

**EXHIBIT JJN-1**



## What is an IP Address – Definition and Explanation



### IP address definition

An IP address is a unique address that identifies a device on the internet or a local network. IP stands for "Internet Protocol," which is the set of rules governing the format of data sent via the internet or local network.

In essence, IP addresses are the identifier that allows information to be sent between devices on a network: they contain location information and make devices accessible for communication. The internet needs a way to differentiate between different computers, routers, and websites. IP addresses provide a way of doing so and form an essential part of how the internet works.



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## What is an IP Address?

An IP address is a string of numbers separated by periods. IP addresses are expressed as a set of four numbers — an example address might be 192.158.1.38. Each number in the set can range from 0 to 255. So, the full IP addressing range goes from 0.0.0.0 to 255.255.255.255.

IP addresses are not random. They are mathematically produced and allocated by the [Internet Assigned Numbers Authority \(IANA\)](#), a division of the [Internet Corporation for Assigned Names and Numbers \(ICANN\)](#). ICANN is a non-profit organization that was established in the United States in 1998 to help maintain the security of the internet and allow it to be usable by all. Each time anyone registers a domain on the internet, they go through a domain name registrar, who pays a small fee to ICANN to register the domain.

Watch this video to learn what IP address is, why IP address is important and how to protect it from hackers:



## How do IP addresses work

If you want to understand why a particular device is not connecting in the way you would expect or you want to troubleshoot why your network may not be working, it helps understand how IP addresses work.

Internet Protocol works the same way as any other language, by communicating using set guidelines to pass information. All devices find, send, and exchange information with other connected devices using this protocol. By speaking the same language, any computer in any location can talk to one another.

The use of IP addresses typically happens behind the scenes. The process works like this:

1. Your device indirectly connects to the internet by connecting at first to a network connected to the internet, which then grants your device access to the internet.
2. When you are at home, that network will probably be your Internet Service Provider (ISP). At work, it will be your company network.
3. Your IP address is assigned to your device by your ISP.
4. Your internet activity goes through the ISP, and they route it back to you, using your IP address. Since they are giving you access to the internet, it is their role to assign an IP address to your device.
5. However, your IP address can change. For example, turning your modem or router on or off can change it. Or you can contact your ISP, and they can change it for you.
6. When you are out and about – for example, traveling – and you take your device with you, your home IP address does not come with you. This is because you will be using another network (Wi-Fi at a hotel, airport, or coffee shop, etc.) to access the internet and



As the process implies, there are different types of IP addresses, which we explore below.

## Types of IP addresses

There are different categories of IP addresses, and within each category, different types.

### Consumer IP addresses

Every individual or business with an internet service plan will have two types of IP addresses: their private IP addresses and their public IP address. The terms public and private relate to the network location — that is, a private IP address is used inside a network, while a public one is used outside a network.

### Private IP addresses

Every device that connects to your internet network has a private IP address. This includes computers, smartphones, and tablets but also any Bluetooth-enabled devices like speakers, printers, or smart TVs. With the growing [internet of things](#), the number of private IP addresses you have at home is probably growing. Your router needs a way to identify these items separately, and many items need a way to recognize each other. Therefore, your router generates private IP addresses that are unique identifiers for each device that differentiate them on the network.

### Public IP addresses

A public IP address is the primary address associated with your whole network. While each connected device has its own IP address, they are also included within the main IP address for your network. As described above, your public IP address is provided to your router by your ISP. Typically, ISPs have a large pool of IP addresses that they distribute to their customers. Your public IP address is the address that all the devices outside your internet network will use to recognize your network.

### Public IP addresses

Public IP addresses come in two forms – dynamic and static.

### Dynamic IP addresses

Dynamic IP addresses change automatically and regularly. ISPs buy a large pool of IP addresses and assign them automatically to their customers. Periodically, they re-assign them and put the older IP addresses back into the pool to be used for other customers. The



establish a customer's IP address if they move home, for example. There are security benefits, too, because a changing IP address makes it harder for criminals to hack into your network interface.

## Static IP addresses

In contrast to dynamic IP addresses, static addresses remain consistent. Once the network assigns an IP address, it remains the same. Most individuals and businesses do not need a static IP address, but for businesses that plan to host their own server, it is crucial to have one. This is because a static IP address ensures that websites and email addresses tied to it will have a consistent IP address – vital if you want other devices to be able to find them consistently on the web.

This leads to the next point – which is the two types of website IP addresses.

### There are two types of website IP addresses

For website owners who don't host their own server, and instead rely on a web hosting package – which is the case for most websites – there are two types of website IP addresses. These are shared and dedicated.

### Shared IP addresses

Websites that rely on shared hosting plans from web hosting providers will typically be one of many websites hosted on the same server. This tends to be the case for individual websites or SME websites, where traffic volumes are manageable, and the sites themselves are limited in terms of the number of pages, etc. Websites hosted in this way will have shared IP addresses.

### Dedicated IP addresses

Some web hosting plans have the option to purchase a dedicated IP address (or addresses). This can make obtaining an SSL certificate easier and allows you to run your own File Transfer Protocol (FTP) server. This makes it easier to share and transfer files with multiple people within an organization and allow anonymous FTP sharing options. A dedicated IP address also allows you to access your website using the IP address alone rather than the domain name – useful if you want to build and test it before registering your domain.

## How to look up IP addresses

The simplest way to check your router's public IP address is to search "What is my IP address?" on Google. Google will show you the answer at the top of the page.



information. The site [IPLocation](#) goes further by showing the name of your ISP and your city.

Generally, you will only receive an approximation of location using this technique — where the provider is, but not the actual device location. If you are doing this, remember to log out of your VPN too. Obtaining the actual physical location address for the public IP address usually requires a search warrant to be submitted to the ISP.

Finding your private IP address varies by platform:

### **In Windows:**

- Use the command prompt.
- Search for "cmd" (without the quotes) using Windows search
- In the resulting pop-up box, type "ipconfig" (no quote marks) to find the information.

### **On a Mac:**

- Go to System Preferences
- Select network – and the information should be visible.

### **On an iPhone:**

- Go to Settings
- Select Wi-Fi and click the "i" in a circle (i) next to the network you are on – the IP address should be visible under the DHCP tab.

If you need to check the IP addresses of other devices on your network, go into the router. How you access the router depends on the brand and the software it uses. Generally, you should be able to type the router's gateway IP address into a web browser on the same network to access it. From there, you will need to navigate to something like "attached devices," which should display a list of all the devices currently or recently attached to the network — including their IP addresses.

## **IP address security threats**

Cybercriminals can use various techniques to obtain your IP address. Two of the most common are social engineering and online stalking.

Attackers can use social engineering to deceive you into revealing your IP address. For example, they can find you through Skype or a similar instant messaging application, which uses IP addresses to communicate. If you chat with strangers using these apps, it is



## Online stalking

Criminals can track down your IP address by merely stalking your online activity. Any number of online activities can reveal your IP address, from playing video games to commenting on websites and forums.

Once they have your IP address, attackers can go to an IP address tracking website, such as [whatismyipaddress.com](https://whatismyipaddress.com), type it in, and then get an idea of your location. They can then cross-reference other open-source data if they want to validate whether the IP address is associated with you specifically. They can then use LinkedIn, Facebook, or other social networks that show where you live, and then see if that matches the area given.

If a Facebook stalker uses a [phishing](#) attack against people with your name to install spying [malware](#), the IP address associated with your system would likely confirm your identity to the stalker.

If cybercriminals know your IP address, they can launch attacks against you or even impersonate you. It is important to be aware of the risks and how to mitigate them. Risks include:

## Downloading illegal content using your IP address

Hackers are known to use hacked IP addresses to download illegal content and anything else they do not want to be traced back to them. For example, using the identity of your IP address, criminals could download pirated movies, music, and video – which would breach your ISP's terms of use – and much more seriously, content related to terrorism or child pornography. This could mean that you – through no fault of your own – could attract the attention of law enforcement.

## Tracking down your location

If they know your IP address, hackers can use geolocation technology to identify your region, city, and state. They only need to do a little more digging on social media to identify your home and potentially burgle it when they know you are away.

## Directly attacking your network

Criminals can directly target your network and launch a variety of assaults. One of the most popular is a [DDoS attack](#) (distributed denial-of-service). This type of cyberattack occurs when hackers use previously infected machines to generate a high volume of requests to flood the targeted system or server. This creates too much traffic for the server to handle, resulting in a disruption of services. Essentially, it shuts down your internet. While this attack



this, as their screen is visible while streaming (on which an IP address can be discovered).

### Hacking into your device

The internet uses ports as well as your IP address to connect. There are thousands of ports for every IP address, and a hacker who knows your IP can try those ports to attempt to force a connection. For example, they could take over your phone and steal your information. If a criminal does obtain access to your device, they could install malware on it.



## How to protect and hide your IP address

Hiding your IP address is a way to protect your personal information and online identity. The two primary ways to hide your IP address are:

1. Using a proxy server
2. Using a virtual private network (VPN)

A proxy server is an intermediary server through which your traffic is routed:



- When those servers send information back to you, it goes to the proxy server, which then routes it to you.

A drawback of proxy servers is that some of the services can spy on you — so you need to trust it. Depending on which one you use, they can also insert ads into your browser.

VPN offers a better solution:

- When you connect your computer – or smartphone or tablet – to a VPN, the device acts as if it is on the same local network as the VPN.
- All your network traffic is sent over a secure connection to the VPN.
- Because your computer behaves as if it is on the network, you can securely access local network resources even when you are in another country.
- You can also use the internet as if you were present at the VPN's location, which has benefits if you are using public Wi-Fi or want to access geo-blocked websites.

[Kaspersky Secure Connection](#) is a VPN that protects you on public Wi-Fi, keeps your communications private, and ensures that you are not exposed to phishing, malware, viruses, and other cyber threats.

## When should you use VPN

Using a VPN hides your IP address and redirects your traffic through a separate server, making it much safer for you online. Situations where you might use a VPN include:

### When using public Wi-Fi

When using a [public Wi-Fi network](#), even one that is password-protected, a VPN is advisable. If a hacker is on the same Wi-Fi network, it is easy for them to snoop on your data. The basic security that the average public Wi-Fi network employs does not provide robust protection from other users on the same network.

Using a VPN will add an extra layer of security to your data, ensuring you bypass the public Wi-Fi's ISP and encrypting all your communication.

### When you are traveling

If you are traveling to a foreign country – for example, China, where sites like Facebook are blocked – a VPN can help you access services that may not be available in that country.



issues. Using a VPN can enable you to use the service as if you were at home. Travelers may also be able to find cheaper airfare when using a VPN, as prices can vary from region to region.

### **When you are working remotely**

This is especially relevant in the post-COVID world, where many [people are working remotely](#). Often employers require the use of a VPN to access company services remotely for security reasons. A VPN that connects to your office's server can give you access to internal company networks and resources when you are not in the office. It can do the same for your home network while you are out and about.

### **When you just want some privacy**

Even in the comfort of your own home, using the internet for everyday purposes, using a VPN can be a good idea. Whenever you access a website, the server you connect to logs your IP address and attaches it to all the other data the site can learn about you: your browsing habits, what you click on, how long you spend looking at a particular page. They can sell this data to advertising companies who use it to tailor ads straight to you. This is why ads on the internet sometimes feel oddly personal: it's because they are. Your IP address can also be used to track your location, even when your location services are turned off. Using a VPN prevents you from leaving footprints on the web.

Don't forget your mobile devices, either. They have IP addresses too, and you probably use them in a wider variety of locations than your home computer, including public Wi-Fi hotspots. [It is advisable to use a VPN on your mobile](#) when connecting to a network you may not fully trust.

## **Other ways to protect your privacy**

### **Change privacy settings on instant messaging applications**

Apps installed on your device are a major source of IP address hacking. Instant messaging and other calling apps can be used as a tool by cybercriminals. Using IM apps only allows direct connections from contacts and doesn't accept calls or messages from people you don't know. Changing your privacy settings makes it harder to find your IP address because people who don't know you cannot connect with you.

### **Create unique passwords**

Your device password is the only barrier that can restrict people from accessing your device. Some people prefer to stick to their devices' default passwords, which makes them



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case letters, numerals, and characters. This will help to safeguard your device against IP address hacking.

### **Stay alert to phishing emails and malicious content**

A high proportion of malware and device tracking software is installed via phishing emails. When you connect with any site, this provides the site with access to your IP address and device location, making it vulnerable to hacking. Be vigilant when opening emails from unknown senders and avoid clicking on links that could send you to unauthorized sites. Pay close attention to the emails' content, even if they appear to come from well-known sites and legitimate businesses.

### **Use a good antivirus solution and keep it up to date**

Install comprehensive antivirus software and keep it up to date. For example, [Kaspersky's Anti-i-Virus protection](#) guards you from viruses on your PC and Android devices, secures and stores your passwords and private documents, and encrypts the data you send and receive online with VPN.

Protecting your IP address is a crucial aspect of protecting your online identity. Securing it through these steps is a way to stay safe against the wide variety of cybercriminals' attacks.

### **Related articles:**

- ◉ [How safe are smart homes](#)
- ◉ [Internet of Things security threats](#)
- ◉ [What is IP spoofing and how to prevent it](#)
- ◉ [What is Voice Over IP \(VOIP\)](#)
- ◉ [Tips to protect yourself from cyberstalkers](#)

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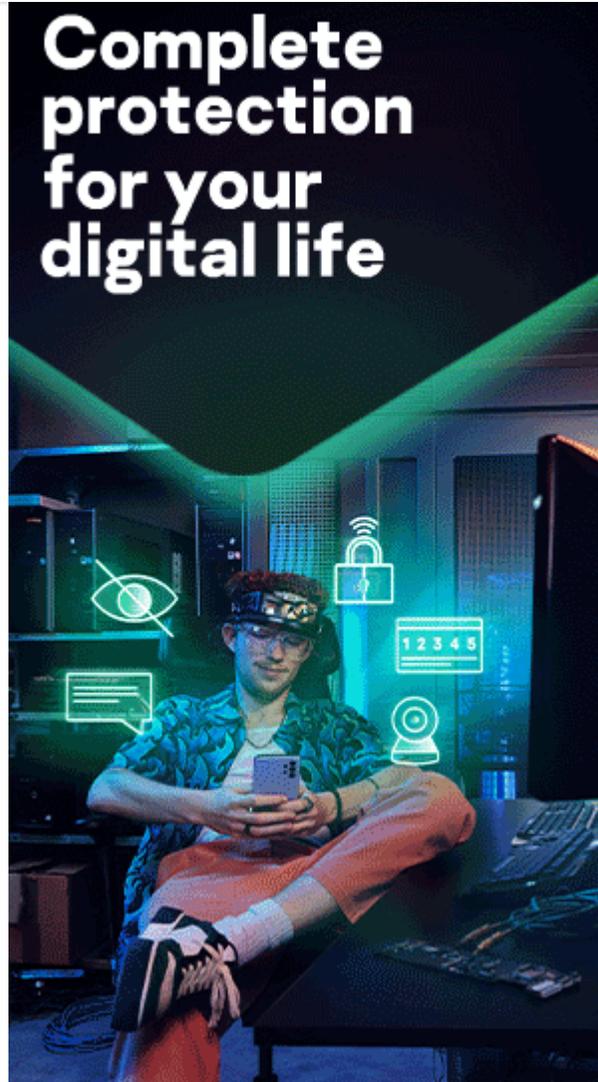


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**EXHIBIT JJN-2**

## Digital Guide



(<https://www.ionos.com/digitalguide/>)

09/16/2020 | Domain extensions (<https://www.ionos.com/digitalguide/domains/domain-extensions/>)

/digitalguide/domains.c

## Country domains: a comprehensive ccTLD list

Every internet address, or domain, has a domain ending, also known as a top-level domain. **Country code top-level domains (ccTLDs)** are used to indicate the site's relation to a specific country or region (i.e. *.uk* for the United Kingdom or *.eu* for the European Union) and are therefore referred to as country code TLDs (<https://www.ionos.com/digitalguide/domains/domain-extensions/cctlds-all-you-need-to-know-about-country-code-domains/>).

ICANN (Internet Corporation for Assigned Names and Numbers)

(<https://www.ionos.com/digitalguide/domains/domain-news/domain-registration-behind-icann-and-neustar/>) is the company that regulates the allocation of all ccTLDs. Meanwhile an NIC (Network Information Center, also known as the Domain Name Registry) is the body responsible for the management and registration of all regional domain extensions in a country. In total there are now more than 200 ccTLDs, all of which can be found in the top-level domain list below.

### Contents

- 1 Characteristics of ccTLDs
- 2 Alternative uses for ccTLDs
- 3 Country code top-level domain list

### Domain Check



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# Characteristics of ccTLDs

## Digital Guide



Country-specific domain extensions generally indicate the **region or language** that the website's content is relevant for. Furthermore, ccTLDs always include two letters of the Latin alphabet. The only **exceptions** to this rule are the countries with **IDN-ccTLDs** (internationalized country code top-level domains). In addition to the standard ccTLD, these countries have one or more variants of the same ccTLD in a language that doesn't use the Latin alphabet. An example of a country with several variations of the same ccTLD is Sri Lanka; as well as the country code, *.lk*, Sri Lanka also uses the TLDs, *.ලංකා* and *.இலங்கை*, which refer to the country in Sinhalese and Tamil, respectively.

## Alternative uses for ccTLDs

Generic top-level domains (<https://www.ionos.com/digitalguide/domains/domain-extensions/what-is-a-generic-top-level-domain-gtld/>) provide the counterpart to ccTLDs. These don't have a regional domain extension, but rather refer to a specific theme (such as *.com* for commercial/business enterprise or *.org* for an organization) and can include more than two letters. However, some **ccTLDs are repurposed** and, like gTLDs, can be used to indicate particular types of websites or the genre of content or products. Wordplay with certain country codes is also quite common. Examples of this include:

- FORA.tv: this video hosting platform and live streaming channel uses the **Tuvaluan ccTLD** to offer users all kinds of video uploading, editing, and streaming services. The *.tv* domain extension is particularly popular in the area of television, film, and video streaming sites (further examples include *ustream.tv* and *green.tv*).
- Last.fm: this is the web address of a UK-based music streaming service, which uses the **county code of the Federated States of Micronesia**, *.fm*. As the abbreviation also stands for 'frequency modulation', it shares a connection with FM radio, and therefore enjoys popularity among websites that are connected to radio shows, music, and podcasts (further examples include the internet radio platform *di.fm* and the music website, *libre.fm*).
- CanIStream.It (<https://www.ionos.com/digitalguide/websites/web-development/web-app-of-the-week-can-i-streamit/>): CanIStream.It is an online platform that provides links to on demand video services. By using the **Italian ccTLD**, the domain spells out exactly what service the website provides.
- Meet.me: this is the most expensive **Montenegrin domain** ever sold (for \$450,000). MeetMe is the name of a US-based social network that was able to express its brand name fully in the domain name with the help of Montenegro's ccTLD.

The *.tk* domain ending (<https://www.ionos.com/digitalguide/domains/domain-news/the-tokelau-domain-miracle/>) is a **special case** when it comes to country domains. Over 30 million websites use this ccTLD, even though the island state of Tokelau, which officially presides over this domain extension, has less than 2 million inhabitants. The mass registration of *.tk* websites can be put down to the fact that in the past, it was completely free of charge to secure an internet address with this ccTLD. Even now, website owners with a *.tk* TLD can run their sites without paying a dime for the first 12 months after registering.

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## Country code top-level domain list

The following domain extensions list includes every country domain in existence. With this table, you can not only discover which **country or area** the domain extensions belong to, but also whether the respective ccTLD is available with DNSSEC (<https://www.ionos.com/digitalguide/server/know-how/dnssec-internet-standards-for-authenticated-name-resolution/>). Websites can use **DNSSEC internet standards** in order to protect the domain name system (<https://www.ionos.com/digitalguide/server/know-how/domain-name-system/>) from manipulation, which includes, for example, phishing websites, which can request sensitive data using fake webpages.

The column on the right indicates whether a web address registered under the respective ccTLD can also be allocated an **internationalized domain name (IDN)**. As mentioned above, these internationalized domain names (<https://www.ionos.com/digitalguide/domains/domain-administration/what-is-an-internationalized-domain-name-idn/>) can use characters from the Latin alphabet, including those with accents, in addition to characters from other alphabets. These characters are located in the second-level domain (i.e. the name of the website *before* the country code top-level domain). One example of this is the Canadian weather website, *méto.ca*, which includes an accented letter.

**Top-level domains that have an IDN** can be accessed using both Latin characters as well as characters from their respective alphabet. However, this doesn't mean that the corresponding top-level domain is also offered as an **IDN ccTLD** at the same time – as is the case with the aforementioned example of Sri Lanka. A good example of this is Germany's *.de* domain extension; although there is no alternative for the *.de* country code, German website owners can use many special characters, including three vowels with umlauts (ä, ö, ü), the 'ß' character, as well as further characters that contain accents (à, á, â, ã etc.). Since the German language is based on the Latin alphabet and can be optimally expressed with a ccTLD (unlike Sri Lanka), it's also not necessary.

ccTLD	DigitalCountry (or region)	DNSSEC	IDN 
.ac	Ascension Island ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	Yes	Yes
.ad	Andorra	Yes	No
.ae	United Arab Emirates	No	No
.af	Afghanistan	Yes	No
.ag	Antigua and Barbuda	Yes	No
.ai ( <a href="https://www.ionos.com/domains/ai-domain?ac=OM.US.USo50K361685T7073a&amp;itc=5L4C4XEV-5ICVBT-38NS5G8">https://www.ionos.com/domains/ai-domain?ac=OM.US.USo50K361685T7073a&amp;itc=5L4C4XEV-5ICVBT-38NS5G8</a> )	Anguilla	No	No
.al	Albania	No	No
.am	Armenia	Yes	No
.an	Netherlands Antilles (now deleted – with the 2010 political dissolution of this region as an overseas territory, the ccTLD was closed down in 2015)	No	No
.ao	Angola	No	No
.aq	Antarctic	No	No
.ar	Argentina	Yes	Yes
.as	American Samoa	No	Yes
.at	Austria	Yes	No
.au	Australia	Yes	No
.aw	Aruba	Yes	No

Domain	Country	Available	Searchable
.ax	Åland Islands (until March 2006 still accessible at <i>.aland.fi</i> ) ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	No	No
.az	Azerbaijan	No	No
.ba	Bosnia and Herzegovina	No	No
.bb	Barbados	No	No
.bd	Bangladesh	No	Yes
.be	Belgium	Yes	Yes
.bf	Burkina Faso	No	No
.bg	Bulgaria	Yes	Yes
.bh	Bahrain	No	No
.bi	Burundi	No	No
.bj	Benin	No	No
.bl	Saint-Barthélemy	No	No
.bm	Bermuda	No	No
.bn	Brunei	No	No
.bo	Bolivia	No	No
.br	Brazil	Yes	Yes
.bq	Bonaire, Saba, Sint Eustatius	No	No
.bs	Bahamas	No	No
.bt	Bhutan	No	No

Domain	Country	Registration	Search
.bv	Digital Guide Bouvet Island (registration not yet possible) ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	No	No 
.bw	Botswana	Yes	No
.by	Belarus	Yes	No
.bz	Belize	Yes	No
.ca	Canada	Yes	Yes
.cc	Cocos Islands	Yes	No
.cd	Democratic Republic of the Congo	No	No
.cf	Central African Republic	No	No
.cg	Republic of the Congo	Yes	No
.ch	Switzerland	Yes	Yes
.ci	Côte d'Ivoire	No	No
.ck	Cook Islands	Yes	No
.cl	Chile	Yes	Yes
.cm	Cameroon	Yes	No
.cn	China	Yes	Yes
.co	Colombia	Yes	No
.cr	Costa Rica	Yes	No
.cs	Czechoslovakia (now deleted)	No	No
.cu	Cuba	No	No

.cv	Digital Guide Cape Verde	No	No
.cw	Curacao ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	Yes	No
.cx	Christmas Island	No	No
.cy	Cyprus	Yes	No
.cz	Czech Republic	Yes	No
.dd	German Democratic Republic (never activated)	No	No
.de	Germany	Yes	Yes
.dj	Djibuti	Yes	No
.dk	Denmark	Yes	Yes
.dm	Dominica	No	No
.do	Dominican Republic	No	No
.dz	Algeria	No	No
.ec	Ecuador	Yes	No
.ee	Estonia	No	Yes
.eg	Egypt	No	No
.eh	Western Sahara (due to the political conflict between the countries of Western Sahara and Morocco, this is ccTLD is currently not live)	No	No
.er	Eritrea	Yes	No
.es	Spain	No	No

ccTLD	Country	Yes	No
.et	Ethiopia	Yes	No
.eu	European Union ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	Yes	Yes
.fi	Finland	Yes	Yes
.fj	Fiji	No	No
.fk	Falkland Islands	No	No
.fm	Micronesia	Yes	No
.fo	Faroe	Yes	No
.fr	France	Yes	Yes
.ga	Gabon	No DS resource record available	No
.gb	United Kingdom (no longer in use since <i>.uk</i> became the established ccTLD)	Yes	No
.gd	Grenada	No	No
.ge	Georgia	No	No
.gf	French Guiana	No	No
.gg	Guernsey	No	No
.gh	Ghana	Yes	No
.gi	Gibraltar	Yes	No
.gl	Greenland	No	No
.gm	Gambia	Yes	No

	Digital Guide	No DS	
.gn	Guinea ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	No DS resource record available	No 
.gp	Guadeloupe	No	No
.gq	Equatorial Guinea	Yes	No
.gr	Greece	Yes	Yes
.gs	South Georgia and the South Sandwich Islands	No	No
.gt	Guatemala	No	Yes
.gu	Guam	No	No
.gw	Guinea-Bissau	No	No
.gy	Guyana	No	No
.hk	Hong Kong	No	Yes
.hm	Heard Island and McDonald Islands	Yes	No
.hn	Honduras	Yes	No
.hr	Croatia	No	No
.ht	Haiti	Yes	Yes
.hu	Hungary	Yes	No
.id	Indonesia	Yes	Yes
.ie	Ireland	No	No
.il	Israel	No	Yes

Domain	Country	Yes	No
.im	Isle of Man	Yes	No
.in	India ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	Yes	No
.io	British Indian Ocean Territory	Yes	No
.iq	Iraq	No	No
.ir	Iran	No	Yes
.is	Iceland	No	Yes
.it	Italy	No	Yes
.je	Jersey	No	No
.jm	Jamaica	No	No
.jo	Jordan	Yes	No
.jp	Japan	Yes	No
.ke	Kenya	Yes	No
.kg	Kyrgyzstan	Yes	No
.kh	Cambodia	Yes	No
.ki	Kiribati	No	No
.km	Comoros	No	No
.kn	St. Kitts and Nevis	No	No
.kp	North Korea	Yes	No
.kr	South Korea	Yes	Yes
.kw	Kuwait	Yes	No

Country Code	Country Name	Digital Guide	DS
.ky	Cook Islands	No	No
.kz	Kazakhstan ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	Yes	No
.la	Laos	Yes	No
.lb	Lebanon	Yes	No
.lc	St. Lucia	Yes	No
.li	Liechtenstein	Yes	Yes
.lk	Sri Lanka	Yes	Yes
.lr	Liberia	No DS resource record available	No
.ls	Lesotho	Yes	No
.lt	Lithuania	Yes	Yes
.lu	Luxembourg	Yes	Yes
.lv	Latvia	Yes	Yes
.ly	Libya	Yes	No
.ma	Marocco	No	No
.mc	Monaco	No	No
.md	Moldova	Yes	No
.me	Montenegro	Yes	No
.mf	Saint Martin	No	No

.mg	Madagascar	No	No
.mh	Marshall Islands ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	No	No
.mk	Macedonia	Yes	No
.ml	Mali	Yes	No
.mm	Myanmar	Yes	No
.mn	Mongolia	Yes	No
.mo	Macau	No	No
.mp	Northern Mariana Islands	No	No
.mq	Martinique	No	No
.mr	Mauritania	No	No
.ms	Montserrat	No	No
.mt	Malta	No	No
.mu	Mauritius	No	No
.mv	Maldives	Yes	No
.mw	Malawi	Yes	No
.mx	Mexico	No	No
.my	Malaysia	Yes	Yes
.mz	Mozambique	Yes	No
.na	Namibia	Yes	No
.nc	New Caledonia	Yes	No

.ne	Nepal	No	No
.nf	Norfolk Island ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	No	No
.ng	Nigeria	Yes	No
.ni	Nicaragua	Yes	No
.nl	Netherlands	Yes	No
.no	Norway	No	Yes
.np	Nepal	Yes	No
.nr	Nauru	Yes	No
.nu	Niue	Yes	Yes
.nz	New Zealand	Yes	Yes
.om	Oman	Yes	No
.pa	Panama	No	No
.pe	Peru	No	Yes
.pf	French Polynesia	No	No
.pg	Papua New Guinea	No	No
.ph	Philippines	Yes	No
.pk	Pakistan	Yes	No
.pl	Poland	Yes	Yes
.pm	Saint Pierre and Miquelon	Yes	Yes
.pn	Pitcairn Islands	No	No

Domain	Country	Yes	No
.pr	Porto Rico	Yes	No
.ps	Palestine ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	Yes	No
.pt	Portugal	Yes	Yes
.pw	Palau	No	No
.py	Paraguay	Yes	No
.qa	Qatar	Yes	No
.re	Réunion	Yes	Yes
.ro	Romania	Yes	Yes
.rs	Serbia	No	No
.ru	Russia	No	No
.rw	Rwanda	Yes	No
.sa	Saudi Arabia	Yes	Yes
.sb	Solomon Islands	No	No
.sc	Seychelles	Yes	No
.sd	Sudan	No	No
.se	Sweden	Yes	Yes
.sg	Singapore	Yes	No
.sh	St. Helena	Yes	Yes
.si	Slovenia	Yes	Yes

ccTLD	Country	Registration	Search
.sj	Denmark and Jan Mayen (registration is not yet possible) ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	No	No 
.sk	Slovakia	No	No
.sl	Sierra Leone	No	No
.sm	San Marino	No	No
.sn	Senegal	No	No
.so	Somalia	No	No
.sr	Suriname	No	No
.ss	South Sudan	Yes	No
.st	São Tomé and Príncipe	No	No
.su	Soviet Union (this TLD has been managed by Russia since the dissolution of the USSR)	Yes	Yes
.sv	El Salvador	No	No
.sx	Sint Maarten	Yes	No
.sy	Syria	No	No
.sz	Swaziland	No	No
.tc	Turks and Caicos Islands	Yes	No
.td	Chad	No	No
.tf	French Southern and Antarctic Lands	Yes	Yes
.tg	Togo	No	No

.th	Digital Guide Thailand	No	Yes
.tj	Tajikistan ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	No	No
.tk	Tokelau	Yes	No
.tl	Timor-Leste (formerly <i>.tp</i> )	Yes	No
.tm	Turkmenistan	Yes	Yes
.tn	Tunisia	No	Yes
.to	Tonga	No	Yes
.tp	Timor-Leste (now deleted – replaced by <i>.tl</i> in 2002)	Yes	No
.tr	Turkey, Turkish Republic of Northern Cyprus	Yes	Yes
.tt	Trinidad and Tobago	Yes	No
.tv	Tuvalu	Yes	No
.tw	Taiwan	Yes	Yes
.tz	Tanzania	No DS resource record available	No
.ua	Ukraine	Yes	No
.ug	Uganda	Yes	No
.uk	United Kingdom	Yes	No
.um	United States Minor Outlying Islands (now deleted)	No	No

Domain	Country	DS	DS
.us	United States	No	No
.uy	Uruguay ( <a href="https://www.ionos.com/digitalguide/">https://www.ionos.com/digitalguide/</a> )	Yes	No
.uz	Uzbekistan	No	No
.va	Vatican City	No	No
.vc	St. Vincent and the Grenadines	No DS resource record available	No
.ve	Venezuela	No	No
.vg	Britische Virgin Islands	Yes	No
.vi	United States Virgin Islands	Yes	No
.vn	Vietnam	Yes	Yes
.vu	Vanuatu	No	No
.wf	Wallis and Futuna (also <i>.fr</i> )	Yes	Yes
.ws	Samoa	No	Yes
.ye	Yemen	Yes	No
.yt	Mayotte (French region – also <i>.fr</i> )	Yes	Yes
.yu	Yugoslavia (now deleted – after the dissolution of the former Yugoslavia the TLD was used by Serbia and Montenegro until 2010)	No	No
.za	South Africa	No	No
.zm	Zambia	No	No

Domain	Country	Available	Deleted
.zr	Zaire	Yes	No
.zw	Zimbabwe	Yes	No

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## ccTLDs – what’s the deal with country domain names?

09/16/2020 | Domain extensions

ICANN manages a list of different top-level domains specific to varying geographic regions. The guidelines these country code top-level domains (ccTLDs) follow (examples: .us (USA), .ca (Canada), or .mx (Mexico), are individually determined by their respective countries, leading to some substantial differences in how they are managed. But what other ccTLDs are out there? And what are the...



# What is a TLD (Top Level Domain)?

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What should you do if your desired domain has already been taken? The range of available .com or .org domains has gotten smaller over the years. Now there is a solution to this problem: new top-level domains! Instead of using complicated and unclear abbreviations, choose short and concise domains from the new TLDs. Local companies can especially profit from nTLDs.

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**EXHIBIT JJN-3**

# THE DOMAIN NAME INDUSTRY BRIEF

**VOLUME 20 – ISSUE 1**  
MARCH 2023



**VERISIGN®**

## THE DOMAIN NAME INDUSTRY BRIEF

As a global provider of domain name registry services and internet infrastructure, Verisign reviews the state of the domain name industry each quarter through a variety of statistical and analytical research, as well as relevant industry insights. Verisign provides this brief to highlight important trends in domain name registrations, including key performance indicators and growth opportunities, to industry analysts, media, and businesses.

## EXECUTIVE SUMMARY

The fourth quarter of 2022 closed with 350.4 million domain name registrations across all top-level domains (TLDs), an increase of 0.5 million domain name registrations, or 0.1%, compared to the third quarter of 2022.<sup>1,2</sup> Domain name registrations have increased by 8.7 million, or 2.6%, year over year.<sup>1,2</sup>

The .com and .net TLDs had a combined total of 173.8 million domain name registrations in the domain name base<sup>3</sup> at the end of the fourth quarter of 2022, a decrease of 0.4 million domain name registrations, or 0.2%, compared to the third quarter of 2022. The .com and .net TLDs had a combined increase of 0.3 million domain name registrations, or 0.2%, year over year. As of Dec. 31, 2022, the .com domain name base totaled 160.5 million domain name registrations, and the .net domain name base totaled 13.2 million domain name registrations.

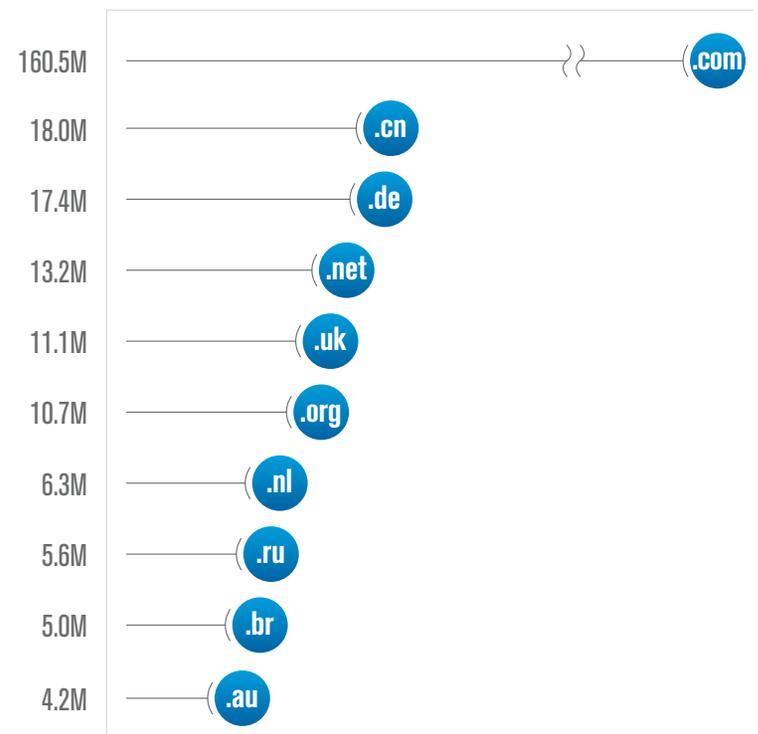
New .com and .net domain name registrations totaled 9.7 million at the end of the fourth quarter of 2022, compared to 10.6 million domain name registrations at the end of the fourth quarter of 2021.

Total country-code TLD (ccTLD) domain name registrations were 133.1 million at the end of the fourth quarter of 2022, an increase of 0.7 million domain name registrations, or 0.5%, compared to the third quarter of 2022.<sup>1,2</sup> ccTLDs increased by 5.7 million domain name registrations, or 4.5%, year over year.<sup>1,2</sup>

Total new generic TLD (ngTLD) domain name registrations were 27.4 million at the end of the fourth quarter of 2022, an increase of 0.1 million domain name registrations, or 0.5%, compared to the third quarter of 2022. ngTLDs increased by 2.7 million domain name registrations, or 11.1%, year over year.

## TOP 10 LARGEST TLDs BY NUMBER OF REPORTED DOMAIN NAMES

Source: ZookNIC, Q4 2022; Verisign, Q4 2022; Centralized Zone Data Service, Q4 2022



As of Dec. 31, 2022, the 10 largest TLDs by number of reported domain names were .com, .cn, .de, .net, .uk, .org, .nl, .ru, .br, and .au.<sup>1,2,4</sup>

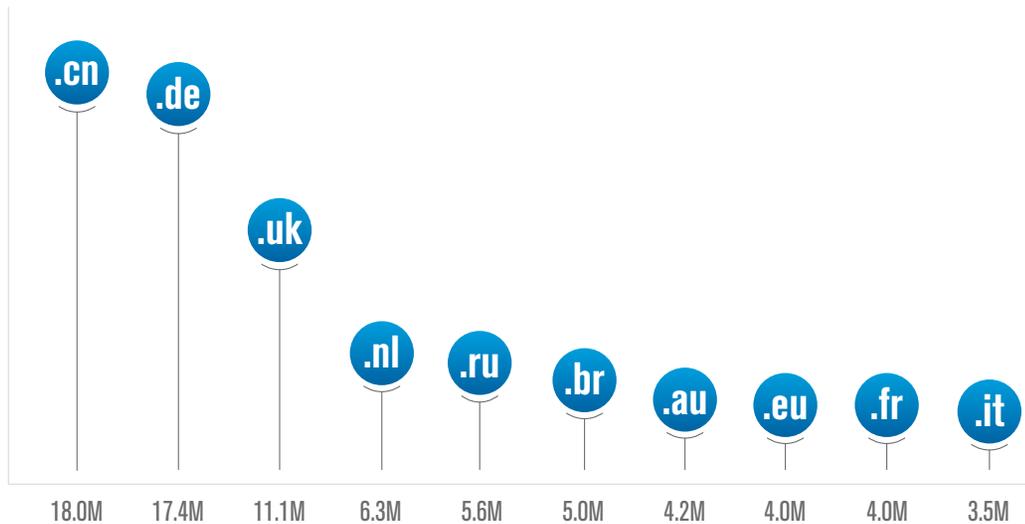


## TOP 10 LARGEST ccTLDs BY NUMBER OF REPORTED DOMAIN NAMES

Source: ZookNIC, Q4 2022

For further information on *The Domain Name Industry Brief* methodology, please see the Editor's Note contained in [Vol. 19, Issue 1 of \*The Domain Name Industry Brief\*](#).

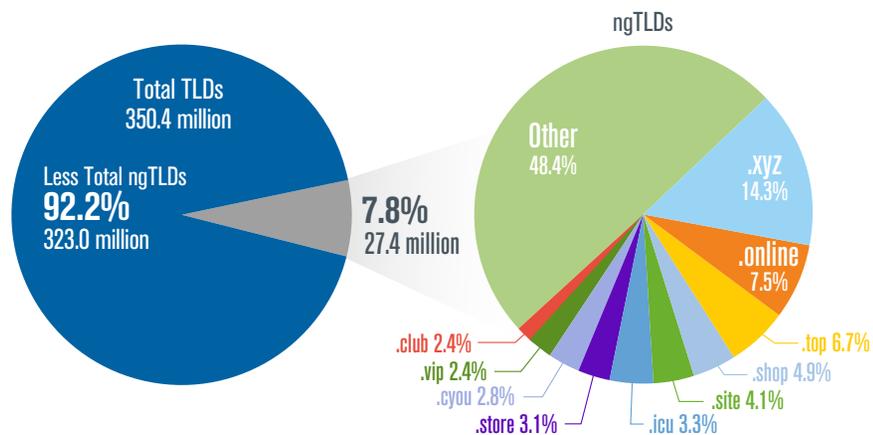
The top 10 ccTLDs, as of Dec. 31, 2022, were .cn, .de, .uk, .nl, .ru, .br, .au, .eu, .fr, and .it.<sup>1,2</sup> As of Dec. 31, 2022, there were 308 global ccTLD extensions delegated in the root zone, including internationalized domain names, with the top 10 ccTLDs comprising 59.4% of all ccTLD domain name registrations.<sup>1,2</sup>



## ngTLDs AS PERCENTAGE OF TOTAL TLDs

Source: ZookNIC, Q4 2022; Verisign, Q4 2022; and Centralized Zone Data Service, Q4 2022

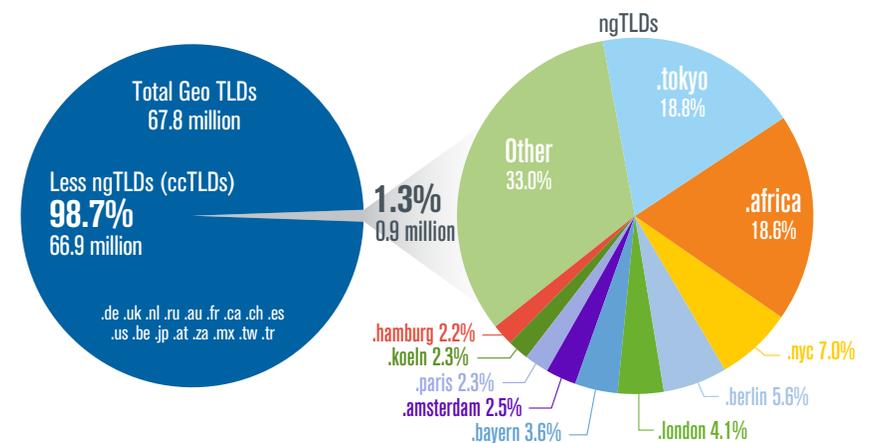
The top 10 ngTLDs represented 51.6% of all ngTLD domain name registrations. The following chart shows ngTLD domain name registrations as a percentage of overall TLD domain name registrations, of which they represent 7.8%. In addition, the chart on the right highlights the top 10 ngTLDs as a percentage of all ngTLD domain name registrations for the fourth quarter of 2022.



## GEOGRAPHICAL ngTLDs AS PERCENTAGE OF TOTAL CORRESPONDING GEOGRAPHICAL TLDs

Source: ZookNIC, Q4 2022 and Centralized Zone Data Service, Q4 2022

As of Dec. 31, 2022, there were 50 ngTLDs delegated that met the following criteria: 1) had a geographical focus and 2) had more than 1,000 domain name registrations since entering general availability. The chart on the left summarizes the domain name registrations as of Dec. 31, 2022, for the listed ccTLDs and the corresponding geographical ngTLDs within the same geographic region. In addition, the chart on the right highlights the top 10 geographical ngTLDs as a percentage of the total geographical TLDs.





## NEW ON THE VERISIGN BLOG / Oct. – Dec. 2022



### **CELEBRATING 35 YEARS OF THE DNS PROTOCOL**

November of 1987 saw the establishment of the Domain Name System protocol suite as internet standards. This was a development that not only would begin to open the internet to individuals and businesses globally, but also would arguably redefine communications, commerce and access to information for future generations.



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## ABOUT VERISIGN

Verisign, a global provider of domain name registry services and internet infrastructure, enables internet navigation for many of the world's most recognized domain names. Verisign enables the security, stability, and resiliency of key internet infrastructure and services, including providing root zone maintainer services, operating two of the 13 global internet root servers, and providing registration services and authoritative resolution for the .com and .net top-level domains, which support the majority of global e-commerce. To learn more about what it means to be Powered by Verisign, please visit [verisign.com](https://verisign.com).

## LEARN MORE

To access the archives for *The Domain Name Industry Brief*, please go to [verisign.com/dnibarchives](https://verisign.com/dnibarchives). Email your comments or questions to [domainbrief@verisign.com](mailto:domainbrief@verisign.com).

## METHODOLOGY

The data presented in this brief, including quarter-over-quarter and year-over-year metrics, reflects information available to Verisign at the time of this brief and may incorporate changes and adjustments to previously reported periods based on additional information received since the date of such prior reports, so as to more accurately reflect the growth rate of domain name registrations. In addition, the data available for this brief may not include data for all of the 308 ccTLD extensions that are delegated to the root zone, and includes only the data available at the time of the preparation of this brief. Beginning with [Vol. 19, Issue 1 of \*The Domain Name Industry Brief\*](#), the .tk, .cf, .ga, .gq, and .ml ccTLDs have been excluded from all applicable calculations. The historical data has been adjusted from Vol. 19, Issue 1 forward.

For generic TLD and ccTLD data cited with ZookNIC as a source, the ZookNIC analysis uses a comparison of domain name root zone file changes supplemented with other authoritative data sources and independent approximations. For more information, see [zooknic.com](https://zooknic.com).

1 Per the Editor's Note in [Vol. 19, Issue 1 of \*The Domain Name Industry Brief\*](#), all figure(s) exclude domain names in the .tk, .cf, .ga, .gq, and .ml ccTLDs operated by Freenom. Quarterly and year-over-year trends have been calculated relative to historical figures that have also been adjusted to exclude these five ccTLDs.  
2 The generic TLD, ngTLD, and ccTLD data cited in this brief: (i) includes ccTLD internationalized domain names, (ii) is an estimate as of the time this brief was developed and (iii) is subject to change as more complete data is received. Some numbers in this brief may reflect standard rounding.  
3 The domain name base is the active zone plus the number of domain names that are registered but not configured for use in the respective TLD zone file plus the number of domain names that are in a client or server hold status. The .com and .net domain name registration figures are as reported in Verisign's most recent SEC filings.  
4 Line break indicates that the .com line has been shortened for display considerations.

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**EXHIBIT JJN-4**

*Supporting the implementation of Union policy and law regarding cybersecurity.*



## NIS Directive

On 16 January 2023, the Directive (EU) 2022/2555 (known as NIS2) entered into force replacing Directive (EU) 2016/1148. ENISA considers that NIS2 improves the existing cyber security status across EU in different ways by:

- creating the necessary cyber crisis management structure (CyCLONe)
- increasing the level of harmonization regarding security requirements and reporting obligations
- encouraging Member States to introduce new areas of interest such as supply chain, vulnerability management, core internet and cyber hygiene their national cybersecurity strategies
- bringing novel ideas such as the peer reviews for enhancing collaboration and knowledge sharing amongst the Member States
- covering a larger share of the economy and society by including more sectors which means that more entities are obliged to take measures in order to increase their level of cybersecurity.

NIS2 assigns to ENISA a number of significant new tasks such as:

- The development and maintenance of a European vulnerability registry
- The secretariat of the European Cyber Crises Liaison Organisation Network (CyCLONe)
- The publication of an annual report on the state of cybersecurity in the EU
- To support the organisation of peer reviews between member states
- The creation and maintenance of a registry for entities providing cross-border services e.g. DNS service providers, TLD name registries, entities providing domain name registration services, cloud computing service providers and data centre service providers.

ENISA already plays a key role in the implementation of the NIS Directive by providing assistance to the Member States regarding its transposition, by supporting several working streams of the Cooperation Group with technical expertise and by providing the secretariat for the CSIRTs Network and organising the CyberEurope Exercise.

In addition, the Agency assists Member States as well as the Cooperation Group in their tasks by:

- Identifying good practices in the Member States regarding the implementation of the NIS directive;
- Supporting the EU-wide reporting process for cybersecurity incidents, by developing thresholds, templates and tools;
- Agreeing on common approaches and procedures;
- Helping Member States to address common cybersecurity issues.

ENISA will continue to support the implementation of the NIS directive as part of its mandate and its work programme. The Member States have 21 months in order to transpose NIS2 to their national legislative framework.

#### DISCOVER MORE



[NIS Directive tool \(https://www.enisa.europa.eu/topics/nis-directive/nis-visualtool\)](https://www.enisa.europa.eu/topics/nis-directive/nis-visualtool)



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(<https://www.enisa.europa.eu/publications/trust-services-secure-move-to-the-cloud-of-the-eidas-ecosystem>)

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**EXHIBIT JJN-5**

# DIRECTIVES

## DIRECTIVE (EU) 2022/2555 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 December 2022

**on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) Directive (EU) 2016/1148 of the European Parliament and the Council <sup>(4)</sup> aimed to build cybersecurity capabilities across the Union, mitigate threats to network and information systems used to provide essential services in key sectors and ensure the continuity of such services when facing incidents, thus contributing to the Union's security and to the effective functioning of its economy and society.
- (2) Since the entry into force of Directive (EU) 2016/1148, significant progress has been made in increasing the Union's level of cyber resilience. The review of that Directive has shown that it has served as a catalyst for the institutional and regulatory approach to cybersecurity in the Union, paving the way for a significant change in mind-set. That Directive has ensured the completion of national frameworks on the security of network and information systems by establishing national strategies on security of network and information systems and establishing national capabilities and by implementing regulatory measures covering essential infrastructures and entities identified by each Member State. Directive (EU) 2016/1148 has also contributed to cooperation at Union level through the establishment of the Cooperation Group and the network of national computer security incident response teams. Notwithstanding those achievements, the review of Directive (EU) 2016/1148 has revealed inherent shortcomings that prevent it from addressing effectively current and emerging cybersecurity challenges.
- (3) Network and information systems have developed into a central feature of everyday life with the speedy digital transformation and interconnectedness of society, including in cross-border exchanges. That development has led to an expansion of the cyber threat landscape, bringing about new challenges, which require adapted, coordinated and innovative responses in all Member States. The number, magnitude, sophistication, frequency and impact of incidents are increasing, and present a major threat to the functioning of network and information systems. As a result, incidents can impede the pursuit of economic activities in the internal market, generate financial loss,

<sup>(1)</sup> OJ C 233, 16.6.2022, p. 22.

<sup>(2)</sup> OJ C 286, 16.7.2021, p. 170.

<sup>(3)</sup> Position of the European Parliament of 10 November 2022 (not yet published in the Official Journal) and decision of the Council of 28 November 2022.

<sup>(4)</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

undermine user confidence and cause major damage to the Union's economy and society. Cybersecurity preparedness and effectiveness are therefore now more essential than ever to the proper functioning of the internal market. Moreover, cybersecurity is a key enabler for many critical sectors to successfully embrace the digital transformation and to fully grasp the economic, social and sustainable benefits of digitalisation.

- (4) The legal basis of Directive (EU) 2016/1148 was Article 114 of the Treaty on the Functioning of the European Union (TFEU), the objective of which is the establishment and functioning of the internal market by enhancing measures for the approximation of national rules. The cybersecurity requirements imposed on entities providing services or carrying out activities which are economically significant vary considerably among Member States in terms of type of requirement, their level of detail and the method of supervision. Those disparities entail additional costs and create difficulties for entities that offer goods or services across borders. Requirements imposed by one Member State that are different from, or even in conflict with, those imposed by another Member State, may substantially affect such cross-border activities. Furthermore, the possibility of the inadequate design or implementation of cybersecurity requirements in one Member State is likely to have repercussions at the level of cybersecurity of other Member States, in particular given the intensity of cross-border exchanges. The review of Directive (EU) 2016/1148 has shown a wide divergence in its implementation by Member States, including in relation to its scope, the delimitation of which was very largely left to the discretion of the Member States. Directive (EU) 2016/1148 also provided the Member States with very wide discretion as regards the implementation of the security and incident reporting obligations laid down therein. Those obligations were therefore implemented in significantly different ways at national level. There are similar divergences in the implementation of the provisions of Directive (EU) 2016/1148 on supervision and enforcement.
- (5) All those divergences entail a fragmentation of the internal market and can have a prejudicial effect on its functioning, affecting in particular the cross-border provision of services and the level of cyber resilience due to the application of a variety of measures. Ultimately, those divergences could lead to the higher vulnerability of some Member States to cyber threats, with potential spill-over effects across the Union. This Directive aims to remove such wide divergences among Member States, in particular by setting out minimum rules regarding the functioning of a coordinated regulatory framework, by laying down mechanisms for effective cooperation among the responsible authorities in each Member State, by updating the list of sectors and activities subject to cybersecurity obligations and by providing effective remedies and enforcement measures which are key to the effective enforcement of those obligations. Therefore, Directive (EU) 2016/1148 should be repealed and replaced by this Directive.
- (6) With the repeal of Directive (EU) 2016/1148, the scope of application by sectors should be extended to a larger part of the economy to provide a comprehensive coverage of sectors and services of vital importance to key societal and economic activities in the internal market. In particular, this Directive aims to overcome the shortcomings of the differentiation between operators of essential services and digital service providers, which has been proven to be obsolete, since it does not reflect the importance of the sectors or services for the societal and economic activities in the internal market.
- (7) Under Directive (EU) 2016/1148, Member States were responsible for identifying the entities which met the criteria to qualify as operators of essential services. In order to eliminate the wide divergences among Member States in that regard and ensure legal certainty as regards the cybersecurity risk-management measures and reporting obligations for all relevant entities, a uniform criterion should be established that determines the entities falling within the scope of this Directive. That criterion should consist of the application of a size-cap rule, whereby all entities which qualify as medium-sized enterprises under Article 2 of the Annex to Commission Recommendation 2003/361/EC <sup>(5)</sup>, or exceed the ceilings for medium-sized enterprises provided for in paragraph 1 of that Article, and which operate within the sectors and provide the types of service or carry out the activities covered by this

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<sup>(5)</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

Directive fall within its scope. Member States should also provide for certain small enterprises and microenterprises, as defined in Article 2(2) and (3) of that Annex, which fulfil specific criteria that indicate a key role for society, the economy or for particular sectors or types of service to fall within the scope of this Directive.

- (8) The exclusion of public administration entities from the scope of this Directive should apply to entities whose activities are predominantly carried out in the areas of national security, public security, defence or law enforcement, including the prevention, investigation, detection and prosecution of criminal offences. However, public administration entities whose activities are only marginally related to those areas should not be excluded from the scope of this Directive. For the purposes of this Directive, entities with regulatory competences are not considered to be carrying out activities in the area of law enforcement and are therefore not excluded on that ground from the scope of this Directive. Public administration entities that are jointly established with a third country in accordance with an international agreement are excluded from the scope of this Directive. This Directive does not apply to Member States' diplomatic and consular missions in third countries or to their network and information systems, insofar as such systems are located in the premises of the mission or are operated for users in a third country.
- (9) Member States should be able to take the necessary measures to ensure the protection of the essential interests of national security, to safeguard public policy and public security, and to allow for the prevention, investigation, detection and prosecution of criminal offences. To that end, Member States should be able to exempt specific entities which carry out activities in the areas of national security, public security, defence or law enforcement, including the prevention, investigation, detection and prosecution of criminal offences, from certain obligations laid down in this Directive with regard to those activities. Where an entity provides services exclusively to a public administration entity that is excluded from the scope of this Directive, Member States should be able to exempt that entity from certain obligations laid down in this Directive with regard to those services. Furthermore, no Member State should be required to supply information the disclosure of which would be contrary to the essential interests of its national security, public security or defence. Union or national rules for the protection of classified information, non-disclosure agreements, and informal non-disclosure agreements such as the traffic light protocol should be taken into account in that context. The traffic light protocol is to be understood as a means to provide information about any limitations with regard to the further spreading of information. It is used in almost all computer security incident response teams (CSIRTs) and in some information analysis and sharing centres.
- (10) Although this Directive applies to entities carrying out activities in the production of electricity from nuclear power plants, some of those activities may be linked to national security. Where that is the case, a Member State should be able to exercise its responsibility for safeguarding national security with respect to those activities, including activities within the nuclear value chain, in accordance with the Treaties.
- (11) Some entities carry out activities in the areas of national security, public security, defence or law enforcement, including the prevention, investigation, detection and prosecution of criminal offences, while also providing trust services. Trust service providers which fall within the scope of Regulation (EU) No 910/2014 of the European Parliament and of the Council <sup>(9)</sup> should fall within the scope of this Directive in order to secure the same level of security requirements and supervision as that which was previously laid down in that Regulation in respect of trust service providers. In line with the exclusion of certain specific services from Regulation (EU) No 910/2014, this Directive should not apply to the provision of trust services that are used exclusively within closed systems resulting from national law or from agreements between a defined set of participants.

<sup>(9)</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

- (12) Postal service providers as defined in Directive 97/67/EC of the European Parliament and of the Council (<sup>(7)</sup>), including providers of courier services, should be subject to this Directive if they provide at least one of the steps in the postal delivery chain, in particular clearance, sorting, transport or distribution of postal items, including pick-up services, while taking account of the degree of their dependence on network and information systems. Transport services that are not undertaken in conjunction with one of those steps should be excluded from the scope of postal services.
- (13) Given the intensification and increased sophistication of cyber threats, Member States should strive to ensure that entities that are excluded from the scope of this Directive achieve a high level of cybersecurity and to support the implementation of equivalent cybersecurity risk-management measures that reflect the sensitive nature of those entities.
- (14) Union data protection law and Union privacy law applies to any processing of personal data under this Directive. In particular, this Directive is without prejudice to Regulation (EU) 2016/679 of the European Parliament and of the Council (<sup>(8)</sup>) and Directive 2002/58/EC of the European Parliament and of the Council (<sup>(9)</sup>). This Directive should therefore not affect, inter alia, the tasks and powers of the authorities competent to monitor compliance with the applicable Union data protection law and Union privacy law.
- (15) Entities falling within the scope of this Directive for the purpose of compliance with cybersecurity risk-management measures and reporting obligations should be classified into two categories, essential entities and important entities, reflecting the extent to which they are critical as regards their sector or the type of service they provide, as well as their size. In that regard, due account should be taken of any relevant sectoral risk assessments or guidance by the competent authorities, where applicable. The supervisory and enforcement regimes for those two categories of entities should be differentiated to ensure a fair balance between risk-based requirements and obligations on the one hand, and the administrative burden stemming from the supervision of compliance on the other.
- (16) In order to avoid entities that have partner enterprises or that are linked enterprises being considered to be essential or important entities where this would be disproportionate, Member States are able to take into account the degree of independence an entity enjoys in relation to its partner or linked enterprises when applying Article 6(2) of the Annex to Recommendation 2003/361/EC. In particular, Member States are able to take into account the fact that an entity is independent from its partner or linked enterprises in terms of the network and information systems that that entity uses in the provision of its services and in terms of the services that the entity provides. On that basis, where appropriate, Member States are able to consider that such an entity does not qualify as a medium-sized enterprise under Article 2 of the Annex to Recommendation 2003/361/EC, or does not exceed the ceilings for a medium-sized enterprise provided for in paragraph 1 of that Article, if, after taking into account the degree of independence of that entity, that entity would not have been considered to qualify as a medium-sized enterprise or to exceed those ceilings in the event that only its own data had been taken into account. This leaves unaffected the obligations laid down in this Directive of partner and linked enterprises which fall within the scope of this Directive.
- (17) Member States should be able to decide that entities identified before the entry into force of this Directive as operators of essential services in accordance with Directive (EU) 2016/1148 are to be considered to be essential entities.

(<sup>7</sup>) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).

(<sup>8</sup>) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(<sup>9</sup>) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

- (18) In order to ensure a clear overview of the entities falling within the scope of this Directive, Member States should establish a list of essential and important entities as well as entities providing domain name registration services. For that purpose, Member States should require entities to submit at least the following information to the competent authorities, namely, the name, address and up-to-date contact details, including the email addresses, IP ranges and telephone numbers of the entity, and, where applicable, the relevant sector and subsector referred to in the annexes, as well as, where applicable, a list of the Member States where they provide services falling within the scope of this Directive. To that end, the Commission, with the assistance of the European Union Agency for Cybersecurity (ENISA), should, without undue delay, provide guidelines and templates regarding the obligation to submit information. To facilitate the establishing and updating of the list of essential and important entities as well as entities providing domain name registration services, Member States should be able to establish national mechanisms for entities to register themselves. Where registers exist at national level, Member States can decide on the appropriate mechanisms that allow for the identification of entities falling within the scope of this Directive.
- (19) Member States should be responsible for submitting to the Commission at least the number of essential and important entities for each sector and subsector referred to in the annexes, as well as relevant information about the number of identified entities and the provision, from among those laid down in this Directive, on the basis of which they were identified, and the type of service that they provide. Member States are encouraged to exchange with the Commission information about essential and important entities and, in the case of a large-scale cybersecurity incident, relevant information such as the name of the entity concerned.
- (20) The Commission should, in cooperation with the Cooperation Group and after consulting the relevant stakeholders, provide guidelines on the implementation of the criteria applicable to microenterprises and small enterprises for the assessment of whether they fall within the scope of this Directive. The Commission should also ensure that appropriate guidance is given to microenterprises and small enterprises falling within the scope of this Directive. The Commission should, with the assistance of the Member States, make information available to microenterprises and small enterprises in that regard.
- (21) The Commission could provide guidance to assist Member States in implementing the provisions of this Directive on scope and evaluating the proportionality of the measures to be taken pursuant to this Directive, in particular as regards entities with complex business models or operating environments, whereby an entity may simultaneously fulfil the criteria assigned to both essential and important entities or may simultaneously carry out activities, some of which fall within and some of which are excluded from the scope of this Directive.
- (22) This Directive sets out the baseline for cybersecurity risk-management measures and reporting obligations across the sectors that fall within its scope. In order to avoid the fragmentation of cybersecurity provisions of Union legal acts, where further sector-specific Union legal acts pertaining to cybersecurity risk-management measures and reporting obligations are considered to be necessary to ensure a high level of cybersecurity across the Union, the Commission should assess whether such further provisions could be stipulated in an implementing act under this Directive. Should such an implementing act not be suitable for that purpose, sector-specific Union legal acts could contribute to ensuring a high level of cybersecurity across the Union, while taking full account of the specificities and complexities of the sectors concerned. To that end, this Directive does not preclude the adoption of further sector-specific Union legal acts addressing cybersecurity risk-management measures and reporting obligations that take due account of the need for a comprehensive and consistent cybersecurity framework. This Directive is without prejudice to the existing implementing powers that have been conferred on the Commission in a number of sectors, including transport and energy.
- (23) Where a sector-specific Union legal act contains provisions requiring essential or important entities to adopt cybersecurity risk-management measures or to notify significant incidents, and where those requirements are at least equivalent in effect to the obligations laid down in this Directive, those provisions, including on supervision

and enforcement, should apply to such entities. If a sector-specific Union legal act does not cover all entities in a specific sector falling within the scope of this Directive, the relevant provisions of this Directive should continue to apply to the entities not covered by that act.

- (24) Where provisions of a sector-specific Union legal act require essential or important entities to comply with reporting obligations that are at least equivalent in effect to the reporting obligations laid down in this Directive, the consistency and effectiveness of the handling of incident notifications should be ensured. To that end, the provisions relating to incident notifications of the sector-specific Union legal act should provide the CSIRTs, the competent authorities or the single points of contact on cybersecurity (single points of contact) under this Directive with an immediate access to the incident notifications submitted in accordance with the sector-specific Union legal act. In particular, such immediate access can be ensured if incident notifications are being forwarded without undue delay to the CSIRT, the competent authority or the single point of contact under this Directive. Where appropriate, Member States should put in place an automatic and direct reporting mechanism that ensures systematic and immediate sharing of information with the CSIRTs, the competent authorities or the single points of contact concerning the handling of such incident notifications. For the purpose of simplifying reporting and of implementing the automatic and direct reporting mechanism, Member States could, in accordance with the sector-specific Union legal act, use a single entry point.
- (25) Sector-specific Union legal acts which provide for cybersecurity risk-management measures or reporting obligations that are at least equivalent in effect to those laid down in this Directive could provide that the competent authorities under such acts exercise their supervisory and enforcement powers in relation to such measures or obligations with the assistance of the competent authorities under this Directive. The competent authorities concerned could establish cooperation arrangements for that purpose. Such cooperation arrangements could specify, inter alia, the procedures concerning the coordination of supervisory activities, including the procedures of investigations and on-site inspections in accordance with national law, and a mechanism for the exchange of relevant information on supervision and enforcement between the competent authorities, including access to cyber-related information requested by the competent authorities under this Directive.
- (26) Where sector-specific Union legal acts require or provide incentives to entities to notify significant cyber threats, Member States should also encourage the sharing of significant cyber threats with the CSIRTs, the competent authorities or the single points of contact under this Directive, in order to ensure an enhanced level of those bodies' awareness of the cyber threat landscape and to enable them to respond effectively and in a timely manner should the significant cyber threats materialise.
- (27) Future sector-specific Union legal acts should take due account of the definitions and the supervisory and enforcement framework laid down in this Directive.
- (28) Regulation (EU) 2022/2554 of the European Parliament and of the Council <sup>(10)</sup> should be considered to be a sector-specific Union legal act in relation to this Directive with regard to financial entities. The provisions of Regulation (EU) 2022/2554 relating to information and communication technology (ICT) risk management, management of ICT-related incidents and, in particular, major ICT-related incident reporting, as well as on digital operational resilience testing, information-sharing arrangements and ICT third-party risk should apply instead of those provided for in this Directive. Member States should therefore not apply the provisions of this Directive on cybersecurity risk-management and reporting obligations, and supervision and enforcement, to financial entities covered by Regulation (EU) 2022/2554. At the same time, it is important to maintain a strong relationship and the exchange of information with the financial sector under this Directive. To that end, Regulation (EU) 2022/2554 allows the European Supervisory Authorities (ESAs) and the competent authorities under that Regulation to participate in the activities of the Cooperation Group and to exchange information and cooperate with the single points of contact, as well as with the CSIRTs and the competent authorities under this Directive. The competent authorities under Regulation (EU) 2022/2554 should also transmit details of major ICT-related incidents and, where relevant, significant cyber threats to the CSIRTs, the competent authorities or the single points of contact under this Directive. This is achievable by providing immediate access to incident notifications and forwarding them either

<sup>(10)</sup> Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (see page 1 of this Official Journal).

directly or through a single entry point. Moreover, Member States should continue to include the financial sector in their cybersecurity strategies and CSIRTs can cover the financial sector in their activities.

- (29) In order to avoid gaps between or duplications of cybersecurity obligations imposed on entities in the aviation sector, national authorities under Regulations (EC) No 300/2008 <sup>(1)</sup> and (EU) 2018/1139 <sup>(12)</sup> of the European Parliament and of the Council and the competent authorities under this Directive should cooperate in relation to the implementation of cybersecurity risk-management measures and the supervision of compliance with those measures at national level. The compliance of an entity with the security requirements laid down in Regulations (EC) No 300/2008 and (EU) 2018/1139 and in the relevant delegated and implementing acts adopted pursuant to those Regulations could be considered by the competent authorities under this Directive to constitute compliance with the corresponding requirements laid down in this Directive.
- (30) In view of the interlinkages between cybersecurity and the physical security of entities, a coherent approach should be ensured between Directive (EU) 2022/2557 of the European Parliament and of the Council <sup>(13)</sup> and this Directive. To achieve this, entities identified as critical entities under Directive (EU) 2022/2557 should be considered to be essential entities under this Directive. Moreover, each Member State should ensure that its national cybersecurity strategy provides for a policy framework for enhanced coordination within that Member State between its competent authorities under this Directive and those under Directive (EU) 2022/2557 in the context of information sharing about risks, cyber threats, and incidents as well as on non-cyber risks, threats and incidents, and the exercise of supervisory tasks. The competent authorities under this Directive and those under Directive (EU) 2022/2557 should cooperate and exchange information without undue delay, in particular in relation to the identification of critical entities, risks, cyber threats, and incidents as well as in relation to non-cyber risks, threats and incidents affecting critical entities, including the cybersecurity and physical measures taken by critical entities as well as the results of supervisory activities carried out with regard to such entities.

Furthermore, in order to streamline supervisory activities between the competent authorities under this Directive and those under Directive (EU) 2022/2557 and in order to minimise the administrative burden for the entities concerned, those competent authorities should endeavour to harmonise incident notification templates and supervisory processes. Where appropriate, the competent authorities under Directive (EU) 2022/2557, should be able to request the competent authorities under this Directive to exercise their supervisory and enforcement powers in relation to an entity that is identified as a critical entity under Directive (EU) 2022/2557. The competent authorities under this Directive and those under Directive (EU) 2022/2557 should, where possible in real time, cooperate and exchange information for that purpose.

- (31) Entities belonging to the digital infrastructure sector are in essence based on network and information systems and therefore the obligations imposed on those entities pursuant to this Directive should address in a comprehensive manner the physical security of such systems as part of their cybersecurity risk-management measures and reporting obligations. Since those matters are covered by this Directive, the obligations laid down in Chapters III, IV and VI of Directive (EU) 2022/2557 do not apply to such entities.

<sup>(1)</sup> Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 (OJ L 97, 9.4.2008, p. 72).

<sup>(12)</sup> Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1).

<sup>(13)</sup> Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC (see page 164 of this Official Journal).

- (32) Upholding and preserving a reliable, resilient and secure domain name system (DNS) are key factors in maintaining the integrity of the internet and are essential for its continuous and stable operation, on which the digital economy and society depend. Therefore, this Directive should apply to top-level-domain (TLD) name registries, and DNS service providers that are to be understood as entities providing publicly available recursive domain name resolution services for internet end-users or authoritative domain name resolution services for third-party usage. This Directive should not apply to root name servers.
- (33) Cloud computing services should cover digital services that enable on-demand administration and broad remote access to a scalable and elastic pool of shareable computing resources, including where such resources are distributed across several locations. Computing resources include resources such as networks, servers or other infrastructure, operating systems, software, storage, applications and services. The service models of cloud computing include, inter alia, Infrastructure as a Service (IaaS), Platform as a Service (PaaS), Software as a Service (SaaS) and Network as a Service (NaaS). The deployment models of cloud computing should include private, community, public and hybrid cloud. The cloud computing service and deployment models have the same meaning as the terms of service and deployment models defined under ISO/IEC 17788:2014 standard. The capability of the cloud computing user to unilaterally self-provision computing capabilities, such as server time or network storage, without any human interaction by the cloud computing service provider could be described as on-demand administration.

The term 'broad remote access' is used to describe that the cloud capabilities are provided over the network and accessed through mechanisms promoting use of heterogeneous thin or thick client platforms, including mobile phones, tablets, laptops and workstations. The term 'scalable' refers to computing resources that are flexibly allocated by the cloud service provider, irrespective of the geographical location of the resources, in order to handle fluctuations in demand. The term 'elastic pool' is used to describe computing resources that are provided and released according to demand in order to rapidly increase and decrease resources available depending on workload. The term 'shareable' is used to describe computing resources that are provided to multiple users who share a common access to the service, but where the processing is carried out separately for each user, although the service is provided from the same electronic equipment. The term 'distributed' is used to describe computing resources that are located on different networked computers or devices and which communicate and coordinate among themselves by message passing.

- (34) Given the emergence of innovative technologies and new business models, new cloud computing service and deployment models are expected to appear in the internal market in response to evolving customer needs. In that context, cloud computing services may be delivered in a highly distributed form, even closer to where data are being generated or collected, thus moving from the traditional model to a highly distributed one (edge computing).
- (35) Services offered by data centre service providers may not always be provided in the form of a cloud computing service. Accordingly, data centres may not always constitute a part of cloud computing infrastructure. In order to manage all the risks posed to the security of network and information systems, this Directive should therefore cover providers of data centre services that are not cloud computing services. For the purposes of this Directive, the term 'data centre service' should cover provision of a service that encompasses structures, or groups of structures, dedicated to the centralised accommodation, interconnection and operation of information technology (IT) and network equipment providing data storage, processing and transport services together with all the facilities and infrastructures for power distribution and environmental control. The term 'data centre service' should not apply to in-house corporate data centres owned and operated by the entity concerned, for its own purposes.
- (36) Research activities play a key role in the development of new products and processes. Many of those activities are carried out by entities that share, disseminate or exploit the results of their research for commercial purposes. Those entities can therefore be important players in value chains, which makes the security of their network and information systems an integral part of the overall cybersecurity of the internal market. Research organisations should be understood to include entities which focus the essential part of their activities on the conduct of applied

research or experimental development, within the meaning of the Organisation for Economic Cooperation and Development's Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development, with a view to exploiting their results for commercial purposes, such as the manufacturing or development of a product or process, the provision of a service, or the marketing thereof.

- (37) The growing interdependencies are the result of an increasingly cross-border and interdependent network of service provision using key infrastructures across the Union in sectors such as energy, transport, digital infrastructure, drinking water and waste water, health, certain aspects of public administration, as well as space in so far as the provision of certain services depending on ground-based infrastructures that are owned, managed and operated either by Member States or by private parties is concerned, therefore not covering infrastructures owned, managed or operated by or on behalf of the Union as part of its space programme. Those interdependencies mean that any disruption, even one initially confined to one entity or one sector, can have cascading effects more broadly, potentially resulting in far-reaching and long-lasting negative impacts in the delivery of services across the internal market. The intensified cyberattacks during the COVID-19 pandemic have shown the vulnerability of increasingly interdependent societies in the face of low-probability risks.
- (38) In view of the differences in national governance structures and in order to safeguard already existing sectoral arrangements or Union supervisory and regulatory bodies, Member States should be able to designate or establish one or more competent authorities responsible for cybersecurity and for the supervisory tasks under this Directive.
- (39) In order to facilitate cross-border cooperation and communication among authorities and to enable this Directive to be implemented effectively, it is necessary for each Member State to designate a single point of contact responsible for coordinating issues related to the security of network and information systems and cross-border cooperation at Union level.
- (40) The single points of contact should ensure effective cross-border cooperation with relevant authorities of other Member States and, where appropriate, with the Commission and ENISA. The single points of contact should therefore be tasked with forwarding notifications of significant incidents with cross-border impact to the single points of contact of other affected Member States upon the request of the CSIRT or the competent authority. At national level, the single points of contact should enable smooth cross-sectoral cooperation with other competent authorities. The single points of contact could also be the addressees of relevant information about incidents concerning financial entities from the competent authorities under Regulation (EU) 2022/2554 which they should be able to forward, as appropriate, to the CSIRTs or the competent authorities under this Directive.
- (41) Member States should be adequately equipped, in terms of both technical and organisational capabilities, to prevent, detect, respond to and mitigate incidents and risks. Member States should therefore establish or designate one or more CSIRTs under this Directive and ensure that they have adequate resources and technical capabilities. The CSIRTs should comply with the requirements laid down in this Directive in order to guarantee effective and compatible capabilities to deal with incidents and risks and to ensure efficient cooperation at Union level. Member States should be able to designate existing computer emergency response teams (CERTs) as CSIRTs. In order to enhance the trust relationship between the entities and the CSIRTs, where a CSIRT is part of a competent authority, Member States should be able to consider functional separation between the operational tasks provided by the CSIRTs, in particular in relation to information sharing and assistance provided to the entities, and the supervisory activities of the competent authorities.
- (42) The CSIRTs are tasked with incident handling. This includes the processing of large volumes of sometimes sensitive data. Member States should ensure that the CSIRTs have an infrastructure for information sharing and processing, as well as well-equipped staff, which ensures the confidentiality and trustworthiness of their operations. The CSIRTs could also adopt codes of conduct in that respect.

- (43) As regards personal data, the CSIRTs should be able to provide, in accordance with Regulation (EU) 2016/679, upon the request of an essential or important entity, a proactive scanning of the network and information systems used for the provision of the entity's services. Where applicable, Member States should aim to ensure an equal level of technical capabilities for all sectoral CSIRTs. Member States should be able to request the assistance of ENISA in developing their CSIRTs.
- (44) The CSIRTs should have the ability, upon an essential or important entity's request, to monitor the entity's internet-facing assets, both on and off premises, in order to identify, understand and manage the entity's overall organisational risks as regards newly identified supply chain compromises or critical vulnerabilities. The entity should be encouraged to communicate to the CSIRT whether it runs a privileged management interface, as this could affect the speed of undertaking mitigating actions.
- (45) Given the importance of international cooperation on cybersecurity, the CSIRTs should be able to participate in international cooperation networks in addition to the CSIRTs network established by this Directive. Therefore, for the purpose of carrying out their tasks, the CSIRTs and the competent authorities should be able to exchange information, including personal data, with the national computer security incident response teams or competent authorities of third countries provided that the conditions under Union data protection law for transfers of personal data to third countries, inter alia those of Article 49 of Regulation (EU) 2016/679, are met.
- (46) Ensuring adequate resources to meet the objectives of this Directive and to enable the competent authorities and the CSIRTs to carry out the tasks laid down herein is essential. The Member States can introduce at the national level a financing mechanism to cover necessary expenditure in relation to the conduct of tasks of public entities responsible for cybersecurity in the Member State pursuant to this Directive. Such mechanism should comply with Union law and should be proportionate and non-discriminatory and should take into account different approaches to providing secure services.
- (47) The CSIRTs network should continue to contribute to strengthening confidence and trust and to promote swift and effective operational cooperation among Member States. In order to enhance operational cooperation at Union level, the CSIRTs network should consider inviting Union bodies and agencies involved in cybersecurity policy, such as Europol, to participate in its work.
- (48) For the purpose of achieving and maintaining a high level of cybersecurity, the national cybersecurity strategies required under this Directive should consist of coherent frameworks providing strategic objectives and priorities in the area of cybersecurity and the governance to achieve them. Those strategies can be composed of one or more legislative or non-legislative instruments.
- (49) Cyber hygiene policies provide the foundations for protecting network and information system infrastructures, hardware, software and online application security, and business or end-user data upon which entities rely. Cyber hygiene policies comprising a common baseline set of practices, including software and hardware updates, password changes, the management of new installs, the limitation of administrator-level access accounts, and the backing-up of data, enable a proactive framework of preparedness and overall safety and security in the event of incidents or cyber threats. ENISA should monitor and analyse Member States' cyber hygiene policies.
- (50) Cybersecurity awareness and cyber hygiene are essential to enhance the level of cybersecurity within the Union, in particular in light of the growing number of connected devices that are increasingly used in cyberattacks. Efforts should be made to enhance the overall awareness of risks related to such devices, while assessments at Union level could help ensure a common understanding of such risks within the internal market.

- (51) Member States should encourage the use of any innovative technology, including artificial intelligence, the use of which could improve the detection and prevention of cyberattacks, enabling resources to be diverted towards cyberattacks more effectively. Member States should therefore encourage in their national cybersecurity strategy activities in research and development to facilitate the use of such technologies, in particular those relating to automated or semi-automated tools in cybersecurity, and, where relevant, the sharing of data needed for training users of such technology and for improving it. The use of any innovative technology, including artificial intelligence, should comply with Union data protection law, including the data protection principles of data accuracy, data minimisation, fairness and transparency, and data security, such as state-of-the-art encryption. The requirements of data protection by design and by default laid down in Regulation (EU) 2016/679 should be fully exploited.
- (52) Open-source cybersecurity tools and applications can contribute to a higher degree of openness and can have a positive impact on the efficiency of industrial innovation. Open standards facilitate interoperability between security tools, benefitting the security of industrial stakeholders. Open-source cybersecurity tools and applications can leverage the wider developer community, enabling diversification of suppliers. Open source can lead to a more transparent verification process of cybersecurity related tools and a community-driven process of discovering vulnerabilities. Member States should therefore be able to promote the use of open-source software and open standards by pursuing policies relating to the use of open data and open-source as part of security through transparency. Policies promoting the introduction and sustainable use of open-source cybersecurity tools are of particular importance for small and medium-sized enterprises facing significant costs for implementation, which could be minimised by reducing the need for specific applications or tools.
- (53) Utilities are increasingly connected to digital networks in cities, for the purpose of improving urban transport networks, upgrading water supply and waste disposal facilities and increasing the efficiency of lighting and the heating of buildings. Those digitalised utilities are vulnerable to cyberattacks and run the risk, in the event of a successful cyberattack, of harming citizens at a large scale due to their interconnectedness. Member States should develop a policy that addresses the development of such connected or smart cities, and their potential effects on society, as part of their national cybersecurity strategy.
- (54) In recent years, the Union has faced an exponential increase in ransomware attacks, in which malware encrypts data and systems and demands a ransom payment for release. The increasing frequency and severity of ransomware attacks can be driven by several factors, such as different attack patterns, criminal business models around 'ransomware as a service' and cryptocurrencies, ransom demands, and the rise of supply chain attacks. Member States should develop a policy addressing the rise of ransomware attacks as part of their national cybersecurity strategy.
- (55) Public-private partnerships (PPPs) in the field of cybersecurity can provide an appropriate framework for knowledge exchange, the sharing of best practices and the establishment of a common level of understanding among stakeholders. Member States should promote policies underpinning the establishment of cybersecurity-specific PPPs. Those policies should clarify, inter alia, the scope and stakeholders involved, the governance model, the available funding options and the interaction among participating stakeholders with regard to PPPs. PPPs can leverage the expertise of private-sector entities to assist the competent authorities in developing state-of-the-art services and processes including information exchange, early warnings, cyber threat and incident exercises, crisis management and resilience planning.
- (56) Member States should, in their national cybersecurity strategies, address the specific cybersecurity needs of small and medium-sized enterprises. Small and medium-sized enterprises represent, across the Union, a large percentage of the industrial and business market and often struggle to adapt to new business practices in a more connected world and to the digital environment, with employees working from home and business increasingly being conducted online. Some small and medium-sized enterprises face specific cybersecurity challenges such as low cyber-awareness, a lack of remote IT security, the high cost of cybersecurity solutions and an increased level of threat, such as ransomware, for which they should receive guidance and assistance. Small and medium-sized enterprises are increasingly becoming the target of supply chain attacks due to their less rigorous cybersecurity risk-management measures and attack management, and the fact that they have limited security resources. Such supply chain attacks not only have an impact on small and medium-sized enterprises and their operations in isolation but can also have a cascading effect on larger attacks on entities to which they provided supplies. Member States should, through their national

cybersecurity strategies, help small and medium-sized enterprises to address the challenges faced in their supply chains. Member States should have a point of contact for small and medium-sized enterprises at national or regional level, which either provides guidance and assistance to small and medium-sized enterprises or directs them to the appropriate bodies for guidance and assistance with regard to cybersecurity related issues. Member States are also encouraged to offer services such as website configuration and logging enabling to microenterprises and small enterprises that lack those capabilities.

- (57) As part of their national cybersecurity strategies, Member States should adopt policies on the promotion of active cyber protection as part of a wider defensive strategy. Rather than responding reactively, active cyber protection is the prevention, detection, monitoring, analysis and mitigation of network security breaches in an active manner, combined with the use of capabilities deployed within and outside the victim network. This could include Member States offering free services or tools to certain entities, including self-service checks, detection tools and takedown services. The ability to rapidly and automatically share and understand threat information and analysis, cyber activity alerts, and response action is critical to enable a unity of effort in successfully preventing, detecting, addressing and blocking attacks against network and information systems. Active cyber protection is based on a defensive strategy that excludes offensive measures.
- (58) Since the exploitation of vulnerabilities in network and information systems may cause significant disruption and harm, swiftly identifying and remedying such vulnerabilities is an important factor in reducing risk. Entities that develop or administer network and information systems should therefore establish appropriate procedures to handle vulnerabilities when they are discovered. Since vulnerabilities are often discovered and disclosed by third parties, the manufacturer or provider of ICT products or ICT services should also put in place the necessary procedures to receive vulnerability information from third parties. In that regard, international standards ISO/IEC 30111 and ISO/IEC 29147 provide guidance on vulnerability handling and vulnerability disclosure. Strengthening the coordination between reporting natural and legal persons and manufacturers or providers of ICT products or ICT services is particularly important for the purpose of facilitating the voluntary framework of vulnerability disclosure. Coordinated vulnerability disclosure specifies a structured process through which vulnerabilities are reported to the manufacturer or provider of the potentially vulnerable ICT products or ICT services in a manner allowing it to diagnose and remedy the vulnerability before detailed vulnerability information is disclosed to third parties or to the public. Coordinated vulnerability disclosure should also include coordination between the reporting natural or legal person and the manufacturer or provider of the potentially vulnerable ICT products or ICT services as regards the timing of remediation and publication of vulnerabilities.
- (59) The Commission, ENISA and the Member States should continue to foster alignments with international standards and existing industry best practices in the area of cybersecurity risk management, for example in the areas of supply chain security assessments, information sharing and vulnerability disclosure.
- (60) Member States, in cooperation with ENISA, should take measures to facilitate coordinated vulnerability disclosure by establishing a relevant national policy. As part of their national policy, Member States should aim to address, to the extent possible, the challenges faced by vulnerability researchers, including their potential exposure to criminal liability, in accordance with national law. Given that natural and legal persons researching vulnerabilities could in some Member States be exposed to criminal and civil liability, Member States are encouraged to adopt guidelines as regards the non-prosecution of information security researchers and an exemption from civil liability for their activities.
- (61) Member States should designate one of its CSIRTs as a coordinator, acting as a trusted intermediary between the reporting natural or legal persons and the manufacturers or providers of ICT products or ICT services, which are likely to be affected by the vulnerability, where necessary. The tasks of the CSIRT designated as coordinator should include identifying and contacting the entities concerned, assisting the natural or legal persons reporting a vulnerability, negotiating disclosure timelines and managing vulnerabilities that affect multiple entities (multi-party

coordinated vulnerability disclosure). Where the reported vulnerability could have significant impact on entities in more than one Member State, the CSIRTs designated as coordinators should cooperate within the CSIRTs network, where appropriate.

- (62) Access to correct and timely information about vulnerabilities affecting ICT products and ICT services contributes to an enhanced cybersecurity risk management. Sources of publicly available information about vulnerabilities are an important tool for the entities and for the users of their services, but also for the competent authorities and the CSIRTs. For that reason, ENISA should establish a European vulnerability database where entities, regardless of whether they fall within the scope of this Directive, and their suppliers of network and information systems, as well as the competent authorities and the CSIRTs, can disclose and register, on a voluntary basis, publicly known vulnerabilities for the purpose of allowing users to take appropriate mitigating measures. The aim of that database is to address the unique challenges posed by risks to Union entities. Furthermore, ENISA should establish an appropriate procedure regarding the publication process in order to give entities the time to take mitigating measures as regards their vulnerabilities and employ state-of-the-art cybersecurity risk-management measures as well as machine-readable datasets and corresponding interfaces. To encourage a culture of disclosure of vulnerabilities, disclosure should have no detrimental effects on the reporting natural or legal person.
- (63) Although similar vulnerability registries or databases exist, they are hosted and maintained by entities which are not established in the Union. A European vulnerability database maintained by ENISA would provide improved transparency regarding the publication process before the vulnerability is publicly disclosed, and resilience in the event of a disruption or an interruption of the provision of similar services. In order, to the extent possible, to avoid a duplication of efforts and to seek complementarity, ENISA should explore the possibility of entering into structured cooperation agreements with similar registries or databases that fall under third-country jurisdiction. In particular, ENISA should explore the possibility of close cooperation with the operators of the Common Vulnerabilities and Exposures (CVE) system.
- (64) The Cooperation Group should support and facilitate strategic cooperation and the exchange of information, as well as strengthen trust and confidence among Member States. The Cooperation Group should establish a work programme every two years. The work programme should include the actions to be undertaken by the Cooperation Group to implement its objectives and tasks. The timeframe for the establishment of the first work programme under this Directive should be aligned with the timeframe of the last work programme established under Directive (EU) 2016/1148 in order to avoid potential disruptions in the work of the Cooperation Group.
- (65) When developing guidance documents, the Cooperation Group should consistently map national solutions and experiences, assess the impact of Cooperation Group deliverables on national approaches, discuss implementation challenges and formulate specific recommendations, in particular as regards facilitating an alignment of the transposition of this Directive among Member States, to be addressed through a better implementation of existing rules. The Cooperation Group could also map the national solutions in order to promote compatibility of cybersecurity solutions applied to each specific sector across the Union. This is particularly relevant to sectors that have an international or cross-border nature.
- (66) The Cooperation Group should remain a flexible forum and be able to react to changing and new policy priorities and challenges while taking into account the availability of resources. It could organise regular joint meetings with relevant private stakeholders from across the Union to discuss activities carried out by the Cooperation Group and gather data and input on emerging policy challenges. Additionally, the Cooperation Group should carry out a regular assessment of the state of play of cyber threats or incidents, such as ransomware. In order to enhance cooperation at Union level, the Cooperation Group should consider inviting relevant Union institutions, bodies, offices and agencies involved in cybersecurity policy, such as the European Parliament, Europol, the European Data

Protection Board, the European Union Aviation Safety Agency, established by Regulation (EU) 2018/1139, and the European Union Agency for Space Programme, established by Regulation (EU) 2021/696 of the European Parliament and the Council <sup>(14)</sup>, to participate in its work.

- (67) The competent authorities and the CSIRTs should be able to participate in exchange schemes for officials from other Member States, within a specific framework and, where applicable, subject to the required security clearance of officials participating in such exchange schemes, in order to improve cooperation and strengthen trust among Member States. The competent authorities should take the necessary measures to enable officials from other Member States to play an effective role in the activities of the host competent authority or the host CSIRT.
- (68) Member States should contribute to the establishment of the EU Cybersecurity Crisis Response Framework as set out in Commission Recommendation (EU) 2017/1584 <sup>(15)</sup> through the existing cooperation networks, in particular the European cyber crisis liaison organisation network (EU-CyCLONe), the CSIRTs network and the Cooperation Group. EU-CyCLONe and the CSIRTs network should cooperate on the basis of procedural arrangements that specify the details of that cooperation and avoid any duplication of tasks. EU-CyCLONe's rules of procedure should further specify the arrangements through which that network should function, including the network's roles, means of cooperation, interactions with other relevant actors and templates for information sharing, as well as means of communication. For crisis management at Union level, relevant parties should rely on the EU Integrated Political Crisis Response arrangements under Council Implementing Decision (EU) 2018/1993 <sup>(16)</sup> (IPCR arrangements). The Commission should use the ARGUS high-level cross-sectoral crisis coordination process for that purpose. If the crisis entails an important external or Common Security and Defence Policy dimension, the European External Action Service Crisis Response Mechanism should be activated.
- (69) In accordance with the Annex to Recommendation (EU) 2017/1584, a large-scale cybersecurity incident should mean an incident which causes a level of disruption that exceeds a Member State's capacity to respond to it or which has a significant impact on at least two Member States. Depending on their cause and impact, large-scale cybersecurity incidents may escalate and turn into fully-fledged crises not allowing the proper functioning of the internal market or posing serious public security and safety risks for entities or citizens in several Member States or the Union as a whole. Given the wide-ranging scope and, in most cases, the cross-border nature of such incidents, Member States and the relevant Union institutions, bodies, offices and agencies should cooperate at technical, operational and political level to properly coordinate the response across the Union.
- (70) Large-scale cybersecurity incidents and crises at Union level require coordinated action to ensure a rapid and effective response because of the high degree of interdependence between sectors and Member States. The availability of cyber-resilient network and information systems and the availability, confidentiality and integrity of data are vital for the security of the Union and for the protection of its citizens, businesses and institutions against incidents and cyber threats, as well as for enhancing the trust of individuals and organisations in the Union's ability to promote and protect a global, open, free, stable and secure cyberspace grounded in human rights, fundamental freedoms, democracy and the rule of law.

<sup>(14)</sup> Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (OJ L 170, 12.5.2021, p. 69).

<sup>(15)</sup> Commission Recommendation (EU) 2017/1584 of 13 September 2017 on coordinated response to large-scale cybersecurity incidents and crises (OJ L 239, 19.9.2017, p. 36).

<sup>(16)</sup> Council Implementing Decision (EU) 2018/1993 of 11 December 2018 on the EU Integrated Political Crisis Response Arrangements (OJ L 320, 17.12.2018, p. 28).

- (71) EU-CyCLONE should work as an intermediary between the technical and political level during large-scale cybersecurity incidents and crises and should enhance cooperation at operational level and support decision-making at political level. In cooperation with the Commission, having regard to the Commission's competence in the area of crisis management, EU-CyCLONE should build on the CSIRTs network findings and use its own capabilities to create impact analysis of large-scale cybersecurity incidents and crises.
- (72) Cyberattacks are of a cross-border nature, and a significant incident can disrupt and damage critical information infrastructures on which the smooth functioning of the internal market depends. Recommendation (EU) 2017/1584 addresses the role of all relevant actors. Furthermore, the Commission is responsible, within the framework of the Union Civil Protection Mechanism, established by Decision No 1313/2013/EU of the European Parliament and of the Council <sup>(17)</sup>, for general preparedness actions including managing the Emergency Response Coordination Centre and the Common Emergency Communication and Information System, maintaining and further developing situational awareness and analysis capability, and establishing and managing the capability to mobilise and dispatch expert teams in the event of a request for assistance from a Member State or third country. The Commission is also responsible for providing analytical reports for the IPCR arrangements under Implementing Decision (EU) 2018/1993, including in relation to cybersecurity situational awareness and preparedness, as well as for situational awareness and crisis response in the areas of agriculture, adverse weather conditions, conflict mapping and forecasts, early warning systems for natural disasters, health emergencies, infection disease surveillance, plant health, chemical incidents, food and feed safety, animal health, migration, customs, nuclear and radiological emergencies, and energy.
- (73) The Union can, where appropriate, conclude international agreements, in accordance with Article 218 TFEU, with third countries or international organisations, allowing and organising their participation in particular activities of the Cooperation Group, the CSIRTs network and EU-CyCLONE. Such agreements should ensure the Union's interests and the adequate protection of data. This should not preclude the right of Member States to cooperate with third countries on management of vulnerabilities and cybersecurity risk management, facilitating reporting and general information sharing in accordance with Union law.
- (74) In order to facilitate the effective implementation of this Directive with regard, inter alia, to the management of vulnerabilities, cybersecurity risk-management measures, reporting obligations and cybersecurity information-sharing arrangements, Member States can cooperate with third countries and undertake activities that are considered to be appropriate for that purpose, including information exchange on cyber threats, incidents, vulnerabilities, tools and methods, tactics, techniques and procedures, cybersecurity crisis management preparedness and exercises, training, trust building and structured information-sharing arrangements.
- (75) Peer reviews should be introduced to help learn from shared experiences, strengthen mutual trust and achieve a high common level of cybersecurity. Peer reviews can lead to valuable insights and recommendations strengthening the overall cybersecurity capabilities, creating another functional path for the sharing of best practices across Member States and contributing to enhance the Member States' levels of maturity in cybersecurity. Furthermore, peer reviews should take account of the results of similar mechanisms, such as the peer-review system of the CSIRTs network, and should add value and avoid duplication. The implementation of peer reviews should be without prejudice to Union or national law on the protection of confidential or classified information.
- (76) The Cooperation Group should establish a self-assessment methodology for Member States, aiming to cover factors such as the level of implementation of the cybersecurity risk-management measures and reporting obligations, the level of capabilities and the effectiveness of the exercise of the tasks of the competent authorities, the operational capabilities of the CSIRTs, the level of implementation of mutual assistance, the level of implementation of the cybersecurity information-sharing arrangements, or specific issues of cross-border or cross-sector nature. Member States should be encouraged to carry out self-assessments on a regular basis, and to present and discuss the results of their self-assessment within the Cooperation Group.

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<sup>(17)</sup> Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism (OJ L 347, 20.12.2013, p. 924).

- (77) Responsibility for ensuring the security of network and information system lies, to a great extent, with essential and important entities. A culture of risk management, involving risk assessments and the implementation of cybersecurity risk-management measures appropriate to the risks faced, should be promoted and developed.
- (78) Cybersecurity risk-management measures should take into account the degree of dependence of the essential or important entity on network and information systems and include measures to identify any risks of incidents, to prevent, detect, respond to and recover from incidents and to mitigate their impact. The security of network and information systems should include the security of stored, transmitted and processed data. Cybersecurity risk-management measures should provide for systemic analysis, taking into account the human factor, in order to have a complete picture of the security of the network and information system.
- (79) As threats to the security of network and information systems can have different origins, cybersecurity risk-management measures should be based on an all-hazards approach, which aims to protect network and information systems and the physical environment of those systems from events such as theft, fire, flood, telecommunication or power failures, or unauthorised physical access and damage to, and interference with, an essential or important entity's information and information processing facilities, which could compromise the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the services offered by, or accessible via, network and information systems. The cybersecurity risk-management measures should therefore also address the physical and environmental security of network and information systems by including measures to protect such systems from system failures, human error, malicious acts or natural phenomena, in line with European and international standards, such as those included in the ISO/IEC 27000 series. In that regard, essential and important entities should, as part of their cybersecurity risk-management measures, also address human resources security and have in place appropriate access control policies. Those measures should be consistent with Directive (EU) 2022/2557.
- (80) For the purpose of demonstrating compliance with cybersecurity risk-management measures and in the absence of appropriate European cybersecurity certification schemes adopted in accordance with Regulation (EU) 2019/881 of the European Parliament and of the Council <sup>(18)</sup>, Member States should, in consultation with the Cooperation Group and the European Cybersecurity Certification Group, promote the use of relevant European and international standards by essential and important entities or may require entities to use certified ICT products, ICT services and ICT processes.
- (81) In order to avoid imposing a disproportionate financial and administrative burden on essential and important entities, the cybersecurity risk-management measures should be proportionate to the risks posed to the network and information system concerned, taking into account the state-of-the-art of such measures, and, where applicable, relevant European and international standards, as well as the cost for their implementation.
- (82) Cybersecurity risk-management measures should be proportionate to the degree of the essential or important entity's exposure to risks and to the societal and economic impact that an incident would have. When establishing cybersecurity risk-management measures adapted to essential and important entities, due account should be taken of the divergent risk exposure of essential and important entities, such as the criticality of the entity, the risks, including societal risks, to which it is exposed, the entity's size and the likelihood of occurrence of incidents and their severity, including their societal and economic impact.

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<sup>(18)</sup> Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act) (OJ L 151, 7.6.2019, p. 15).

- (83) Essential and important entities should ensure the security of the network and information systems which they use in their activities. Those systems are primarily private network and information systems managed by the essential and important entities' internal IT staff or the security of which has been outsourced. The cybersecurity risk-management measures and reporting obligations laid down in this Directive should apply to the relevant essential and important entities regardless of whether those entities maintain their network and information systems internally or outsource the maintenance thereof.
- (84) Taking account of their cross-border nature, DNS service providers, TLD name registries, cloud computing service providers, data centre service providers, content delivery network providers, managed service providers, managed security service providers, providers of online marketplaces, of online search engines and of social networking services platforms, and trust service providers should be subject to a high degree of harmonisation at Union level. The implementation of cybersecurity risk-management measures with regard to those entities should therefore be facilitated by an implementing act.
- (85) Addressing risks stemming from an entity's supply chain and its relationship with its suppliers, such as providers of data storage and processing services or managed security service providers and software editors, is particularly important given the prevalence of incidents where entities have been the victim of cyberattacks and where malicious perpetrators were able to compromise the security of an entity's network and information systems by exploiting vulnerabilities affecting third-party products and services. Essential and important entities should therefore assess and take into account the overall quality and resilience of products and services, the cybersecurity risk-management measures embedded in them, and the cybersecurity practices of their suppliers and service providers, including their secure development procedures. Essential and important entities should in particular be encouraged to incorporate cybersecurity risk-management measures into contractual arrangements with their direct suppliers and service providers. Those entities could consider risks stemming from other levels of suppliers and service providers.
- (86) Among service providers, managed security service providers in areas such as incident response, penetration testing, security audits and consultancy play a particularly important role in assisting entities in their efforts to prevent, detect, respond to or recover from incidents. Managed security service providers have however also themselves been the target of cyberattacks and, because of their close integration in the operations of entities pose a particular risk. Essential and important entities should therefore exercise increased diligence in selecting a managed security service provider.
- (87) The competent authorities, in the context of their supervisory tasks, may also benefit from cybersecurity services such as security audits, penetration testing or incident responses.
- (88) Essential and important entities should also address risks stemming from their interactions and relationships with other stakeholders within a broader ecosystem, including with regard to countering industrial espionage and protecting trade secrets. In particular, those entities should take appropriate measures to ensure that their cooperation with academic and research institutions takes place in line with their cybersecurity policies and follows good practices as regards secure access and dissemination of information in general and the protection of intellectual property in particular. Similarly, given the importance and value of data for the activities of essential and important entities, when relying on data transformation and data analytics services from third parties, those entities should take all appropriate cybersecurity risk-management measures.
- (89) Essential and important entities should adopt a wide range of basic cyber hygiene practices, such as zero-trust principles, software updates, device configuration, network segmentation, identity and access management or user awareness, organise training for their staff and raise awareness concerning cyber threats, phishing or social engineering techniques. Furthermore, those entities should evaluate their own cybersecurity capabilities and, where appropriate, pursue the integration of cybersecurity enhancing technologies, such as artificial intelligence or machine-learning systems to enhance their capabilities and the security of network and information systems.

- (90) To further address key supply chain risks and assist essential and important entities operating in sectors covered by this Directive to appropriately manage supply chain and supplier related risks, the Cooperation Group, in cooperation with the Commission and ENISA, and where appropriate after consulting relevant stakeholders including from the industry, should carry out coordinated security risk assessments of critical supply chains, as carried out for 5G networks following Commission Recommendation (EU) 2019/534 <sup>(19)</sup>, with the aim of identifying, per sector, the critical ICT services, ICT systems or ICT products, relevant threats and vulnerabilities. Such coordinated security risk assessments should identify measures, mitigation plans and best practices to counter critical dependencies, potential single points of failure, threats, vulnerabilities and other risks associated with the supply chain and should explore ways to further encourage their wider adoption by essential and important entities. Potential non-technical risk factors, such as undue influence by a third country on suppliers and service providers, in particular in the case of alternative models of governance, include concealed vulnerabilities or backdoors and potential systemic supply disruptions, in particular in the case of technological lock-in or provider dependency.
- (91) The coordinated security risk assessments of critical supply chains, in light of the features of the sector concerned, should take into account both technical and, where relevant, non-technical factors including those defined in Recommendation (EU) 2019/534, in the EU coordinated risk assessment of the cybersecurity of 5G networks and in the EU Toolbox on 5G cybersecurity agreed by the Cooperation Group. To identify the supply chains that should be subject to a coordinated security risk assessment, the following criteria should be taken into account: (i) the extent to which essential and important entities use and rely on specific critical ICT services, ICT systems or ICT products; (ii) the relevance of specific critical ICT services, ICT systems or ICT products for performing critical or sensitive functions, including the processing of personal data; (iii) the availability of alternative ICT services, ICT systems or ICT products; (iv) the resilience of the overall supply chain of ICT services, ICT systems or ICT products throughout their lifecycle against disruptive events; and (v) for emerging ICT services, ICT systems or ICT products, their potential future significance for the entities' activities. Furthermore, particular emphasis should be placed on ICT services, ICT systems or ICT products that are subject to specific requirements stemming from third countries.
- (92) In order to streamline the obligations imposed on providers of public electronic communications networks or of publicly available electronic communications services, and trust service providers, related to the security of their network and information systems, as well as to enable those entities and the competent authorities under Directive (EU) 2018/1972 of the European Parliament and of the Council <sup>(20)</sup> and Regulation (EU) No 910/2014 respectively to benefit from the legal framework established by this Directive, including the designation of a CSIRT responsible for incident handling, the participation of the competent authorities concerned in the activities of the Cooperation Group and the CSIRTs network, those entities should fall within the scope of this Directive. The corresponding provisions laid down in Regulation (EU) No 910/2014 and Directive (EU) 2018/1972 related to the imposition of security and notification requirements on those types of entity should therefore be deleted. The rules on reporting obligations laid down in this Directive should be without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC.
- (93) The cybersecurity obligations laid down in this Directive should be considered to be complementary to the requirements imposed on trust service providers under Regulation (EU) No 910/2014. Trust service providers should be required to take all appropriate and proportionate measures to manage the risks posed to their services, including in relation to customers and relying third parties, and to report incidents under this Directive. Such cybersecurity and reporting obligations should also concern the physical protection of the services provided. The requirements for qualified trust service providers laid down in Article 24 of Regulation (EU) No 910/2014 continue to apply.

<sup>(19)</sup> Commission Recommendation (EU) 2019/534 of 26 March 2019 – Cybersecurity of 5G networks (OJ L 88, 29.3.2019, p. 42).

<sup>(20)</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

- (94) Member States can assign the role of the competent authorities for trust services to the supervisory bodies under Regulation (EU) No 910/2014 in order to ensure the continuation of current practices and to build on the knowledge and experience gained in the application of that Regulation. In such a case, the competent authorities under this Directive should cooperate closely and in a timely manner with those supervisory bodies by exchanging relevant information in order to ensure effective supervision and compliance of trust service providers with the requirements laid down in this Directive and in Regulation (EU) No 910/2014. Where applicable, the CSIRT or the competent authority under this Directive should immediately inform the supervisory body under Regulation (EU) No 910/2014 about any notified significant cyber threat or incident affecting trust services as well as about any infringements by a trust service provider of this Directive. For the purpose of reporting, Member States can, where applicable, use the single entry point established to achieve a common and automatic incident reporting to both the supervisory body under Regulation (EU) No 910/2014 and the CSIRT or the competent authority under this Directive.
- (95) Where appropriate and in order to avoid unnecessary disruption, existing national guidelines adopted for the transposition of the rules related to security measures laid down in Articles 40 and 41 of Directive (EU) 2018/1972 should be taken into account in the transposition of this Directive, thereby building on the knowledge and skills already acquired under Directive (EU) 2018/1972 concerning security measures and incident notifications. ENISA can also develop guidance on security requirements and on reporting obligations for providers of public electronic communications networks or of publicly available electronic communications services to facilitate harmonisation and transition and to minimise disruption. Member States can assign the role of the competent authorities for electronic communications to the national regulatory authorities under Directive (EU) 2018/1972 in order to ensure the continuation of current practices and to build on the knowledge and experience gained as a result of the implementation of that Directive.
- (96) Given the growing importance of number-independent interpersonal communications services as defined in Directive (EU) 2018/1972, it is necessary to ensure that such services are also subject to appropriate security requirements in view of their specific nature and economic importance. As the attack surface continues to expand, number-independent interpersonal communications services, such as messaging services, are becoming widespread attack vectors. Malicious perpetrators use platforms to communicate and attract victims to open compromised web pages, therefore increasing the likelihood of incidents involving the exploitation of personal data, and, by extension, the security of network and information systems. Providers of number-independent interpersonal communications services should ensure a level of security of network and information systems appropriate to the risks posed. Given that providers of number-independent interpersonal communications services normally do not exercise actual control over the transmission of signals over networks, the degree of risks posed to such services can be considered in some respects to be lower than for traditional electronic communications services. The same applies to interpersonal communications services as defined in Directive (EU) 2018/1972 which make use of numbers and which do not exercise actual control over signal transmission.
- (97) The internal market is more reliant on the functioning of the internet than ever. The services of almost all essential and important entities are dependent on services provided over the internet. In order to ensure the smooth provision of services provided by essential and important entities, it is important that all providers of public electronic communications networks have appropriate cybersecurity risk-management measures in place and report significant incidents in relation thereto. Member States should ensure that the security of the public electronic communications networks is maintained and that their vital security interests are protected from sabotage and espionage. Since international connectivity enhances and accelerates the competitive digitalisation of the Union and its economy, incidents affecting undersea communications cables should be reported to the CSIRT or, where applicable, the competent authority. The national cybersecurity strategy should, where relevant, take into account the cybersecurity of undersea communications cables and include a mapping of potential cybersecurity risks and mitigation measures to secure the highest level of their protection.

- (98) In order to safeguard the security of public electronic communications networks and publicly available electronic communications services, the use of encryption technologies, in particular end-to-end encryption as well as data-centric security concepts, such as cartography, segmentation, tagging, access policy and access management, and automated access decisions, should be promoted. Where necessary, the use of encryption, in particular end-to-end encryption should be mandatory for providers of public electronic communications networks or of publicly available electronic communications services in accordance with the principles of security and privacy by default and by design for the purposes of this Directive. The use of end-to-end encryption should be reconciled with the Member States' powers to ensure the protection of their essential security interests and public security, and to allow for the prevention, investigation, detection and prosecution of criminal offences in accordance with Union law. However, this should not weaken end-to-end encryption, which is a critical technology for the effective protection of data and privacy and the security of communications.
- (99) In order to safeguard the security, and to prevent abuse and manipulation, of public electronic communications networks and of publicly available electronic communications services, the use of secure routing standards should be promoted to ensure the integrity and robustness of routing functions across the ecosystem of internet access service providers.
- (100) In order to safeguard the functionality and integrity of the internet and to promote the security and resilience of the DNS, relevant stakeholders including Union private-sector entities, providers of publicly available electronic communications services, in particular internet access service providers, and providers of online search engines should be encouraged to adopt a DNS resolution diversification strategy. Furthermore, Member States should encourage the development and use of a public and secure European DNS resolver service.
- (101) This Directive lays down a multiple-stage approach to the reporting of significant incidents in order to strike the right balance between, on the one hand, swift reporting that helps mitigate the potential spread of significant incidents and allows essential and important entities to seek assistance, and, on the other, in-depth reporting that draws valuable lessons from individual incidents and improves over time the cyber resilience of individual entities and entire sectors. In that regard, this Directive should include the reporting of incidents that, based on an initial assessment carried out by the entity concerned, could cause severe operational disruption of the services or financial loss for that entity or affect other natural or legal persons by causing considerable material or non-material damage. Such initial assessment should take into account, inter alia, the affected network and information systems, in particular their importance in the provision of the entity's services, the severity and technical characteristics of a cyber threat and any underlying vulnerabilities that are being exploited as well as the entity's experience with similar incidents. Indicators such as the extent to which the functioning of the service is affected, the duration of an incident or the number of affected recipients of services could play an important role in identifying whether the operational disruption of the service is severe.
- (102) Where essential or important entities become aware of a significant incident, they should be required to submit an early warning without undue delay and in any event within 24 hours. That early warning should be followed by an incident notification. The entities concerned should submit an incident notification without undue delay and in any event within 72 hours of becoming aware of the significant incident, with the aim, in particular, of updating information submitted through the early warning and indicating an initial assessment of the significant incident, including its severity and impact, as well as indicators of compromise, where available. A final report should be submitted not later than one month after the incident notification. The early warning should only include the information necessary to make the CSIRT, or where applicable the competent authority, aware of the significant incident and allow the entity concerned to seek assistance, if required. Such early warning, where applicable, should indicate whether the significant incident is suspected of being caused by unlawful or malicious acts, and whether it is likely to have a cross-border impact. Member States should ensure that the obligation to submit that early warning, or the subsequent incident notification, does not divert the notifying entity's resources from activities related to incident handling that should be prioritised, in order to prevent incident reporting obligations from either diverting resources from significant incident response handling or otherwise compromising the entity's efforts in that respect.

In the event of an ongoing incident at the time of the submission of the final report, Member States should ensure that entities concerned provide a progress report at that time, and a final report within one month of their handling of the significant incident.

- (103) Where applicable, essential and important entities should communicate, without undue delay, to their service recipients any measures or remedies that they can take to mitigate the resulting risks from a significant cyber threat. Those entities should, where appropriate and in particular where the significant cyber threat is likely to materialise, also inform their service recipients of the threat itself. The requirement to inform those recipients of significant cyber threats should be met on a best efforts basis but should not discharge those entities from the obligation to take, at their own expense, appropriate and immediate measures to prevent or remedy any such threats and restore the normal security level of the service. The provision of such information about significant cyber threats to the service recipients should be free of charge and drafted in easily comprehensible language.
- (104) Providers of public electronic communications networks or of publicly available electronic communications services should implement security by design and by default, and inform their service recipients of significant cyber threats and of measures they can take to protect the security of their devices and communications, for example by using specific types of software or encryption technologies.
- (105) A proactive approach to cyber threats is a vital component of cybersecurity risk management that should enable the competent authorities to effectively prevent cyber threats from materialising into incidents that may cause considerable material or non-material damage. For that purpose, the notification of cyber threats is of key importance. To that end, entities are encouraged to report on a voluntary basis cyber threats.
- (106) In order to simplify the reporting of information required under this Directive as well as to decrease the administrative burden for entities, Member States should provide technical means such as a single entry point, automated systems, online forms, user-friendly interfaces, templates, dedicated platforms for the use of entities, regardless of whether they fall within the scope of this Directive, for the submission of the relevant information to be reported. Union funding supporting the implementation of this Directive, in particular within the Digital Europe programme, established by Regulation (EU) 2021/694 of the European Parliament and of the Council <sup>(21)</sup>, could include support for single entry points. Furthermore, entities are often in a situation where a particular incident, because of its features, needs to be reported to various authorities as a result of notification obligations included in various legal instruments. Such cases create additional administrative burden and could also lead to uncertainties with regard to the format and procedures of such notifications. Where a single entry point is established, Member States are encouraged also to use that single entry point for notifications of security incidents required under other Union law, such as Regulation (EU) 2016/679 and Directive 2002/58/EC. The use of such single entry point for reporting of security incidents under Regulation (EU) 2016/679 and Directive 2002/58/EC should not affect the application of the provisions of Regulation (EU) 2016/679 and Directive 2002/58/EC, in particular those relating to the independence of the authorities referred to therein. ENISA, in cooperation with the Cooperation Group, should develop common notification templates by means of guidelines to simplify and streamline the information to be reported under Union law and decrease the administrative burden on notifying entities.
- (107) Where it is suspected that an incident is related to serious criminal activities under Union or national law, Member States should encourage essential and important entities, on the basis of applicable criminal proceedings rules in accordance with Union law, to report incidents of a suspected serious criminal nature to the relevant law enforcement authorities. Where appropriate, and without prejudice to the personal data protection rules applying to Europol, it is desirable that coordination between the competent authorities and the law enforcement authorities of different Member States be facilitated by the European Cybercrime Centre (EC3) and ENISA.

<sup>(21)</sup> Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (OJ L 166, 11.5.2021, p. 1).

- (108) Personal data are in many cases compromised as a result of incidents. In that context, the competent authorities should cooperate and exchange information about all relevant matters with the authorities referred to in Regulation (EU) 2016/679 and Directive 2002/58/EC.
- (109) Maintaining accurate and complete databases of domain name registration data (WHOIS data) and providing lawful access to such data is essential to ensure the security, stability and resilience of the DNS, which in turn contributes to a high common level of cybersecurity across the Union. For that specific purpose, TLD name registries and entities providing domain name registration services should be required to process certain data necessary to achieve that purpose. Such processing should constitute a legal obligation within the meaning of Article 6(1), point (c), of Regulation (EU) 2016/679. That obligation is without prejudice to the possibility to collect domain name registration data for other purposes, for example on the basis of contractual arrangements or legal requirements established in other Union or national law. That obligation aims to achieve a complete and accurate set of registration data and should not result in collecting the same data multiple times. The TLD name registries and the entities providing domain name registration services should cooperate with each other in order to avoid the duplication of that task.
- (110) The availability and timely accessibility of domain name registration data to legitimate access seekers is essential for the prevention and combating of DNS abuse, and for the prevention and detection of and response to incidents. Legitimate access seekers are to be understood as any natural or legal person making a request pursuant to Union or national law. They can include authorities that are competent under this Directive and those that are competent under Union or national law for the prevention, investigation, detection or prosecution of criminal offences, and CERTs or CSIRTs. TLD name registries and entities providing domain name registration services should be required to enable lawful access to specific domain name registration data, which are necessary for the purposes of the access request, to legitimate access seekers in accordance with Union and national law. The request of legitimate access seekers should be accompanied by a statement of reasons permitting the assessment of the necessity of access to the data.
- (111) In order to ensure the availability of accurate and complete domain name registration data, TLD name registries and entities providing domain name registration services should collect and guarantee the integrity and availability of domain name registration data. In particular, TLD name registries and entities providing domain name registration services should establish policies and procedures to collect and maintain accurate and complete domain name registration data, as well as to prevent and correct inaccurate registration data, in accordance with Union data protection law. Those policies and procedures should take into account, to the extent possible, the standards developed by the multi-stakeholder governance structures at international level. The TLD name registries and the entities providing domain name registration services should adopt and implement proportionate procedures to verify domain name registration data. Those procedures should reflect the best practices used within the industry and, to the extent possible, the progress made in the field of electronic identification. Examples of verification procedures may include *ex ante* controls carried out at the time of the registration and *ex post* controls carried out after the registration. The TLD name registries and the entities providing domain name registration services should, in particular, verify at least one means of contact of the registrant.
- (112) TLD name registries and entities providing domain name registration services should be required to make publicly available domain name registration data that fall outside the scope of Union data protection law, such as data that concern legal persons, in line with the preamble of Regulation (EU) 2016/679. For legal persons, the TLD name registries and the entities providing domain name registration services should make publicly available at least the name of the registrant and the contact telephone number. The contact email address should also be published, provided that it does not contain any personal data, such as in the case of email aliases or functional accounts. TLD name registries and entities providing domain name registration services should also enable lawful access to specific domain name registration data concerning natural persons to legitimate access seekers, in accordance with Union data protection law. Member States should require TLD name registries and entities providing domain name registration services to respond without undue delay to requests for the disclosure of domain name registration data from legitimate access seekers. TLD name registries and entities providing domain name registration services should establish policies and procedures for the publication and disclosure of registration data, including service level agreements to deal with requests for access from legitimate access seekers. Those policies and procedures should take into account, to the extent possible, any guidance and the standards developed by the multi-stakeholder

governance structures at international level. The access procedure could include the use of an interface, portal or other technical tool to provide an efficient system for requesting and accessing registration data. With a view to promoting harmonised practices across the internal market, the Commission can, without prejudice to the competences of the European Data Protection Board, provide guidelines with regard to such procedures, which take into account, to the extent possible, the standards developed by the multi-stakeholder governance structures at international level. Member States should ensure that all types of access to personal and non-personal domain name registration data are free of charge.

- (113) Entities falling within the scope of this Directive should be considered to fall under the jurisdiction of the Member State in which they are established. However, providers of public electronic communications networks or providers of publicly available electronic communications services should be considered to fall under the jurisdiction of the Member State in which they provide their services. DNS service providers, TLD name registries, entities providing domain name registration services, cloud computing service providers, data centre service providers, content delivery network providers, managed service providers, managed security service providers, as well as providers of online marketplaces, of online search engines and of social networking services platforms should be considered to fall under the jurisdiction of the Member State in which they have their main establishment in the Union. Public administration entities should fall under the jurisdiction of the Member State which established them. If the entity provides services or is established in more than one Member State, it should fall under the separate and concurrent jurisdiction of each of those Member States. The competent authorities of those Member States should cooperate, provide mutual assistance to each other and, where appropriate, carry out joint supervisory actions. Where Member States exercise jurisdiction, they should not impose enforcement measures or penalties more than once for the same conduct, in line with the principle of *ne bis in idem*.
- (114) In order to take account of the cross-border nature of the services and operations of DNS service providers, TLD name registries, entities providing domain name registration services, cloud computing service providers, data centre service providers, content delivery network providers, managed service providers, managed security service providers, as well as providers of online marketplaces, of online search engines and of social networking services platforms, only one Member State should have jurisdiction over those entities. Jurisdiction should be attributed to the Member State in which the entity concerned has its main establishment in the Union. The criterion of establishment for the purposes of this Directive implies the effective exercise of activity through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in that respect. Whether that criterion is fulfilled should not depend on whether the network and information systems are physically located in a given place; the presence and use of such systems do not, in themselves, constitute such main establishment and are therefore not decisive criteria for determining the main establishment. The main establishment should be considered to be in the Member State where the decisions related to the cybersecurity risk-management measures are predominantly taken in the Union. This will typically correspond to the place of the entities' central administration in the Union. If such a Member State cannot be determined or if such decisions are not taken in the Union, the main establishment should be considered to be in the Member State where cybersecurity operations are carried out. If such a Member State cannot be determined, the main establishment should be considered to be in the Member State where the entity has the establishment with the highest number of employees in the Union. Where the services are carried out by a group of undertakings, the main establishment of the controlling undertaking should be considered to be the main establishment of the group of undertakings.
- (115) Where a publicly available recursive DNS service is provided by a provider of public electronic communications networks or of publicly available electronic communications services only as a part of the internet access service, the entity should be considered to fall under the jurisdiction of all the Member States where its services are provided.

- (116) Where a DNS service provider, a TLD name registry, an entity providing domain name registration services, a cloud computing service provider, a data centre service provider, a content delivery network provider, a managed service provider, a managed security service provider or a provider of an online marketplace, of an online search engine or of a social networking services platform, which is not established in the Union, offers services within the Union, it should designate a representative in the Union. In order to determine whether such an entity is offering services within the Union, it should be ascertained whether the entity is planning to offer services to persons in one or more Member States. The mere accessibility in the Union of the entity's or an intermediary's website or of an email address or other contact details, or the use of a language generally used in the third country where the entity is established, should be considered to be insufficient to ascertain such an intention. However, factors such as the use of a language or a currency generally used in one or more Member States with the possibility of ordering services in that language, or the mentioning of customers or users who are in the Union, could make it apparent that the entity is planning to offer services within the Union. The representative should act on behalf of the entity and it should be possible for the competent authorities or the CSIRTs to address the representative. The representative should be explicitly designated by a written mandate of the entity to act on the latter's behalf with regard to the latter's obligations laid down in this Directive, including incident reporting.
- (117) In order to ensure a clear overview of DNS service providers, TLD name registries, entities providing domain name registration services, cloud computing service providers, data centre service providers, content delivery network providers, managed service providers, managed security service providers, as well as providers of online marketplaces, of online search engines and of social networking services platforms, which provide services across the Union that fall within the scope of this Directive, ENISA should create and maintain a registry of such entities, based on the information received by Member States, where applicable through national mechanisms established for entities to register themselves. The single points of contact should forward to ENISA the information and any changes thereto. With a view to ensuring the accuracy and completeness of the information that is to be included in that registry, Member States can submit to ENISA the information available in any national registries on those entities. ENISA and the Member States should take measures to facilitate the interoperability of such registries, while ensuring protection of confidential or classified information. ENISA should establish appropriate information classification and management protocols to ensure the security and confidentiality of disclosed information and restrict the access, storage, and transmission of such information to intended users.
- (118) Where information which is classified in accordance with Union or national law is exchanged, reported or otherwise shared under this Directive, the corresponding rules on the handling of classified information should be applied. In addition, ENISA should have the infrastructure, procedures and rules in place to handle sensitive and classified information in accordance with the applicable security rules for protecting EU classified information.
- (119) With cyber threats becoming more complex and sophisticated, good detection of such threats and their prevention measures depend to a large extent on regular threat and vulnerability intelligence sharing between entities. Information sharing contributes to an increased awareness of cyber threats, which, in turn, enhances entities' capacity to prevent such threats from materialising into incidents and enables entities to better contain the effects of incidents and recover more efficiently. In the absence of guidance at Union level, various factors seem to have inhibited such intelligence sharing, in particular uncertainty over the compatibility with competition and liability rules.
- (120) Entities should be encouraged and assisted by Member States to collectively leverage their individual knowledge and practical experience at strategic, tactical and operational levels with a view to enhancing their capabilities to adequately prevent, detect, respond to or recover from incidents or to mitigate their impact. It is thus necessary to enable the emergence at Union level of voluntary cybersecurity information-sharing arrangements. To that end, Member States should actively assist and encourage entities, such as those providing cybersecurity services and research, as well as relevant entities not falling within the scope of this Directive, to participate in such cybersecurity information-sharing arrangements. Those arrangements should be established in accordance with the Union competition rules and Union data protection law.

- (121) The processing of personal data, to the extent necessary and proportionate for the purpose of ensuring security of network and information systems by essential and important entities, could be considered to be lawful on the basis that such processing complies with a legal obligation to which the controller is subject, in accordance with the requirements of Article 6(1), point (c), and Article 6(3) of Regulation (EU) 2016/679. Processing of personal data could also be necessary for legitimate interests pursued by essential and important entities, as well as providers of security technologies and services acting on behalf of those entities, pursuant to Article 6(1), point (f), of Regulation (EU) 2016/679, including where such processing is necessary for cybersecurity information-sharing arrangements or the voluntary notification of relevant information in accordance with this Directive. Measures related to the prevention, detection, identification, containment, analysis and response to incidents, measures to raise awareness in relation to specific cyber threats, exchange of information in the context of vulnerability remediation and coordinated vulnerability disclosure, the voluntary exchange of information about those incidents, and cyber threats and vulnerabilities, indicators of compromise, tactics, techniques and procedures, cybersecurity alerts and configuration tools could require the processing of certain categories of personal data, such as IP addresses, uniform resources locators (URLs), domain names, email addresses and, where they reveal personal data, time stamps. Processing of personal data by the competent authorities, the single points of contact and the CSIRTs, could constitute a legal obligation or be considered to be necessary for carrying out a task in the public interest or in the exercise of official authority vested in the controller pursuant to Article 6(1), point (c) or (e), and Article 6(3) of Regulation (EU) 2016/679, or for pursuing a legitimate interest of the essential and important entities, as referred to in Article 6(1), point (f), of that Regulation. Furthermore, national law could lay down rules allowing the competent authorities, the single points of contact and the CSIRTs, to the extent that is necessary and proportionate for the purpose of ensuring the security of network and information systems of essential and important entities, to process special categories of personal data in accordance with Article 9 of Regulation (EU) 2016/679, in particular by providing for suitable and specific measures to safeguard the fundamental rights and interests of natural persons, including technical limitations on the re-use of such data and the use of state-of-the-art security and privacy-preserving measures, such as pseudonymisation, or encryption where anonymisation may significantly affect the purpose pursued.
- (122) In order to strengthen the supervisory powers and measures that help ensure effective compliance, this Directive should provide for a minimum list of supervisory measures and means through which the competent authorities can supervise essential and important entities. In addition, this Directive should establish a differentiation of supervisory regime between essential and important entities with a view to ensuring a fair balance of obligations on those entities and on the competent authorities. Therefore, essential entities should be subject to a comprehensive *ex ante* and *ex post* supervisory regime, while important entities should be subject to a light, *ex post* only, supervisory regime. Important entities should therefore not be required to systematically document compliance with cybersecurity risk-management measures, while the competent authorities should implement a reactive *ex post* approach to supervision and, hence, not have a general obligation to supervise those entities. The *ex post* supervision of important entities may be triggered by evidence, indication or information brought to the attention of the competent authorities considered by those authorities to suggest potential infringements of this Directive. For example, such evidence, indication or information could be of the type provided to the competent authorities by other authorities, entities, citizens, media or other sources or publicly available information, or could emerge from other activities conducted by the competent authorities in the fulfilment of their tasks.
- (123) The execution of supervisory tasks by the competent authorities should not unnecessarily hamper the business activities of the entity concerned. Where the competent authorities execute their supervisory tasks in relation to essential entities, including the conduct of on-site inspections and off-site supervision, the investigation of infringements of this Directive and the conduct of security audits or security scans, they should minimise the impact on the business activities of the entity concerned.
- (124) In the exercise of *ex ante* supervision, the competent authorities should be able to decide on the prioritisation of the use of supervisory measures and means at their disposal in a proportionate manner. This entails that the competent authorities can decide on such prioritisation based on supervisory methodologies which should follow a risk-based approach. More specifically, such methodologies could include criteria or benchmarks for the classification of essential entities into risk categories and corresponding supervisory measures and means recommended per risk category, such as the use, frequency or types of on-site inspections, targeted security audits or security scans, the type of information to be requested and the level of detail of that information. Such supervisory methodologies

could also be accompanied by work programmes and be assessed and reviewed on a regular basis, including on aspects such as resource allocation and needs. In relation to public administration entities, the supervisory powers should be exercised in line with the national legislative and institutional frameworks.

- (125) The competent authorities should ensure that their supervisory tasks in relation to essential and important entities are carried out by trained professionals, who should have the necessary skills to carry out those tasks, in particular with regard to conducting on-site inspections and off-site supervision, including the identification of weaknesses in databases, hardware, firewalls, encryption and networks. Those inspections and that supervision should be conducted in an objective manner.
- (126) In duly substantiated cases where it is aware of a significant cyber threat or an imminent risk, the competent authority should be able to take immediate enforcement decisions with the aim of preventing or responding to an incident.
- (127) In order to make enforcement effective, a minimum list of enforcement powers that can be exercised for breach of the cybersecurity risk-management measures and reporting obligations provided for in this Directive should be laid down, setting up a clear and consistent framework for such enforcement across the Union. Due regard should be given to the nature, gravity and duration of the infringement of this Directive, the material or non-material damage caused, whether the infringement was intentional or negligent, actions taken to prevent or mitigate the material or non-material damage, the degree of responsibility or any relevant previous infringements, the degree of cooperation with the competent authority and any other aggravating or mitigating factor. The enforcement measures, including administrative fines, should be proportionate and their imposition should be subject to appropriate procedural safeguards in accordance with the general principles of Union law and the Charter of Fundamental Rights of the European Union (the 'Charter'), including the right to an effective remedy and to a fair trial, the presumption of innocence and the rights of the defence.
- (128) This Directive does not require Member States to provide for criminal or civil liability with regard to natural persons with responsibility for ensuring that an entity complies with this Directive for damage suffered by third parties as a result of an infringement of this Directive.
- (129) In order to ensure effective enforcement of the obligations laid down in this Directive, each competent authority should have the power to impose or request the imposition of administrative fines.
- (130) Where an administrative fine is imposed on an essential or important entity that is an undertaking, an undertaking should be understood to be an undertaking in accordance with Articles 101 and 102 TFEU for those purposes. Where an administrative fine is imposed on a person that is not an undertaking, the competent authority should take account of the general level of income in the Member State as well as the economic situation of the person when considering the appropriate amount of the fine. It should be for the Member States to determine whether and to what extent public authorities should be subject to administrative fines. Imposing an administrative fine does not affect the application of other powers of the competent authorities or of other penalties laid down in the national rules transposing this Directive.
- (131) Member States should be able to lay down the rules on criminal penalties for infringements of the national rules transposing this Directive. However, the imposition of criminal penalties for infringements of such national rules and of related administrative penalties should not lead to a breach of the principle of *ne bis in idem*, as interpreted by the Court of Justice of the European Union.
- (132) Where this Directive does not harmonise administrative penalties or where necessary in other cases, for example in the event of a serious infringement of this Directive, Member States should implement a system which provides for effective, proportionate and dissuasive penalties. The nature of such penalties and whether they are criminal or administrative should be determined by national law.

- (133) In order to further strengthen the effectiveness and dissuasiveness of the enforcement measures applicable to infringements of this Directive, the competent authorities should be empowered to suspend temporarily or to request the temporary suspension of a certification or authorisation concerning part or all of the relevant services provided or activities carried out by an essential entity and request the imposition of a temporary prohibition of the exercise of managerial functions by any natural person discharging managerial responsibilities at chief executive officer or legal representative level. Given their severity and impact on the entities' activities and ultimately on users, such temporary suspensions or prohibitions should only be applied proportionally to the severity of the infringement and taking account of the circumstances of each individual case, including whether the infringement was intentional or negligent, and any actions taken to prevent or mitigate the material or non-material damage. Such temporary suspensions or prohibitions should only be applied as a last resort, namely only after the other relevant enforcement measures laid down in this Directive have been exhausted, and only until the entity concerned takes the necessary action to remedy the deficiencies or comply with the requirements of the competent authority for which such temporary suspensions or prohibitions were applied. The imposition of such temporary suspensions or prohibitions should be subject to appropriate procedural safeguards in accordance with the general principles of Union law and the Charter, including the right to an effective remedy and to a fair trial, the presumption of innocence and the rights of the defence.
- (134) For the purpose of ensuring entities' compliance with their obligations laid down in this Directive, Member States should cooperate with and assist each other with regard to supervisory and enforcement measures, in particular where an entity provides services in more than one Member State or where its network and information systems are located in a Member State other than that where it provides services. When providing assistance, the requested competent authority should take supervisory or enforcement measures in accordance with national law. In order to ensure the smooth functioning of mutual assistance under this Directive, the competent authorities should use the Cooperation Group as a forum to discuss cases and particular requests for assistance.
- (135) In order to ensure effective supervision and enforcement, in particular in a situation with a cross-border dimension, a Member State that has received a request for mutual assistance should, within the limits of that request, take appropriate supervisory and enforcement measures in relation to the entity that is the subject of that request, and that provides services or has a network and information system on the territory of that Member State.
- (136) This Directive should establish cooperation rules between the competent authorities and the supervisory authorities under Regulation (EU) 2016/679 to deal with infringements of this Directive related to personal data.
- (137) This Directive should aim to ensure a high level of responsibility for the cybersecurity risk-management measures and reporting obligations at the level of the essential and important entities. Therefore, the management bodies of the essential and important entities should approve the cybersecurity risk-management measures and oversee their implementation.
- (138) In order to ensure a high common level of cybersecurity across the Union on the basis of this Directive, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of supplementing this Directive by specifying which categories of essential and important entities are to be required to use certain certified ICT products, ICT services and ICT processes or obtain a certificate under a European cybersecurity certification scheme. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>(22)</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

<sup>(22)</sup> OJ L 123, 12.5.2016, p. 1.

- (139) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to lay down the procedural arrangements necessary for the functioning of the Cooperation Group and the technical and methodological as well as sectoral requirements concerning the cybersecurity risk-management measures, and to further specify the type of information, the format and the procedure of incident, cyber threat and near miss notifications and of significant cyber threat communications, as well as cases in which an incident is to be considered to be significant. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(23)</sup>.
- (140) The Commission should periodically review this Directive, after consulting stakeholders, in particular with a view to determining whether it is appropriate to propose amendments in light of changes to societal, political, technological or market conditions. As part of those reviews, the Commission should assess the relevance of the size of the entities concerned, and the sectors, subsectors and types of entity referred to in the annexes to this Directive for the functioning of the economy and society in relation to cybersecurity. The Commission should assess, inter alia, whether providers, falling within the scope of this Directive, that are designated as very large online platforms within the meaning of Article 33 of Regulation (EU) 2022/2065 of the European Parliament and of the Council <sup>(24)</sup> could be identified as essential entities under this Directive.
- (141) This Directive creates new tasks for ENISA, thereby enhancing its role, and could also result in ENISA being required to carry out its existing tasks under Regulation (EU) 2019/881 to a higher level than before. In order to ensure that ENISA has the necessary financial and human resources to carry out existing and new tasks, as well as to meet any higher level of execution of those tasks resulting from its enhanced role, its budget should be increased accordingly. In addition, in order to ensure the efficient use of resources, ENISA should be given greater flexibility in the way that it is able to allocate resources internally for the purpose of effectively carrying out its tasks and meeting expectations.
- (142) Since the objective of this Directive, namely to achieve a high common level of cybersecurity across the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of the effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (143) This Directive respects the fundamental rights, and observes the principles, recognised by the Charter, in particular the right to respect for private life and communications, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and the rights of the defence. The right to an effective remedy extends to the recipients of services provided by essential and important entities. This Directive should be implemented in accordance with those rights and principles.
- (144) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(25)</sup> and delivered an opinion on 11 March 2021 <sup>(26)</sup>,

<sup>(23)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>(24)</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

<sup>(25)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>(26)</sup> OJ C 183, 11.5.2021, p. 3.

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### **Subject matter**

1. This Directive lays down measures that aim to achieve a high common level of cybersecurity across the Union, with a view to improving the functioning of the internal market.
2. To that end, this Directive lays down:
  - (a) obligations that require Member States to adopt national cybersecurity strategies and to designate or establish competent authorities, cyber crisis management authorities, single points of contact on cybersecurity (single points of contact) and computer security incident response teams (CSIRTs);
  - (b) cybersecurity risk-management measures and reporting obligations for entities of a type referred to in Annex I or II as well as for entities identified as critical entities under Directive (EU) 2022/2557;
  - (c) rules and obligations on cybersecurity information sharing;
  - (d) supervisory and enforcement obligations on Member States.

#### *Article 2*

#### **Scope**

1. This Directive applies to public or private entities of a type referred to in Annex I or II which qualify as medium-sized enterprises under Article 2 of the Annex to Recommendation 2003/361/EC, or exceed the ceilings for medium-sized enterprises provided for in paragraph 1 of that Article, and which provide their services or carry out their activities within the Union.

Article 3(4) of the Annex to that Recommendation shall not apply for the purposes of this Directive.

2. Regardless of their size, this Directive also applies to entities of a type referred to in Annex I or II, where:
  - (a) services are provided by:
    - (i) providers of public electronic communications networks or of publicly available electronic communications services;
    - (ii) trust service providers;
    - (iii) top-level domain name registries and domain name system service providers;
  - (b) the entity is the sole provider in a Member State of a service which is essential for the maintenance of critical societal or economic activities;
  - (c) disruption of the service provided by the entity could have a significant impact on public safety, public security or public health;
  - (d) disruption of the service provided by the entity could induce a significant systemic risk, in particular for sectors where such disruption could have a cross-border impact;
  - (e) the entity is critical because of its specific importance at national or regional level for the particular sector or type of service, or for other interdependent sectors in the Member State;

- (f) the entity is a public administration entity:
- (i) of central government as defined by a Member State in accordance with national law; or
  - (ii) at regional level as defined by a Member State in accordance with national law that, following a risk-based assessment, provides services the disruption of which could have a significant impact on critical societal or economic activities.
3. Regardless of their size, this Directive applies to entities identified as critical entities under Directive (EU) 2022/2557.
4. Regardless of their size, this Directive applies to entities providing domain name registration services.
5. Member States may provide for this Directive to apply to:
- (a) public administration entities at local level;
  - (b) education institutions, in particular where they carry out critical research activities.
6. This Directive is without prejudice to the Member States' responsibility for safeguarding national security and their power to safeguard other essential State functions, including ensuring the territorial integrity of the State and maintaining law and order.
7. This Directive does not apply to public administration entities that carry out their activities in the areas of national security, public security, defence or law enforcement, including the prevention, investigation, detection and prosecution of criminal offences.
8. Member States may exempt specific entities which carry out activities in the areas of national security, public security, defence or law enforcement, including the prevention, investigation, detection and prosecution of criminal offences, or which provide services exclusively to the public administration entities referred to in paragraph 7 of this Article, from the obligations laid down in Article 21 or 23 with regard to those activities or services. In such cases, the supervisory and enforcement measures referred to in Chapter VII shall not apply in relation to those specific activities or services. Where the entities carry out activities or provide services exclusively of the type referred to in this paragraph, Member States may decide also to exempt those entities from the obligations laid down in Articles 3 and 27.
9. Paragraphs 7 and 8 shall not apply where an entity acts as a trust service provider.
10. This Directive does not apply to entities which Member States have exempted from the scope of Regulation (EU) 2022/2554 in accordance with Article 2(4) of that Regulation.
11. The obligations laid down in this Directive shall not entail the supply of information the disclosure of which would be contrary to the essential interests of Member States' national security, public security or defence.
12. This Directive applies without prejudice to Regulation (EU) 2016/679, Directive 2002/58/EC, Directives 2011/93/EU <sup>(27)</sup> and 2013/40/EU <sup>(28)</sup> of the European Parliament and of the Council and Directive (EU) 2022/2557.
13. Without prejudice to Article 346 TFEU, information that is confidential pursuant to Union or national rules, such as rules on business confidentiality, shall be exchanged with the Commission and other relevant authorities in accordance with this Directive only where that exchange is necessary for the application of this Directive. The information exchanged shall be limited to that which is relevant and proportionate to the purpose of that exchange. The exchange of information shall preserve the confidentiality of that information and protect the security and commercial interests of entities concerned.

<sup>(27)</sup> Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

<sup>(28)</sup> Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (OJ L 218, 14.8.2013, p. 8).

14. Entities, the competent authorities, the single points of contact and the CSIRTs shall process personal data to the extent necessary for the purposes of this Directive and in accordance with Regulation (EU) 2016/679, in particular such processing shall rely on Article 6 thereof.

The processing of personal data pursuant to this Directive by providers of public electronic communications networks or providers of publicly available electronic communications services shall be carried out in accordance with Union data protection law and Union privacy law, in particular Directive 2002/58/EC.

### Article 3

#### Essential and important entities

1. For the purposes of this Directive, the following entities shall be considered to be essential entities:
  - (a) entities of a type referred to in Annex I which exceed the ceilings for medium-sized enterprises provided for in Article 2(1) of the Annex to Recommendation 2003/361/EC;
  - (b) qualified trust service providers and top-level domain name registries as well as DNS service providers, regardless of their size;
  - (c) providers of public electronic communications networks or of publicly available electronic communications services which qualify as medium-sized enterprises under Article 2 of the Annex to Recommendation 2003/361/EC;
  - (d) public administration entities referred to in Article 2(2), point (f)(i);
  - (e) any other entities of a type referred to in Annex I or II that are identified by a Member State as essential entities pursuant to Article 2(2), points (b) to (e);
  - (f) entities identified as critical entities under Directive (EU) 2022/2557, referred to in Article 2(3) of this Directive;
  - (g) if the Member State so provides, entities which that Member State identified before 16 January 2023 as operators of essential services in accordance with Directive (EU) 2016/1148 or national law.
2. For the purposes of this Directive, entities of a type referred to in Annex I or II which do not qualify as essential entities pursuant to paragraph 1 of this Article shall be considered to be important entities. This includes entities identified by Member States as important entities pursuant to Article 2(2), points (b) to (e).
3. By 17 April 2025, Member States shall establish a list of essential and important entities as well as entities providing domain name registration services. Member States shall review and, where appropriate, update that list on a regular basis and at least every two years thereafter.
4. For the purpose of establishing the list referred to in paragraph 3, Member States shall require the entities referred to in that paragraph to submit at least the following information to the competent authorities:
  - (a) the name of the entity;
  - (b) the address and up-to-date contact details, including email addresses, IP ranges and telephone numbers;
  - (c) where applicable, the relevant sector and subsector referred to in Annex I or II; and
  - (d) where applicable, a list of the Member States where they provide services falling within the scope of this Directive.

The entities referred to in paragraph 3 shall notify any changes to the details submitted pursuant to the first subparagraph of this paragraph without delay, and, in any event, within two weeks of the date of the change.

The Commission, with the assistance of the European Union Agency for Cybersecurity (ENISA), shall without undue delay provide guidelines and templates regarding the obligations laid down in this paragraph.

Member States may establish national mechanisms for entities to register themselves.

5. By 17 April 2025 and every two years thereafter, the competent authorities shall notify:
  - (a) the Commission and the Cooperation Group of the number of essential and important entities listed pursuant to paragraph 3 for each sector and subsector referred to in Annex I or II; and
  - (b) the Commission of relevant information about the number of essential and important entities identified pursuant to Article 2(2), points (b) to (e), the sector and subsector referred to in Annex I or II to which they belong, the type of service that they provide, and the provision, from among those laid down in Article 2(2), points (b) to (e), pursuant to which they were identified.
6. Until 17 April 2025 and upon request of the Commission, Member States may notify the Commission of the names of the essential and important entities referred to in paragraph 5, point (b).

#### *Article 4*

### **Sector-specific Union legal acts**

1. Where sector-specific Union legal acts require essential or important entities to adopt cybersecurity risk-management measures or to notify significant incidents and where those requirements are at least equivalent in effect to the obligations laid down in this Directive, the relevant provisions of this Directive, including the provisions on supervision and enforcement laid down in Chapter VII, shall not apply to such entities. Where sector-specific Union legal acts do not cover all entities in a specific sector falling within the scope of this Directive, the relevant provisions of this Directive shall continue to apply to the entities not covered by those sector-specific Union legal acts.
2. The requirements referred to in paragraph 1 of this Article shall be considered to be equivalent in effect to the obligations laid down in this Directive where:
  - (a) cybersecurity risk-management measures are at least equivalent in effect to those laid down in Article 21(1) and (2); or
  - (b) the sector-specific Union legal act provides for immediate access, where appropriate automatic and direct, to the incident notifications by the CSIRTs, the competent authorities or the single points of contact under this Directive and where requirements to notify significant incidents are at least equivalent in effect to those laid down in Article 23(1) to (6) of this Directive.
3. The Commission shall, by 17 July 2023, provide guidelines clarifying the application of paragraphs 1 and 2. The Commission shall review those guidelines on a regular basis. When preparing those guidelines, the Commission shall take into account any observations of the Cooperation Group and ENISA.

#### *Article 5*

### **Minimum harmonisation**

This Directive shall not preclude Member States from adopting or maintaining provisions ensuring a higher level of cybersecurity, provided that such provisions are consistent with Member States' obligations laid down in Union law.

#### *Article 6*

### **Definitions**

For the purposes of this Directive, the following definitions apply:

- (1) 'network and information system' means:
  - (a) an electronic communications network as defined in Article 2, point (1), of Directive (EU) 2018/1972;

- (b) any device or group of interconnected or related devices, one or more of which, pursuant to a programme, carry out automatic processing of digital data; or
- (c) digital data stored, processed, retrieved or transmitted by elements covered under points (a) and (b) for the purposes of their operation, use, protection and maintenance;
- (2) 'security of network and information systems' means the ability of network and information systems to resist, at a given level of confidence, any event that may compromise the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the services offered by, or accessible via, those network and information systems;
- (3) 'cybersecurity' means cybersecurity as defined in Article 2, point (1), of Regulation (EU) 2019/881;
- (4) 'national cybersecurity strategy' means a coherent framework of a Member State providing strategic objectives and priorities in the area of cybersecurity and the governance to achieve them in that Member State;
- (5) 'near miss' means an event that could have compromised the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the services offered by, or accessible via, network and information systems, but that was successfully prevented from materialising or that did not materialise;
- (6) 'incident' means an event compromising the availability, authenticity, integrity or confidentiality of stored, transmitted or processed data or of the services offered by, or accessible via, network and information systems;
- (7) 'large-scale cybersecurity incident' means an incident which causes a level of disruption that exceeds a Member State's capacity to respond to it or which has a significant impact on at least two Member States;
- (8) 'incident handling' means any actions and procedures aiming to prevent, detect, analyse, and contain or to respond to and recover from an incident;
- (9) 'risk' means the potential for loss or disruption caused by an incident and is to be expressed as a combination of the magnitude of such loss or disruption and the likelihood of occurrence of the incident;
- (10) 'cyber threat' means a cyber threat as defined in Article 2, point (8), of Regulation (EU) 2019/881;
- (11) 'significant cyber threat' means a cyber threat which, based on its technical characteristics, can be assumed to have the potential to have a severe impact on the network and information systems of an entity or the users of the entity's services by causing considerable material or non-material damage;
- (12) 'ICT product' means an ICT product as defined in Article 2, point (12), of Regulation (EU) 2019/881;
- (13) 'ICT service' means an ICT service as defined in Article 2, point (13), of Regulation (EU) 2019/881;
- (14) 'ICT process' means an ICT process as defined in Article 2, point (14), of Regulation (EU) 2019/881;
- (15) 'vulnerability' means a weakness, susceptibility or flaw of ICT products or ICT services that can be exploited by a cyber threat;
- (16) 'standard' means a standard as defined in Article 2, point (1), of Regulation (EU) No 1025/2012 of the European Parliament and of the Council <sup>(29)</sup>;
- (17) 'technical specification' means a technical specification as defined in Article 2, point (4), of Regulation (EU) No 1025/2012;

<sup>(29)</sup> Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

- (18) 'internet exchange point' means a network facility which enables the interconnection of more than two independent networks (autonomous systems), primarily for the purpose of facilitating the exchange of internet traffic, which provides interconnection only for autonomous systems and which neither requires the internet traffic passing between any pair of participating autonomous systems to pass through any third autonomous system nor alters or otherwise interferes with such traffic;
- (19) 'domain name system' or 'DNS' means a hierarchical distributed naming system which enables the identification of internet services and resources, allowing end-user devices to use internet routing and connectivity services to reach those services and resources;
- (20) 'DNS service provider' means an entity that provides:
- (a) publicly available recursive domain name resolution services for internet end-users; or
  - (b) authoritative domain name resolution services for third-party use, with the exception of root name servers;
- (21) 'top-level domain name registry' or 'TLD name registry' means an entity which has been delegated a specific TLD and is responsible for administering the TLD including the registration of domain names under the TLD and the technical operation of the TLD, including the operation of its name servers, the maintenance of its databases and the distribution of TLD zone files across name servers, irrespective of whether any of those operations are carried out by the entity itself or are outsourced, but excluding situations where TLD names are used by a registry only for its own use;
- (22) 'entity providing domain name registration services' means a registrar or an agent acting on behalf of registrars, such as a privacy or proxy registration service provider or reseller;
- (23) 'digital service' means a service as defined in Article 1(1), point (b), of Directive (EU) 2015/1535 of the European Parliament and of the Council <sup>(30)</sup>;
- (24) 'trust service' means a trust service as defined in Article 3, point (16), of Regulation (EU) No 910/2014;
- (25) 'trust service provider' means a trust service provider as defined in Article 3, point (19), of Regulation (EU) No 910/2014;
- (26) 'qualified trust service' means a qualified trust service as defined in Article 3, point (17), of Regulation (EU) No 910/2014;
- (27) 'qualified trust service provider' means a qualified trust service provider as defined in Article 3, point (20), of Regulation (EU) No 910/2014;
- (28) 'online marketplace' means an online marketplace as defined in Article 2, point (n), of Directive 2005/29/EC of the European Parliament and of the Council <sup>(31)</sup>;
- (29) 'online search engine' means an online search engine as defined in Article 2, point (5), of Regulation (EU) 2019/1150 of the European Parliament and of the Council <sup>(32)</sup>;
- (30) 'cloud computing service' means a digital service that enables on-demand administration and broad remote access to a scalable and elastic pool of shareable computing resources, including where such resources are distributed across several locations;

<sup>(30)</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

<sup>(31)</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

<sup>(32)</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

- (31) 'data centre service' means a service that encompasses structures, or groups of structures, dedicated to the centralised accommodation, interconnection and operation of IT and network equipment providing data storage, processing and transport services together with all the facilities and infrastructures for power distribution and environmental control;
- (32) 'content delivery network' means a network of geographically distributed servers for the purpose of ensuring high availability, accessibility or fast delivery of digital content and services to internet users on behalf of content and service providers;
- (33) 'social networking services platform' means a platform that enables end-users to connect, share, discover and communicate with each other across multiple devices, in particular via chats, posts, videos and recommendations;
- (34) 'representative' means a natural or legal person established in the Union explicitly designated to act on behalf of a DNS service provider, a TLD name registry, an entity providing domain name registration services, a cloud computing service provider, a data centre service provider, a content delivery network provider, a managed service provider, a managed security service provider, or a provider of an online marketplace, of an online search engine or of a social networking services platform that is not established in the Union, which may be addressed by a competent authority or a CSIRT in the place of the entity itself with regard to the obligations of that entity under this Directive;
- (35) 'public administration entity' means an entity recognised as such in a Member State in accordance with national law, not including the judiciary, parliaments or central banks, which complies with the following criteria:
- (a) it is established for the purpose of meeting needs in the general interest and does not have an industrial or commercial character;
  - (b) it has legal personality or is entitled by law to act on behalf of another entity with legal personality;
  - (c) it is financed, for the most part, by the State, regional authorities or by other bodies governed by public law, is subject to management supervision by those authorities or bodies, or has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional authorities or by other bodies governed by public law;
  - (d) it has the power to address to natural or legal persons administrative or regulatory decisions affecting their rights in the cross-border movement of persons, goods, services or capital;
- (36) 'public electronic communications network' means a public electronic communications network as defined in Article 2, point (8), of Directive (EU) 2018/1972;
- (37) 'electronic communications service' means an electronic communications service as defined in Article 2, point (4), of Directive (EU) 2018/1972;
- (38) 'entity' means a natural or legal person created and recognised as such under the national law of its place of establishment, which may, acting under its own name, exercise rights and be subject to obligations;
- (39) 'managed service provider' means an entity that provides services related to the installation, management, operation or maintenance of ICT products, networks, infrastructure, applications or any other network and information systems, via assistance or active administration carried out either on customers' premises or remotely;
- (40) 'managed security service provider' means a managed service provider that carries out or provides assistance for activities relating to cybersecurity risk management;
- (41) 'research organisation' means an entity which has as its primary goal to conduct applied research or experimental development with a view to exploiting the results of that research for commercial purposes, but which does not include educational institutions.

## CHAPTER II

## COORDINATED CYBERSECURITY FRAMEWORKS

*Article 7***National cybersecurity strategy**

1. Each Member State shall adopt a national cybersecurity strategy that provides for the strategic objectives, the resources required to achieve those objectives, and appropriate policy and regulatory measures, with a view to achieving and maintaining a high level of cybersecurity. The national cybersecurity strategy shall include:

- (a) objectives and priorities of the Member State's cybersecurity strategy covering in particular the sectors referred to in Annexes I and II;
- (b) a governance framework to achieve the objectives and priorities referred to in point (a) of this paragraph, including the policies referred to in paragraph 2;
- (c) a governance framework clarifying the roles and responsibilities of relevant stakeholders at national level, underpinning the cooperation and coordination at the national level between the competent authorities, the single points of contact, and the CSIRTs under this Directive, as well as coordination and cooperation between those bodies and competent authorities under sector-specific Union legal acts;
- (d) a mechanism to identify relevant assets and an assessment of the risks in that Member State;
- (e) an identification of the measures ensuring preparedness for, responsiveness to and recovery from incidents, including cooperation between the public and private sectors;
- (f) a list of the various authorities and stakeholders involved in the implementation of the national cybersecurity strategy;
- (g) a policy framework for enhanced coordination between the competent authorities under this Directive and the competent authorities under Directive (EU) 2022/2557 for the purpose of information sharing on risks, cyber threats, and incidents as well as on non-cyber risks, threats and incidents and the exercise of supervisory tasks, as appropriate;
- (h) a plan, including necessary measures, to enhance the general level of cybersecurity awareness among citizens.

2. As part of the national cybersecurity strategy, Member States shall in particular adopt policies:

- (a) addressing cybersecurity in the supply chain for ICT products and ICT services used by entities for the provision of their services;
- (b) on the inclusion and specification of cybersecurity-related requirements for ICT products and ICT services in public procurement, including in relation to cybersecurity certification, encryption and the use of open-source cybersecurity products;
- (c) managing vulnerabilities, encompassing the promotion and facilitation of coordinated vulnerability disclosure under Article 12(1);
- (d) related to sustaining the general availability, integrity and confidentiality of the public core of the open internet, including, where relevant, the cybersecurity of undersea communications cables;
- (e) promoting the development and integration of relevant advanced technologies aiming to implement state-of-the-art cybersecurity risk-management measures;
- (f) promoting and developing education and training on cybersecurity, cybersecurity skills, awareness raising and research and development initiatives, as well as guidance on good cyber hygiene practices and controls, aimed at citizens, stakeholders and entities;

- (g) supporting academic and research institutions to develop, enhance and promote the deployment of cybersecurity tools and secure network infrastructure;
- (h) including relevant procedures and appropriate information-sharing tools to support voluntary cybersecurity information sharing between entities in accordance with Union law;
- (i) strengthening the cyber resilience and the cyber hygiene baseline of small and medium-sized enterprises, in particular those excluded from the scope of this Directive, by providing easily accessible guidance and assistance for their specific needs;
- (j) promoting active cyber protection.

3. Member States shall notify their national cybersecurity strategies to the Commission within three months of their adoption. Member States may exclude information which relates to their national security from such notifications.

4. Member States shall assess their national cybersecurity strategies on a regular basis and at least every five years on the basis of key performance indicators and, where necessary, update them. ENISA shall assist Member States, upon their request, in the development or the update of a national cybersecurity strategy and of key performance indicators for the assessment of that strategy, in order to align it with the requirements and obligations laid down in this Directive.

#### *Article 8*

### **Competent authorities and single points of contact**

1. Each Member State shall designate or establish one or more competent authorities responsible for cybersecurity and for the supervisory tasks referred to in Chapter VII (competent authorities).
2. The competent authorities referred to in paragraph 1 shall monitor the implementation of this Directive at national level.
3. Each Member State shall designate or establish a single point of contact. Where a Member State designates or establishes only one competent authority pursuant to paragraph 1, that competent authority shall also be the single point of contact for that Member State.
4. Each single point of contact shall exercise a liaison function to ensure cross-border cooperation of its Member State's authorities with the relevant authorities of other Member States, and, where appropriate, with the Commission and ENISA, as well as to ensure cross-sectoral cooperation with other competent authorities within its Member State.
5. Member States shall ensure that their competent authorities and single points of contact have adequate resources to carry out, in an effective and efficient manner, the tasks assigned to them and thereby to fulfil the objectives of this Directive.
6. Each Member State shall notify the Commission without undue delay of the identity of the competent authority referred to in paragraph 1 and of the single point of contact referred to in paragraph 3, of the tasks of those authorities, and of any subsequent changes thereto. Each Member State shall make public the identity of its competent authority. The Commission shall make a list of the single points of contact publicly available.

#### *Article 9*

### **National cyber crisis management frameworks**

1. Each Member State shall designate or establish one or more competent authorities responsible for the management of large-scale cybersecurity incidents and crises (cyber crisis management authorities). Member States shall ensure that those authorities have adequate resources to carry out, in an effective and efficient manner, the tasks assigned to them. Member States shall ensure coherence with the existing frameworks for general national crisis management.

2. Where a Member State designates or establishes more than one cyber crisis management authority pursuant to paragraph 1, it shall clearly indicate which of those authorities is to serve as the coordinator for the management of large-scale cybersecurity incidents and crises.
3. Each Member State shall identify capabilities, assets and procedures that can be deployed in the case of a crisis for the purposes of this Directive.
4. Each Member State shall adopt a national large-scale cybersecurity incident and crisis response plan where the objectives of and arrangements for the management of large-scale cybersecurity incidents and crises are set out. That plan shall lay down, in particular:
  - (a) the objectives of national preparedness measures and activities;
  - (b) the tasks and responsibilities of the cyber crisis management authorities;
  - (c) the cyber crisis management procedures, including their integration into the general national crisis management framework and information exchange channels;
  - (d) national preparedness measures, including exercises and training activities;
  - (e) the relevant public and private stakeholders and infrastructure involved;
  - (f) national procedures and arrangements between relevant national authorities and bodies to ensure the Member State's effective participation in and support of the coordinated management of large-scale cybersecurity incidents and crises at Union level.
5. Within three months of the designation or establishment of the cyber crisis management authority referred to in paragraph 1, each Member State shall notify the Commission of the identity of its authority and of any subsequent changes thereto. Member States shall submit to the Commission and to the European cyber crisis liaison organisation network (EU-CyCLONe) relevant information relating to the requirements of paragraph 4 about their national large-scale cybersecurity incident and crisis response plans within three months of the adoption of those plans. Member States may exclude information where and to the extent that such exclusion is necessary for their national security.

#### Article 10

#### **Computer security incident response teams (CSIRTs)**

1. Each Member State shall designate or establish one or more CSIRTs. The CSIRTs may be designated or established within a competent authority. The CSIRTs shall comply with the requirements set out in Article 11(1), shall cover at least the sectors, subsectors and types of entity referred to in Annexes I and II, and shall be responsible for incident handling in accordance with a well-defined process.
2. Member States shall ensure that each CSIRT has adequate resources to carry out effectively its tasks as set out in Article 11(3).
3. Member States shall ensure that each CSIRT has at its disposal an appropriate, secure, and resilient communication and information infrastructure through which to exchange information with essential and important entities and other relevant stakeholders. To that end, Member States shall ensure that each CSIRT contributes to the deployment of secure information-sharing tools.
4. The CSIRTs shall cooperate and, where appropriate, exchange relevant information in accordance with Article 29 with sectoral or cross-sectoral communities of essential and important entities.
5. The CSIRTs shall participate in peer reviews organised in accordance with Article 19.
6. Member States shall ensure the effective, efficient and secure cooperation of their CSIRTs in the CSIRTs network.

7. The CSIRTs may establish cooperation relationships with third countries' national computer security incident response teams. As part of such cooperation relationships, Member States shall facilitate effective, efficient and secure information exchange with those third countries' national computer security incident response teams, using relevant information-sharing protocols, including the traffic light protocol. The CSIRTs may exchange relevant information with third countries' national computer security incident response teams, including personal data in accordance with Union data protection law.
8. The CSIRTs may cooperate with third countries' national computer security incident response teams or equivalent third-country bodies, in particular for the purpose of providing them with cybersecurity assistance.
9. Each Member State shall notify the Commission without undue delay of the identity of the CSIRT referred to in paragraph 1 of this Article and the CSIRT designated as coordinator pursuant to Article 12(1), of their respective tasks in relation to essential and important entities, and of any subsequent changes thereto.
10. Member States may request the assistance of ENISA in developing their CSIRTs.

#### Article 11

#### **Requirements, technical capabilities and tasks of CSIRTs**

1. The CSIRTs shall comply with the following requirements:
  - (a) the CSIRTs shall ensure a high level of availability of their communication channels by avoiding single points of failure, and shall have several means for being contacted and for contacting others at all times; they shall clearly specify the communication channels and make them known to constituency and cooperative partners;
  - (b) the CSIRTs' premises and the supporting information systems shall be located at secure sites;
  - (c) the CSIRTs shall be equipped with an appropriate system for managing and routing requests, in particular to facilitate effective and efficient handovers;
  - (d) the CSIRTs shall ensure the confidentiality and trustworthiness of their operations;
  - (e) the CSIRTs shall be adequately staffed to ensure availability of their services at all times and they shall ensure that their staff is trained appropriately;
  - (f) the CSIRTs shall be equipped with redundant systems and backup working space to ensure continuity of their services.

The CSIRTs may participate in international cooperation networks.

2. Member States shall ensure that their CSIRTs jointly have the technical capabilities necessary to carry out the tasks referred to in paragraph 3. Member States shall ensure that sufficient resources are allocated to their CSIRTs to ensure adequate staffing levels for the purpose of enabling the CSIRTs to develop their technical capabilities.
3. The CSIRTs shall have the following tasks:
  - (a) monitoring and analysing cyber threats, vulnerabilities and incidents at national level and, upon request, providing assistance to essential and important entities concerned regarding real-time or near real-time monitoring of their network and information systems;
  - (b) providing early warnings, alerts, announcements and dissemination of information to essential and important entities concerned as well as to the competent authorities and other relevant stakeholders on cyber threats, vulnerabilities and incidents, if possible in near real-time;
  - (c) responding to incidents and providing assistance to the essential and important entities concerned, where applicable;
  - (d) collecting and analysing forensic data and providing dynamic risk and incident analysis and situational awareness regarding cybersecurity;

- (e) providing, upon the request of an essential or important entity, a proactive scanning of the network and information systems of the entity concerned to detect vulnerabilities with a potential significant impact;
- (f) participating in the CSIRTs network and providing mutual assistance in accordance with their capacities and competencies to other members of the CSIRTs network upon their request;
- (g) where applicable, acting as a coordinator for the purposes of the coordinated vulnerability disclosure under Article 12(1);
- (h) contributing to the deployment of secure information-sharing tools pursuant to Article 10(3).

The CSIRTs may carry out proactive non-intrusive scanning of publicly accessible network and information systems of essential and important entities. Such scanning shall be carried out to detect vulnerable or insecurely configured network and information systems and inform the entities concerned. Such scanning shall not have any negative impact on the functioning of the entities' services.

When carrying out the tasks referred to in the first subparagraph, the CSIRTs may prioritise particular tasks on the basis of a risk-based approach.

4. The CSIRTs shall establish cooperation relationships with relevant stakeholders in the private sector, with a view to achieving the objectives of this Directive.

5. In order to facilitate cooperation referred to in paragraph 4, the CSIRTs shall promote the adoption and use of common or standardised practices, classification schemes and taxonomies in relation to:

- (a) incident-handling procedures;
- (b) crisis management; and
- (c) coordinated vulnerability disclosure under Article 12(1).

#### *Article 12*

### **Coordinated vulnerability disclosure and a European vulnerability database**

1. Each Member State shall designate one of its CSIRTs as a coordinator for the purposes of coordinated vulnerability disclosure. The CSIRT designated as coordinator shall act as a trusted intermediary, facilitating, where necessary, the interaction between the natural or legal person reporting a vulnerability and the manufacturer or provider of the potentially vulnerable ICT products or ICT services, upon the request of either party. The tasks of the CSIRT designated as coordinator shall include:

- (a) identifying and contacting the entities concerned;
- (b) assisting the natural or legal persons reporting a vulnerability; and
- (c) negotiating disclosure timelines and managing vulnerabilities that affect multiple entities.

Member States shall ensure that natural or legal persons are able to report, anonymously where they so request, a vulnerability to the CSIRT designated as coordinator. The CSIRT designated as coordinator shall ensure that diligent follow-up action is carried out with regard to the reported vulnerability and shall ensure the anonymity of the natural or legal person reporting the vulnerability. Where a reported vulnerability could have a significant impact on entities in more than one Member State, the CSIRT designated as coordinator of each Member State concerned shall, where appropriate, cooperate with other CSIRTs designated as coordinators within the CSIRTs network.

2. ENISA shall develop and maintain, after consulting the Cooperation Group, a European vulnerability database. To that end, ENISA shall establish and maintain the appropriate information systems, policies and procedures, and shall adopt the necessary technical and organisational measures to ensure the security and integrity of the European vulnerability database, with a view in particular to enabling entities, regardless of whether they fall within the scope of this Directive, and their suppliers of network and information systems, to disclose and register, on a voluntary basis, publicly known vulnerabilities in ICT products or ICT services. All stakeholders shall be provided access to the information about the vulnerabilities contained in the European vulnerability database. That database shall include:

- (a) information describing the vulnerability;
- (b) the affected ICT products or ICT services and the severity of the vulnerability in terms of the circumstances under which it may be exploited;
- (c) the availability of related patches and, in the absence of available patches, guidance provided by the competent authorities or the CSIRTs addressed to users of vulnerable ICT products and ICT services as to how the risks resulting from disclosed vulnerabilities can be mitigated.

#### Article 13

### Cooperation at national level

1. Where they are separate, the competent authorities, the single point of contact and the CSIRTs of the same Member State shall cooperate with each other with regard to the fulfilment of the obligations laid down in this Directive.

2. Member States shall ensure that their CSIRTs or, where applicable, their competent authorities, receive notifications of significant incidents pursuant to Article 23, and incidents, cyber threats and near misses pursuant to Article 30.

3. Member States shall ensure that their CSIRTs or, where applicable, their competent authorities inform their single points of contact of notifications of incidents, cyber threats and near misses submitted pursuant to this Directive.

4. In order to ensure that the tasks and obligations of the competent authorities, the single points of contact and the CSIRTs are carried out effectively, Member States shall, to the extent possible, ensure appropriate cooperation between those bodies and law enforcement authorities, data protection authorities, the national authorities under Regulations (EC) No 300/2008 and (EU) 2018/1139, the supervisory bodies under Regulation (EU) No 910/2014, the competent authorities under Regulation (EU) 2022/2554, the national regulatory authorities under Directive (EU) 2018/1972, the competent authorities under Directive (EU) 2022/2557, as well as the competent authorities under other sector-specific Union legal acts, within that Member State.

5. Member States shall ensure that their competent authorities under this Directive and their competent authorities under Directive (EU) 2022/2557 cooperate and exchange information on a regular basis with regard to the identification of critical entities, on risks, cyber threats, and incidents as well as on non-cyber risks, threats and incidents affecting entities identified as critical entities under Directive (EU) 2022/2557, and the measures taken in response to such risks, threats and incidents. Member States shall also ensure that their competent authorities under this Directive and their competent authorities under Regulation (EU) No 910/2014, Regulation (EU) 2022/2554 and Directive (EU) 2018/1972 exchange relevant information on a regular basis, including with regard to relevant incidents and cyber threats.

6. Member States shall simplify the reporting through technical means for notifications referred to in Articles 23 and 30.

## CHAPTER III

## COOPERATION AT UNION AND INTERNATIONAL LEVEL

## Article 14

**Cooperation Group**

1. In order to support and facilitate strategic cooperation and the exchange of information among Member States, as well as to strengthen trust and confidence, a Cooperation Group is established.
2. The Cooperation Group shall carry out its tasks on the basis of biennial work programmes referred to in paragraph 7.
3. The Cooperation Group shall be composed of representatives of Member States, the Commission and ENISA. The European External Action Service shall participate in the activities of the Cooperation Group as an observer. The European Supervisory Authorities (ESAs) and the competent authorities under Regulation (EU) 2022/2554 may participate in the activities of the Cooperation Group in accordance with Article 47(1) of that Regulation.

Where appropriate, the Cooperation Group may invite the European Parliament and representatives of relevant stakeholders to participate in its work.

The Commission shall provide the secretariat.

4. The Cooperation Group shall have the following tasks:
  - (a) to provide guidance to the competent authorities in relation to the transposition and implementation of this Directive;
  - (b) to provide guidance to the competent authorities in relation to the development and implementation of policies on coordinated vulnerability disclosure, as referred to in Article 7(2), point (c);
  - (c) to exchange best practices and information in relation to the implementation of this Directive, including in relation to cyber threats, incidents, vulnerabilities, near misses, awareness-raising initiatives, training, exercises and skills, capacity building, standards and technical specifications as well as the identification of essential and important entities pursuant to Article 2(2), points (b) to (e);
  - (d) to exchange advice and cooperate with the Commission on emerging cybersecurity policy initiatives and the overall consistency of sector-specific cybersecurity requirements;
  - (e) to exchange advice and cooperate with the Commission on draft delegated or implementing acts adopted pursuant to this Directive;
  - (f) to exchange best practices and information with relevant Union institutions, bodies, offices and agencies;
  - (g) to exchange views on the implementation of sector-specific Union legal acts that contain provisions on cybersecurity;
  - (h) where relevant, to discuss reports on the peer review referred to in Article 19(9) and draw up conclusions and recommendations;
  - (i) to carry out coordinated security risk assessments of critical supply chains in accordance with Article 22(1);
  - (j) to discuss cases of mutual assistance, including experiences and results from cross-border joint supervisory actions as referred to in Article 37;
  - (k) upon the request of one or more Member States concerned, to discuss specific requests for mutual assistance as referred to in Article 37;
  - (l) to provide strategic guidance to the CSIRTs network and EU-CyCLONe on specific emerging issues;

- (m) to exchange views on the policy on follow-up actions following large-scale cybersecurity incidents and crises on the basis of lessons learned of the CSIRTs network and EU-CyCLONe;
- (n) to contribute to cybersecurity capabilities across the Union by facilitating the exchange of national officials through a capacity building programme involving staff from the competent authorities or the CSIRTs;
- (o) to organise regular joint meetings with relevant private stakeholders from across the Union to discuss activities carried out by the Cooperation Group and gather input on emerging policy challenges;
- (p) to discuss the work undertaken in relation to cybersecurity exercises, including the work done by ENISA;
- (q) to establish the methodology and organisational aspects of the peer reviews referred to in Article 19(1), as well as to lay down the self-assessment methodology for Member States in accordance with Article 19(5), with the assistance of the Commission and ENISA, and, in cooperation with the Commission and ENISA, to develop codes of conduct underpinning the working methods of designated cybersecurity experts in accordance with Article 19(6);
- (r) to prepare reports for the purpose of the review referred to in Article 40 on the experience gained at a strategic level and from peer reviews;
- (s) to discuss and carry out on a regular basis an assessment of the state of play of cyber threats or incidents, such as ransomware.

The Cooperation Group shall submit the reports referred to in the first subparagraph, point (r), to the Commission, to the European Parliament and to the Council.

5. Member States shall ensure effective, efficient and secure cooperation of their representatives in the Cooperation Group.

6. The Cooperation Group may request from the CSIRTs network a technical report on selected topics.

7. By 1 February 2024 and every two years thereafter, the Cooperation Group shall establish a work programme in respect of actions to be undertaken to implement its objectives and tasks.

8. The Commission may adopt implementing acts laying down procedural arrangements necessary for the functioning of the Cooperation Group.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

The Commission shall exchange advice and cooperate with the Cooperation Group on the draft implementing acts referred to in the first subparagraph of this paragraph in accordance with paragraph (4), point (e).

9. The Cooperation Group shall meet on a regular basis and in any event at least once a year with the Critical Entities Resilience Group established under Directive (EU) 2022/2557 to promote and facilitate strategic cooperation and the exchange of information.

#### Article 15

#### **CSIRTs network**

1. In order to contribute to the development of confidence and trust and to promote swift and effective operational cooperation among Member States, a network of national CSIRTs is established.

2. The CSIRTs network shall be composed of representatives of the CSIRTs designated or established pursuant to Article 10 and the computer emergency response team for the Union's institutions, bodies and agencies (CERT-EU). The Commission shall participate in the CSIRTs network as an observer. ENISA shall provide the secretariat and shall actively provide assistance for the cooperation among the CSIRTs.

3. The CSIRTs network shall have the following tasks:
- (a) to exchange information about the CSIRTs' capabilities;
  - (b) to facilitate the sharing, transfer and exchange of technology and relevant measures, policies, tools, processes, best practices and frameworks among the CSIRTs;
  - (c) to exchange relevant information about incidents, near misses, cyber threats, risks and vulnerabilities;
  - (d) to exchange information with regard to cybersecurity publications and recommendations;
  - (e) to ensure interoperability with regard to information-sharing specifications and protocols;
  - (f) at the request of a member of the CSIRTs network potentially affected by an incident, to exchange and discuss information in relation to that incident and associated cyber threats, risks and vulnerabilities;
  - (g) at the request of a member of the CSIRTs network, to discuss and, where possible, implement a coordinated response to an incident that has been identified within the jurisdiction of that Member State;
  - (h) to provide Member States with assistance in addressing cross-border incidents pursuant to this Directive;
  - (i) to cooperate, exchange best practices and provide assistance to the CSIRTs designated as coordinators pursuant to Article 12(1) with regard to the management of the coordinated disclosure of vulnerabilities which could have a significant impact on entities in more than one Member State;
  - (j) to discuss and identify further forms of operational cooperation, including in relation to:
    - (i) categories of cyber threats and incidents;
    - (ii) early warnings;
    - (iii) mutual assistance;
    - (iv) principles and arrangements for coordination in response to cross-border risks and incidents;
    - (v) contribution to the national large-scale cybersecurity incident and crisis response plan referred to in Article 9(4) at the request of a Member State;
  - (k) to inform the Cooperation Group of its activities and of the further forms of operational cooperation discussed pursuant to point (j), and, where necessary, request guidance in that regard;
  - (l) to take stock of cybersecurity exercises, including those organised by ENISA;
  - (m) at the request of an individual CSIRT, to discuss the capabilities and preparedness of that CSIRT;
  - (n) to cooperate and exchange information with regional and Union-level Security Operations Centres (SOCs) in order to improve common situational awareness on incidents and cyber threats across the Union;
  - (o) where relevant, to discuss the peer-review reports referred to in Article 19(9);
  - (p) to provide guidelines in order to facilitate the convergence of operational practices with regard to the application of the provisions of this Article concerning operational cooperation.

4. By 17 January 2025, and every two years thereafter, the CSIRTs network shall, for the purpose of the review referred to in Article 40, assess the progress made with regard to the operational cooperation and adopt a report. The report shall, in particular, draw up conclusions and recommendations on the basis of the outcome of the peer reviews referred to in Article 19, which are carried out in relation to the national CSIRTs. That report shall be submitted to the Cooperation Group.

5. The CSIRTs network shall adopt its rules of procedure.
6. The CSIRTs network and EU-CyCLONe shall agree on procedural arrangements and cooperate on the basis thereof.

#### Article 16

#### **European cyber crisis liaison organisation network (EU-CyCLONe)**

1. EU-CyCLONe is established to support the coordinated management of large-scale cybersecurity incidents and crises at operational level and to ensure the regular exchange of relevant information among Member States and Union institutions, bodies, offices and agencies.

2. EU-CyCLONe shall be composed of the representatives of Member States' cyber crisis management authorities as well as, in cases where a potential or ongoing large-scale cybersecurity incident has or is likely to have a significant impact on services and activities falling within the scope of this Directive, the Commission. In other cases, the Commission shall participate in the activities of EU-CyCLONe as an observer.

ENISA shall provide the secretariat of EU-CyCLONe and support the secure exchange of information as well as provide necessary tools to support cooperation between Member States ensuring secure exchange of information.

Where appropriate, EU-CyCLONe may invite representatives of relevant stakeholders to participate in its work as observers.

3. EU-CyCLONe shall have the following tasks:

- (a) to increase the level of preparedness of the management of large-scale cybersecurity incidents and crises;
- (b) to develop a shared situational awareness for large-scale cybersecurity incidents and crises;
- (c) to assess the consequences and impact of relevant large-scale cybersecurity incidents and crises and propose possible mitigation measures;
- (d) to coordinate the management of large-scale cybersecurity incidents and crises and support decision-making at political level in relation to such incidents and crises;
- (e) to discuss, upon the request of a Member State concerned, national large-scale cybersecurity incident and crisis response plans referred to in Article 9(4).

4. EU-CyCLONe shall adopt its rules of procedure.

5. EU-CyCLONe shall report on a regular basis to the Cooperation Group on the management of large-scale cybersecurity incidents and crises, as well as trends, focusing in particular on their impact on essential and important entities.

6. EU-CyCLONe shall cooperate with the CSIRTs network on the basis of agreed procedural arrangements provided for in Article 15(6).

7. By 17 July 2024 and every 18 months thereafter, EU-CyCLONe shall submit to the European Parliament and to the Council a report assessing its work.

#### Article 17

#### **International cooperation**

The Union may, where appropriate, conclude international agreements, in accordance with Article 218 TFEU, with third countries or international organisations, allowing and organising their participation in particular activities of the Cooperation Group, the CSIRTs network and EU-CyCLONe. Such agreements shall comply with Union data protection law.

*Article 18***Report on the state of cybersecurity in the Union**

1. ENISA shall adopt, in cooperation with the Commission and the Cooperation Group, a biennial report on the state of cybersecurity in the Union and shall submit and present that report to the European Parliament. The report shall, inter alia, be made available in machine-readable data and include the following:

- (a) a Union-level cybersecurity risk assessment, taking account of the cyber threat landscape;
- (b) an assessment of the development of cybersecurity capabilities in the public and private sectors across the Union;
- (c) an assessment of the general level of cybersecurity awareness and cyber hygiene among citizens and entities, including small and medium-sized enterprises;
- (d) an aggregated assessment of the outcome of the peer reviews referred to in Article 19;
- (e) an aggregated assessment of the level of maturity of cybersecurity capabilities and resources across the Union, including those at sector level, as well as of the extent to which the Member States' national cybersecurity strategies are aligned.

2. The report shall include particular policy recommendations, with a view to addressing shortcomings and increasing the level of cybersecurity across the Union, and a summary of the findings for the particular period from the EU Cybersecurity Technical Situation Reports on incidents and cyber threats prepared by ENISA in accordance with Article 7(6) of Regulation (EU) 2019/881.

3. ENISA, in cooperation with the Commission, the Cooperation Group and the CSIRTs network, shall develop the methodology, including the relevant variables, such as quantitative and qualitative indicators, of the aggregated assessment referred to in paragraph 1, point (e).

*Article 19***Peer reviews**

1. The Cooperation Group shall, on 17 January 2025, establish, with the assistance of the Commission and ENISA, and, where relevant, the CSIRTs network, the methodology and organisational aspects of peer reviews with a view to learning from shared experiences, strengthening mutual trust, achieving a high common level of cybersecurity, as well as enhancing Member States' cybersecurity capabilities and policies necessary to implement this Directive. Participation in peer reviews is voluntary. The peer reviews shall be carried out by cybersecurity experts. The cybersecurity experts shall be designated by at least two Member States, different from the Member State being reviewed.

The peer reviews shall cover at least one of the following:

- (a) the level of implementation of the cybersecurity risk-management measures and reporting obligations laid down in Articles 21 and 23;
- (b) the level of capabilities, including the available financial, technical and human resources, and the effectiveness of the exercise of the tasks of the competent authorities;
- (c) the operational capabilities of the CSIRTs;
- (d) the level of implementation of mutual assistance referred to in Article 37;
- (e) the level of implementation of the cybersecurity information-sharing arrangements referred to in Article 29;
- (f) specific issues of cross-border or cross-sector nature.

2. The methodology referred to in paragraph 1 shall include objective, non-discriminatory, fair and transparent criteria on the basis of which the Member States designate cybersecurity experts eligible to carry out the peer reviews. The Commission and ENISA shall participate as observers in the peer reviews.

3. Member States may identify specific issues as referred to in paragraph 1, point (f), for the purposes of a peer review.
4. Before commencing a peer review as referred to in paragraph 1, Member States shall notify the participating Member States of its scope, including the specific issues identified pursuant to paragraph 3.
5. Prior to the commencement of the peer review, Member States may carry out a self-assessment of the reviewed aspects and provide that self-assessment to the designated cybersecurity experts. The Cooperation Group shall, with the assistance of the Commission and ENISA, lay down the methodology for the Member States' self-assessment.
6. Peer reviews shall entail physical or virtual on-site visits and off-site exchanges of information. In line with the principle of good cooperation, the Member State subject to the peer review shall provide the designated cybersecurity experts with the information necessary for the assessment, without prejudice to Union or national law concerning the protection of confidential or classified information and to the safeguarding of essential State functions, such as national security. The Cooperation Group, in cooperation with the Commission and ENISA, shall develop appropriate codes of conduct underpinning the working methods of designated cybersecurity experts. Any information obtained through the peer review shall be used solely for that purpose. The cybersecurity experts participating in the peer review shall not disclose any sensitive or confidential information obtained in the course of that peer review to any third parties.
7. Once subject to a peer review, the same aspects reviewed in a Member State shall not be subject to a further peer review in that Member State for two years following the conclusion of the peer review, unless otherwise requested by the Member State or agreed upon after a proposal of the Cooperation Group.
8. Member States shall ensure that any risk of conflict of interest concerning the designated cybersecurity experts is revealed to the other Member States, the Cooperation Group, the Commission and ENISA, before the commencement of the peer review. The Member State subject to the peer review may object to the designation of particular cybersecurity experts on duly substantiated grounds communicated to the designating Member State.
9. Cybersecurity experts participating in peer reviews shall draft reports on the findings and conclusions of the peer reviews. Member States subject to a peer review may provide comments on the draft reports concerning them and such comments shall be attached to the reports. The reports shall include recommendations to enable improvement on the aspects covered by the peer review. The reports shall be submitted to the Cooperation Group and the CSIRTs network where relevant. A Member State subject to the peer review may decide to make its report, or a redacted version of it, publicly available.

#### CHAPTER IV

#### CYBERSECURITY RISK-MANAGEMENT MEASURES AND REPORTING OBLIGATIONS

##### *Article 20*

##### **Governance**

1. Member States shall ensure that the management bodies of essential and important entities approve the cybersecurity risk-management measures taken by those entities in order to comply with Article 21, oversee its implementation and can be held liable for infringements by the entities of that Article.

The application of this paragraph shall be without prejudice to national law as regards the liability rules applicable to public institutions, as well as the liability of public servants and elected or appointed officials.

2. Member States shall ensure that the members of the management bodies of essential and important entities are required to follow training, and shall encourage essential and important entities to offer similar training to their employees on a regular basis, in order that they gain sufficient knowledge and skills to enable them to identify risks and assess cybersecurity risk-management practices and their impact on the services provided by the entity.

#### Article 21

### Cybersecurity risk-management measures

1. Member States shall ensure that essential and important entities take appropriate and proportionate technical, operational and organisational measures to manage the risks posed to the security of network and information systems which those entities use for their operations or for the provision of their services, and to prevent or minimise the impact of incidents on recipients of their services and on other services.

Taking into account the state-of-the-art and, where applicable, relevant European and international standards, as well as the cost of implementation, the measures referred to in the first subparagraph shall ensure a level of security of network and information systems appropriate to the risks posed. When assessing the proportionality of those measures, due account shall be taken of the degree of the entity's exposure to risks, the entity's size and the likelihood of occurrence of incidents and their severity, including their societal and economic impact.

2. The measures referred to in paragraph 1 shall be based on an all-hazards approach that aims to protect network and information systems and the physical environment of those systems from incidents, and shall include at least the following:

- (a) policies on risk analysis and information system security;
- (b) incident handling;
- (c) business continuity, such as backup management and disaster recovery, and crisis management;
- (d) supply chain security, including security-related aspects concerning the relationships between each entity and its direct suppliers or service providers;
- (e) security in network and information systems acquisition, development and maintenance, including vulnerability handling and disclosure;
- (f) policies and procedures to assess the effectiveness of cybersecurity risk-management measures;
- (g) basic cyber hygiene practices and cybersecurity training;
- (h) policies and procedures regarding the use of cryptography and, where appropriate, encryption;
- (i) human resources security, access control policies and asset management;
- (j) the use of multi-factor authentication or continuous authentication solutions, secured voice, video and text communications and secured emergency communication systems within the entity, where appropriate.

3. Member States shall ensure that, when considering which measures referred to in paragraph 2, point (d), of this Article are appropriate, entities take into account the vulnerabilities specific to each direct supplier and service provider and the overall quality of products and cybersecurity practices of their suppliers and service providers, including their secure development procedures. Member States shall also ensure that, when considering which measures referred to in that point are appropriate, entities are required to take into account the results of the coordinated security risk assessments of critical supply chains carried out in accordance with Article 22(1).

4. Member States shall ensure that an entity that finds that it does not comply with the measures provided for in paragraph 2 takes, without undue delay, all necessary, appropriate and proportionate corrective measures.

5. By 17 October 2024, the Commission shall adopt implementing acts laying down the technical and the methodological requirements of the measures referred to in paragraph 2 with regard to DNS service providers, TLD name registries, cloud computing service providers, data centre service providers, content delivery network providers, managed service providers, managed security service providers, providers of online market places, of online search engines and of social networking services platforms, and trust service providers.

The Commission may adopt implementing acts laying down the technical and the methodological requirements, as well as sectoral requirements, as necessary, of the measures referred to in paragraph 2 with regard to essential and important entities other than those referred to in the first subparagraph of this paragraph.

When preparing the implementing acts referred to in the first and second subparagraphs of this paragraph, the Commission shall, to the extent possible, follow European and international standards, as well as relevant technical specifications. The Commission shall exchange advice and cooperate with the Cooperation Group and ENISA on the draft implementing acts in accordance with Article 14(4), point (e).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

#### Article 22

### **Union level coordinated security risk assessments of critical supply chains**

1. The Cooperation Group, in cooperation with the Commission and ENISA, may carry out coordinated security risk assessments of specific critical ICT services, ICT systems or ICT products supply chains, taking into account technical and, where relevant, non-technical risk factors.
2. The Commission, after consulting the Cooperation Group and ENISA, and, where necessary, relevant stakeholders, shall identify the specific critical ICT services, ICT systems or ICT products that may be subject to the coordinated security risk assessment referred to in paragraph 1.

#### Article 23

### **Reporting obligations**

1. Each Member State shall ensure that essential and important entities notify, without undue delay, its CSIRT or, where applicable, its competent authority in accordance with paragraph 4 of any incident that has a significant impact on the provision of their services as referred to in paragraph 3 (significant incident). Where appropriate, entities concerned shall notify, without undue delay, the recipients of their services of significant incidents that are likely to adversely affect the provision of those services. Each Member State shall ensure that those entities report, inter alia, any information enabling the CSIRT or, where applicable, the competent authority to determine any cross-border impact of the incident. The mere act of notification shall not subject the notifying entity to increased liability.

Where the entities concerned notify the competent authority of a significant incident under the first subparagraph, the Member State shall ensure that that competent authority forwards the notification to the CSIRT upon receipt.

In the case of a cross-border or cross-sectoral significant incident, Member States shall ensure that their single points of contact are provided in due time with relevant information notified in accordance with paragraph 4.

2. Where applicable, Member States shall ensure that essential and important entities communicate, without undue delay, to the recipients of their services that are potentially affected by a significant cyber threat any measures or remedies that those recipients are able to take in response to that threat. Where appropriate, the entities shall also inform those recipients of the significant cyber threat itself.

3. An incident shall be considered to be significant if:
  - (a) it has caused or is capable of causing severe operational disruption of the services or financial loss for the entity concerned;
  - (b) it has affected or is capable of affecting other natural or legal persons by causing considerable material or non-material damage.
  
4. Member States shall ensure that, for the purpose of notification under paragraph 1, the entities concerned submit to the CSIRT or, where applicable, the competent authority:
  - (a) without undue delay and in any event within 24 hours of becoming aware of the significant incident, an early warning, which, where applicable, shall indicate whether the significant incident is suspected of being caused by unlawful or malicious acts or could have a cross-border impact;
  - (b) without undue delay and in any event within 72 hours of becoming aware of the significant incident, an incident notification, which, where applicable, shall update the information referred to in point (a) and indicate an initial assessment of the significant incident, including its severity and impact, as well as, where available, the indicators of compromise;
  - (c) upon the request of a CSIRT or, where applicable, the competent authority, an intermediate report on relevant status updates;
  - (d) a final report not later than one month after the submission of the incident notification under point (b), including the following:
    - (i) a detailed description of the incident, including its severity and impact;
    - (ii) the type of threat or root cause that is likely to have triggered the incident;
    - (iii) applied and ongoing mitigation measures;
    - (iv) where applicable, the cross-border impact of the incident;
  - (e) in the event of an ongoing incident at the time of the submission of the final report referred to in point (d), Member States shall ensure that entities concerned provide a progress report at that time and a final report within one month of their handling of the incident.

By way of derogation from the first subparagraph, point (b), a trust service provider shall, with regard to significant incidents that have an impact on the provision of its trust services, notify the CSIRT or, where applicable, the competent authority, without undue delay and in any event within 24 hours of becoming aware of the significant incident.

5. The CSIRT or the competent authority shall provide, without undue delay and where possible within 24 hours of receiving the early warning referred to in paragraph 4, point (a), a response to the notifying entity, including initial feedback on the significant incident and, upon request of the entity, guidance or operational advice on the implementation of possible mitigation measures. Where the CSIRT is not the initial recipient of the notification referred to in paragraph 1, the guidance shall be provided by the competent authority in cooperation with the CSIRT. The CSIRT shall provide additional technical support if the entity concerned so requests. Where the significant incident is suspected to be of criminal nature, the CSIRT or the competent authority shall also provide guidance on reporting the significant incident to law enforcement authorities.

6. Where appropriate, and in particular where the significant incident concerns two or more Member States, the CSIRT, the competent authority or the single point of contact shall inform, without undue delay, the other affected Member States and ENISA of the significant incident. Such information shall include the type of information received in accordance with paragraph 4. In so doing, the CSIRT, the competent authority or the single point of contact shall, in accordance with Union or national law, preserve the entity's security and commercial interests as well as the confidentiality of the information provided.

7. Where public awareness is necessary to prevent a significant incident or to deal with an ongoing significant incident, or where disclosure of the significant incident is otherwise in the public interest, a Member State's CSIRT or, where applicable, its competent authority, and, where appropriate, the CSIRTs or the competent authorities of other Member States concerned, may, after consulting the entity concerned, inform the public about the significant incident or require the entity to do so.

8. At the request of the CSIRT or the competent authority, the single point of contact shall forward notifications received pursuant to paragraph 1 to the single points of contact of other affected Member States.

9. The single point of contact shall submit to ENISA every three months a summary report, including anonymised and aggregated data on significant incidents, incidents, cyber threats and near misses notified in accordance with paragraph 1 of this Article and with Article 30. In order to contribute to the provision of comparable information, ENISA may adopt technical guidance on the parameters of the information to be included in the summary report. ENISA shall inform the Cooperation Group and the CSIRTs network about its findings on notifications received every six months.

10. The CSIRTs or, where applicable, the competent authorities shall provide to the competent authorities under Directive (EU) 2022/2557 information about significant incidents, incidents, cyber threats and near misses notified in accordance with paragraph 1 of this Article and with Article 30 by entities identified as critical entities under Directive (EU) 2022/2557.

11. The Commission may adopt implementing acts further specifying the type of information, the format and the procedure of a notification submitted pursuant to paragraph 1 of this Article and to Article 30 and of a communication submitted pursuant to paragraph 2 of this Article.

By 17 October 2024, the Commission shall, with regard to DNS service providers, TLD name registries, cloud computing service providers, data centre service providers, content delivery network providers, managed service providers, managed security service providers, as well as providers of online marketplaces, of online search engines and of social networking services platforms, adopt implementing acts further specifying the cases in which an incident shall be considered to be significant as referred to in paragraph 3. The Commission may adopt such implementing acts with regard to other essential and important entities.

The Commission shall exchange advice and cooperate with the Cooperation Group on the draft implementing acts referred to in the first and second subparagraphs of this paragraph in accordance with Article 14(4), point (e).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39(2).

#### *Article 24*

### **Use of European cybersecurity certification schemes**

1. In order to demonstrate compliance with particular requirements of Article 21, Member States may require essential and important entities to use particular ICT products, ICT services and ICT processes, developed by the essential or important entity or procured from third parties, that are certified under European cybersecurity certification schemes adopted pursuant to Article 49 of Regulation (EU) 2019/881. Furthermore, Member States shall encourage essential and important entities to use qualified trust services.

2. The Commission is empowered to adopt delegated acts, in accordance with Article 38, to supplement this Directive by specifying which categories of essential and important entities are to be required to use certain certified ICT products, ICT services and ICT processes or obtain a certificate under a European cybersecurity certification scheme adopted pursuant to Article 49 of Regulation (EU) 2019/881. Those delegated acts shall be adopted where insufficient levels of cybersecurity have been identified and shall include an implementation period.

Before adopting such delegated acts, the Commission shall carry out an impact assessment and shall carry out consultations in accordance with Article 56 of Regulation (EU) 2019/881.

3. Where no appropriate European cybersecurity certification scheme for the purposes of paragraph 2 of this Article is available, the Commission may, after consulting the Cooperation Group and the European Cybersecurity Certification Group, request ENISA to prepare a candidate scheme pursuant to Article 48(2) of Regulation (EU) 2019/881.

#### Article 25

##### **Standardisation**

1. In order to promote the convergent implementation of Article 21(1) and (2), Member States shall, without imposing or discriminating in favour of the use of a particular type of technology, encourage the use of European and international standards and technical specifications relevant to the security of network and information systems.

2. ENISA, in cooperation with Member States, and, where appropriate, after consulting relevant stakeholders, shall draw up advice and guidelines regarding the technical areas to be considered in relation to paragraph 1 as well as regarding already existing standards, including national standards, which would allow for those areas to be covered.

#### CHAPTER V

##### **JURISDICTION AND REGISTRATION**

#### Article 26

##### **Jurisdiction and territoriality**

1. Entities falling within the scope of this Directive shall be considered to fall under the jurisdiction of the Member State in which they are established, except in the case of:

- (a) providers of public electronic communications networks or providers of publicly available electronic communications services, which shall be considered to fall under the jurisdiction of the Member State in which they provide their services;
- (b) DNS service providers, TLD name registries, entities providing domain name registration services, cloud computing service providers, data centre service providers, content delivery network providers, managed service providers, managed security service providers, as well as providers of online marketplaces, of online search engines or of social networking services platforms, which shall be considered to fall under the jurisdiction of the Member State in which they have their main establishment in the Union under paragraph 2;
- (c) public administration entities, which shall be considered to fall under the jurisdiction of the Member State which established them.

2. For the purposes of this Directive, an entity as referred to in paragraph 1, point (b), shall be considered to have its main establishment in the Union in the Member State where the decisions related to the cybersecurity risk-management measures are predominantly taken. If such a Member State cannot be determined or if such decisions are not taken in the Union, the main establishment shall be considered to be in the Member State where cybersecurity operations are carried out. If such a Member State cannot be determined, the main establishment shall be considered to be in the Member State where the entity concerned has the establishment with the highest number of employees in the Union.

3. If an entity as referred to in paragraph 1, point (b), is not established in the Union, but offers services within the Union, it shall designate a representative in the Union. The representative shall be established in one of those Member States where the services are offered. Such an entity shall be considered to fall under the jurisdiction of the Member State where the representative is established. In the absence of a representative in the Union designated under this paragraph, any Member State in which the entity provides services may take legal actions against the entity for the infringement of this Directive.

4. The designation of a representative by an entity as referred to in paragraph 1, point (b), shall be without prejudice to legal actions, which could be initiated against the entity itself.

5. Member States that have received a request for mutual assistance in relation to an entity as referred to in paragraph 1, point (b), may, within the limits of that request, take appropriate supervisory and enforcement measures in relation to the entity concerned that provides services or which has a network and information system on their territory.

#### Article 27

##### **Registry of entities**

1. ENISA shall create and maintain a registry of DNS service providers, TLD name registries, entities providing domain name registration services, cloud computing service providers, data centre service providers, content delivery network providers, managed service providers, managed security service providers, as well as providers of online marketplaces, of online search engines and of social networking services platforms, on the basis of the information received from the single points of contact in accordance with paragraph 4. Upon request, ENISA shall allow the competent authorities access to that registry, while ensuring that the confidentiality of information is protected where applicable.

2. Member States shall require entities referred to in paragraph 1 to submit the following information to the competent authorities by 17 January 2025:

- (a) the name of the entity;
- (b) the relevant sector, subsector and type of entity referred to in Annex I or II, where applicable;
- (c) the address of the entity's main establishment and its other legal establishments in the Union or, if not established in the Union, of its representative designated pursuant to Article 26(3);
- (d) up-to-date contact details, including email addresses and telephone numbers of the entity and, where applicable, its representative designated pursuant to Article 26(3);
- (e) the Member States where the entity provides services; and
- (f) the entity's IP ranges.

3. Member States shall ensure that the entities referred to in paragraph 1 notify the competent authority about any changes to the information they submitted under paragraph 2 without delay and in any event within three months of the date of the change.

4. Upon receipt of the information referred to in paragraphs 2 and 3, except for that referred to in paragraph 2, point (f), the single point of contact of the Member State concerned shall, without undue delay, forward it to ENISA.

5. Where applicable, the information referred to in paragraphs 2 and 3 of this Article shall be submitted through the national mechanism referred to in Article 3(4), fourth subparagraph.

#### Article 28

##### **Database of domain name registration data**

1. For the purpose of contributing to the security, stability and resilience of the DNS, Member States shall require TLD name registries and entities providing domain name registration services to collect and maintain accurate and complete domain name registration data in a dedicated database with due diligence in accordance with Union data protection law as regards data which are personal data.

2. For the purposes of paragraph 1, Member States shall require the database of domain name registration data to contain the necessary information to identify and contact the holders of the domain names and the points of contact administering the domain names under the TLDs. Such information shall include:

- (a) the domain name;
- (b) the date of registration;

- (c) the registrant's name, contact email address and telephone number;
  - (d) the contact email address and telephone number of the point of contact administering the domain name in the event that they are different from those of the registrant.
3. Member States shall require the TLD name registries and the entities providing domain name registration services to have policies and procedures, including verification procedures, in place to ensure that the databases referred to in paragraph 1 include accurate and complete information. Member States shall require such policies and procedures to be made publicly available.
4. Member States shall require the TLD name registries and the entities providing domain name registration services to make publicly available, without undue delay after the registration of a domain name, the domain name registration data which are not personal data.
5. Member States shall require the TLD name registries and the entities providing domain name registration services to provide access to specific domain name registration data upon lawful and duly substantiated requests by legitimate access seekers, in accordance with Union data protection law. Member States shall require the TLD name registries and the entities providing domain name registration services to reply without undue delay and in any event within 72 hours of receipt of any requests for access. Member States shall require policies and procedures with regard to the disclosure of such data to be made publicly available.
6. Compliance with the obligations laid down in paragraphs 1 to 5 shall not result in a duplication of collecting domain name registration data. To that end, Member States shall require TLD name registries and entities providing domain name registration services to cooperate with each other.

## CHAPTER VI

### INFORMATION SHARING

#### *Article 29*

#### **Cybersecurity information-sharing arrangements**

1. Member States shall ensure that entities falling within the scope of this Directive and, where relevant, other entities not falling within the scope of this Directive are able to exchange on a voluntary basis relevant cybersecurity information among themselves, including information relating to cyber threats, near misses, vulnerabilities, techniques and procedures, indicators of compromise, adversarial tactics, threat-actor-specific information, cybersecurity alerts and recommendations regarding configuration of cybersecurity tools to detect cyberattacks, where such information sharing:
- (a) aims to prevent, detect, respond to or recover from incidents or to mitigate their impact;
  - (b) enhances the level of cybersecurity, in particular through raising awareness in relation to cyber threats, limiting or impeding the ability of such threats to spread, supporting a range of defensive capabilities, vulnerability remediation and disclosure, threat detection, containment and prevention techniques, mitigation strategies, or response and recovery stages or promoting collaborative cyber threat research between public and private entities.
2. Member States shall ensure that the exchange of information takes place within communities of essential and important entities, and where relevant, their suppliers or service providers. Such exchange shall be implemented through cybersecurity information-sharing arrangements in respect of the potentially sensitive nature of the information shared.

3. Member States shall facilitate the establishment of cybersecurity information-sharing arrangements referred to in paragraph 2 of this Article. Such arrangements may specify operational elements, including the use of dedicated ICT platforms and automation tools, content and conditions of the information-sharing arrangements. In laying down the details of the involvement of public authorities in such arrangements, Member States may impose conditions on the information made available by the competent authorities or the CSIRTs. Member States shall offer assistance for the application of such arrangements in accordance with their policies referred to in Article 7(2), point (h).

4. Member States shall ensure that essential and important entities notify the competent authorities of their participation in the cybersecurity information-sharing arrangements referred to in paragraph 2, upon entering into such arrangements, or, as applicable, of their withdrawal from such arrangements, once the withdrawal takes effect.

5. ENISA shall provide assistance for the establishment of cybersecurity information-sharing arrangements referred to in paragraph 2 by exchanging best practices and providing guidance.

#### *Article 30*

### **Voluntary notification of relevant information**

1. Member States shall ensure that, in addition to the notification obligation provided for in Article 23, notifications can be submitted to the CSIRTs or, where applicable, the competent authorities, on a voluntary basis, by:

- (a) essential and important entities with regard to incidents, cyber threats and near misses;
- (b) entities other than those referred to in point (a), regardless of whether they fall within the scope of this Directive, with regard to significant incidents, cyber threats and near misses.

2. Member States shall process the notifications referred to in paragraph 1 of this Article in accordance with the procedure laid down in Article 23. Member States may prioritise the processing of mandatory notifications over voluntary notifications.

Where necessary, the CSIRTs and, where applicable, the competent authorities shall provide the single points of contact with the information about notifications received pursuant to this Article, while ensuring the confidentiality and appropriate protection of the information provided by the notifying entity. Without prejudice to the prevention, investigation, detection and prosecution of criminal offences, voluntary reporting shall not result in the imposition of any additional obligations upon the notifying entity to which it would not have been subject had it not submitted the notification.

## CHAPTER VII

### **SUPERVISION AND ENFORCEMENT**

#### *Article 31*

### **General aspects concerning supervision and enforcement**

1. Member States shall ensure that their competent authorities effectively supervise and take the measures necessary to ensure compliance with this Directive.

2. Member States may allow their competent authorities to prioritise supervisory tasks. Such prioritisation shall be based on a risk-based approach. To that end, when exercising their supervisory tasks provided for in Articles 32 and 33, the competent authorities may establish supervisory methodologies allowing for a prioritisation of such tasks following a risk-based approach.

3. The competent authorities shall work in close cooperation with supervisory authorities under Regulation (EU) 2016/679 when addressing incidents resulting in personal data breaches, without prejudice to the competence and tasks of the supervisory authorities under that Regulation.

4. Without prejudice to national legislative and institutional frameworks, Member States shall ensure that, in the supervision of compliance of public administration entities with this Directive and the imposition of enforcement measures with regard to infringements of this Directive, the competent authorities have appropriate powers to carry out such tasks with operational independence vis-à-vis the public administration entities supervised. Member States may decide on the imposition of appropriate, proportionate and effective supervisory and enforcement measures in relation to those entities in accordance with the national legislative and institutional frameworks.

#### Article 32

##### **Supervisory and enforcement measures in relation to essential entities**

1. Member States shall ensure that the supervisory or enforcement measures imposed on essential entities in respect of the obligations laid down in this Directive are effective, proportionate and dissuasive, taking into account the circumstances of each individual case.

2. Member States shall ensure that the competent authorities, when exercising their supervisory tasks in relation to essential entities, have the power to subject those entities at least to:

- (a) on-site inspections and off-site supervision, including random checks conducted by trained professionals;
- (b) regular and targeted security audits carried out by an independent body or a competent authority;
- (c) ad hoc audits, including where justified on the ground of a significant incident or an infringement of this Directive by the essential entity;
- (d) security scans based on objective, non-discriminatory, fair and transparent risk assessment criteria, where necessary with the cooperation of the entity concerned;
- (e) requests for information necessary to assess the cybersecurity risk-management measures adopted by the entity concerned, including documented cybersecurity policies, as well as compliance with the obligation to submit information to the competent authorities pursuant to Article 27;
- (f) requests to access data, documents and information necessary to carry out their supervisory tasks;
- (g) requests for evidence of implementation of cybersecurity policies, such as the results of security audits carried out by a qualified auditor and the respective underlying evidence.

The targeted security audits referred to in the first subparagraph, point (b), shall be based on risk assessments conducted by the competent authority or the audited entity, or on other risk-related available information.

The results of any targeted security audit shall be made available to the competent authority. The costs of such targeted security audit carried out by an independent body shall be paid by the audited entity, except in duly substantiated cases when the competent authority decides otherwise.

3. When exercising their powers under paragraph 2, point (e), (f) or (g), the competent authorities shall state the purpose of the request and specify the information requested.

4. Member States shall ensure that their competent authorities, when exercising their enforcement powers in relation to essential entities, have the power at least to:

- (a) issue warnings about infringements of this Directive by the entities concerned;

- (b) adopt binding instructions, including with regard to measures necessary to prevent or remedy an incident, as well as time-limits for the implementation of such measures and for reporting on their implementation, or an order requiring the entities concerned to remedy the deficiencies identified or the infringements of this Directive;
- (c) order the entities concerned to cease conduct that infringes this Directive and desist from repeating that conduct;
- (d) order the entities concerned to ensure that their cybersecurity risk-management measures comply with Article 21 or to fulfil the reporting obligations laid down in Article 23, in a specified manner and within a specified period;
- (e) order the entities concerned to inform the natural or legal persons with regard to which they provide services or carry out activities which are potentially affected by a significant cyber threat of the nature of the threat, as well as of any possible protective or remedial measures which can be taken by those natural or legal persons in response to that threat;
- (f) order the entities concerned to implement the recommendations provided as a result of a security audit within a reasonable deadline;
- (g) designate a monitoring officer with well-defined tasks for a determined period of time to oversee the compliance of the entities concerned with Articles 21 and 23;
- (h) order the entities concerned to make public aspects of infringements of this Directive in a specified manner;
- (i) impose, or request the imposition by the relevant bodies, courts or tribunals, in accordance with national law, of an administrative fine pursuant to Article 34 in addition to any of the measures referred to in points (a) to (h) of this paragraph.

5. Where enforcement measures adopted pursuant to paragraph 4, points (a) to (d) and (f), are ineffective, Member States shall ensure that their competent authorities have the power to establish a deadline by which the essential entity is requested to take the necessary action to remedy the deficiencies or to comply with the requirements of those authorities. If the requested action is not taken within the deadline set, Member States shall ensure that their competent authorities have the power to:

- (a) suspend temporarily, or request a certification or authorisation body, or a court or tribunal, in accordance with national law, to suspend temporarily a certification or authorisation concerning part or all of the relevant services provided or activities carried out by the essential entity;
- (b) request that the relevant bodies, courts or tribunals, in accordance with national law, prohibit temporarily any natural person who is responsible for discharging managerial responsibilities at chief executive officer or legal representative level in the essential entity from exercising managerial functions in that entity.

Temporary suspensions or prohibitions imposed pursuant to this paragraph shall be applied only until the entity concerned takes the necessary action to remedy the deficiencies or comply with the requirements of the competent authority for which such enforcement measures were applied. The imposition of such temporary suspensions or prohibitions shall be subject to appropriate procedural safeguards in accordance with the general principles of Union law and the Charter, including the right to an effective remedy and to a fair trial, the presumption of innocence and the rights of the defence.

The enforcement measures provided for in this paragraph shall not be applicable to public administration entities that are subject to this Directive.

6. Member States shall ensure that any natural person responsible for or acting as a legal representative of an essential entity on the basis of the power to represent it, the authority to take decisions on its behalf or the authority to exercise control of it has the power to ensure its compliance with this Directive. Member States shall ensure that it is possible to hold such natural persons liable for breach of their duties to ensure compliance with this Directive.

As regards public administration entities, this paragraph shall be without prejudice to national law as regards the liability of public servants and elected or appointed officials.

7. When taking any of the enforcement measures referred to in paragraph 4 or 5, the competent authorities shall comply with the rights of the defence and take account of the circumstances of each individual case and, as a minimum, take due account of:

- (a) the seriousness of the infringement and the importance of the provisions breached, the following, *inter alia*, constituting serious infringement in any event:
  - (i) repeated violations;
  - (ii) a failure to notify or remedy significant incidents;
  - (iii) a failure to remedy deficiencies following binding instructions from competent authorities;
  - (iv) the obstruction of audits or monitoring activities ordered by the competent authority following the finding of an infringement;
  - (v) providing false or grossly inaccurate information in relation to cybersecurity risk-management measures or reporting obligations laid down in Articles 21 and 23;
- (b) the duration of the infringement;
- (c) any relevant previous infringements by the entity concerned;
- (d) any material or non-material damage caused, including any financial or economic loss, effects on other services and the number of users affected;
- (e) any intent or negligence on the part of the perpetrator of the infringement;
- (f) any measures taken by the entity to prevent or mitigate the material or non-material damage;
- (g) any adherence to approved codes of conduct or approved certification mechanisms;
- (h) the level of cooperation of the natural or legal persons held responsible with the competent authorities.

8. The competent authorities shall set out a detailed reasoning for their enforcement measures. Before adopting such measures, the competent authorities shall notify the entities concerned of their preliminary findings. They shall also allow a reasonable time for those entities to submit observations, except in duly substantiated cases where immediate action to prevent or respond to incidents would otherwise be impeded.

9. Member States shall ensure that their competent authorities under this Directive inform the relevant competent authorities within the same Member State under Directive (EU) 2022/2557 when exercising their supervisory and enforcement powers aiming to ensure compliance of an entity identified as a critical entity under Directive (EU) 2022/2557 with this Directive. Where appropriate, the competent authorities under Directive (EU) 2022/2557 may request the competent authorities under this Directive to exercise their supervisory and enforcement powers in relation to an entity that is identified as a critical entity under Directive (EU) 2022/2557.

10. Member States shall ensure that their competent authorities under this Directive cooperate with the relevant competent authorities of the Member State concerned under Regulation (EU) 2022/2554. In particular, Member States shall ensure that their competent authorities under this Directive inform the Oversight Forum established pursuant to Article 32(1) of Regulation (EU) 2022/2554 when exercising their supervisory and enforcement powers aimed at ensuring compliance of an essential entity that is designated as a critical ICT third-party service provider pursuant to Article 31 of Regulation (EU) 2022/2554. with this Directive.

### Article 33

#### **Supervisory and enforcement measures in relation to important entities**

1. When provided with evidence, indication or information that an important entity allegedly does not comply with this Directive, in particular Articles 21 and 23 thereof, Member States shall ensure that the competent authorities take action, where necessary, through *ex post* supervisory measures. Member States shall ensure that those measures are effective, proportionate and dissuasive, taking into account the circumstances of each individual case.

2. Member States shall ensure that the competent authorities, when exercising their supervisory tasks in relation to important entities, have the power to subject those entities at least to:

- (a) on-site inspections and off-site *ex post* supervision conducted by trained professionals;
- (b) targeted security audits carried out by an independent body or a competent authority;
- (c) security scans based on objective, non-discriminatory, fair and transparent risk assessment criteria, where necessary with the cooperation of the entity concerned;
- (d) requests for information necessary to assess, *ex post*, the cybersecurity risk-management measures adopted by the entity concerned, including documented cybersecurity policies, as well as compliance with the obligation to submit information to the competent authorities pursuant to Article 27;
- (e) requests to access data, documents and information necessary to carry out their supervisory tasks;
- (f) requests for evidence of implementation of cybersecurity policies, such as the results of security audits carried out by a qualified auditor and the respective underlying evidence.

The targeted security audits referred to in the first subparagraph, point (b), shall be based on risk assessments conducted by the competent authority or the audited entity, or on other risk-related available information.

The results of any targeted security audit shall be made available to the competent authority. The costs of such targeted security audit carried out by an independent body shall be paid by the audited entity, except in duly substantiated cases when the competent authority decides otherwise.

3. When exercising their powers under paragraph 2, point (d), (e) or (f), the competent authorities shall state the purpose of the request and specify the information requested.

4. Member States shall ensure that the competent authorities, when exercising their enforcement powers in relation to important entities, have the power at least to:

- (a) issue warnings about infringements of this Directive by the entities concerned;
- (b) adopt binding instructions or an order requiring the entities concerned to remedy the deficiencies identified or the infringement of this Directive;
- (c) order the entities concerned to cease conduct that infringes this Directive and desist from repeating that conduct;
- (d) order the entities concerned to ensure that their cybersecurity risk-management measures comply with Article 21 or to fulfil the reporting obligations laid down in Article 23, in a specified manner and within a specified period;
- (e) order the entities concerned to inform the natural or legal persons with regard to which they provide services or carry out activities which are potentially affected by a significant cyber threat of the nature of the threat, as well as of any possible protective or remedial measures which can be taken by those natural or legal persons in response to that threat;
- (f) order the entities concerned to implement the recommendations provided as a result of a security audit within a reasonable deadline;
- (g) order the entities concerned to make public aspects of infringements of this Directive in a specified manner;
- (h) impose, or request the imposition by the relevant bodies, courts or tribunals, in accordance with national law, of an administrative fine pursuant to Article 34 in addition to any of the measures referred to in points (a) to (g) of this paragraph.

5. Article 32(6), (7) and (8) shall apply *mutatis mutandis* to the supervisory and enforcement measures provided for in this Article for important entities.

6. Member States shall ensure that their competent authorities under this Directive cooperate with the relevant competent authorities of the Member State concerned under Regulation (EU) 2022/2554. In particular, Member States shall ensure that their competent authorities under this Directive inform the Oversight Forum established pursuant to Article 32(1) of Regulation (EU) 2022/2554 when exercising their supervisory and enforcement powers aimed at ensuring compliance of an important entity that is designated as a critical ICT third-party service provider pursuant to Article 31 of Regulation (EU) 2022/2554. with this Directive.

#### Article 34

##### **General conditions for imposing administrative fines on essential and important entities**

1. Member States shall ensure that the administrative fines imposed on essential and important entities pursuant to this Article in respect of infringements of this Directive are effective, proportionate and dissuasive, taking into account the circumstances of each individual case.
2. Administrative fines shall be imposed in addition to any of the measures referred to in Article 32(4), points (a) to (h), Article 32(5) and Article 33(4), points (a) to (g).
3. When deciding whether to impose an administrative fine and deciding on its amount in each individual case, due regard shall be given, as a minimum, to the elements provided for in Article 32(7).
4. Member States shall ensure that where they infringe Article 21 or 23, essential entities are subject, in accordance with paragraphs 2 and 3 of this Article, to administrative fines of a maximum of at least EUR 10 000 000 or of a maximum of at least 2 % of the total worldwide annual turnover in the preceding financial year of the undertaking to which the essential entity belongs, whichever is higher.
5. Member States shall ensure that where they infringe Article 21 or 23, important entities are subject, in accordance with paragraphs 2 and 3 of this Article, to administrative fines of a maximum of at least EUR 7 000 000 or of a maximum of at least 1,4 % of the total worldwide annual turnover in the preceding financial year of the undertaking to which the important entity belongs, whichever is higher.
6. Member States may provide for the power to impose periodic penalty payments in order to compel an essential or important entity to cease an infringement of this Directive in accordance with a prior decision of the competent authority.
7. Without prejudice to the powers of the competent authorities pursuant to Articles 32 and 33, each Member State may lay down the rules on whether and to what extent administrative fines may be imposed on public administration entities.
8. Where the legal system of a Member State does not provide for administrative fines, that Member State shall ensure that this Article is applied in such a manner that the fine is initiated by the competent authority and imposed by competent national courts or tribunals, while ensuring that those legal remedies are effective and have an equivalent effect to the administrative fines imposed by the competent authorities. In any event, the fines imposed shall be effective, proportionate and dissuasive. The Member State shall notify to the Commission the provisions of the laws which it adopts pursuant to this paragraph by 17 October 2024 and, without delay, any subsequent amendment law or amendment affecting them.

#### Article 35

##### **Infringements entailing a personal data breach**

1. Where the competent authorities become aware in the course of supervision or enforcement that the infringement by an essential or important entity of the obligations laid down in Articles 21 and 23 of this Directive can entail a personal data breach, as defined in Article 4, point (12), of Regulation (EU) 2016/679 which is to be notified pursuant to Article 33 of that Regulation, they shall, without undue delay, inform the supervisory authorities as referred to in Article 55 or 56 of that Regulation.

2. Where the supervisory authorities as referred to in Article 55 or 56 of Regulation (EU) 2016/679 impose an administrative fine pursuant to Article 58(2), point (i), of that Regulation, the competent authorities shall not impose an administrative fine pursuant to Article 34 of this Directive for an infringement referred to in paragraph 1 of this Article arising from the same conduct as that which was the subject of the administrative fine under Article 58(2), point (i), of Regulation (EU) 2016/679. The competent authorities may, however, impose the enforcement measures provided for in Article 32(4), points (a) to (h), Article 32(5) and Article 33(4), points (a) to (g), of this Directive.

3. Where the supervisory authority competent pursuant to Regulation (EU) 2016/679 is established in another Member State than the competent authority, the competent authority shall inform the supervisory authority established in its own Member State of the potential data breach referred to in paragraph 1.

#### *Article 36*

### **Penalties**

Member States shall lay down rules on penalties applicable to infringements of national measures adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, by 17 January 2025, notify the Commission of those rules and of those measures and shall notify it, without delay of any subsequent amendment affecting them.

#### *Article 37*

### **Mutual assistance**

1. Where an entity provides services in more than one Member State, or provides services in one or more Member States and its network and information systems are located in one or more other Member States, the competent authorities of the Member States concerned shall cooperate with and assist each other as necessary. That cooperation shall entail, at least, that:

- (a) the competent authorities applying supervisory or enforcement measures in a Member State shall, via the single point of contact, inform and consult the competent authorities in the other Member States concerned on the supervisory and enforcement measures taken;
- (b) a competent authority may request another competent authority to take supervisory or enforcement measures;
- (c) a competent authority shall, upon receipt of a substantiated request from another competent authority, provide the other competent authority with mutual assistance proportionate to its own resources so that the supervisory or enforcement measures can be implemented in an effective, efficient and consistent manner.

The mutual assistance referred to in the first subparagraph, point (c), may cover information requests and supervisory measures, including requests to carry out on-site inspections or off-site supervision or targeted security audits. A competent authority to which a request for assistance is addressed shall not refuse that request unless it is established that it does not have the competence to provide the requested assistance, the requested assistance is not proportionate to the supervisory tasks of the competent authority, or the request concerns information or entails activities which, if disclosed or carried out, would be contrary to the essential interests of the Member State's national security, public security or defence. Before refusing such a request, the competent authority shall consult the other competent authorities concerned as well as, upon the request of one of the Member States concerned, the Commission and ENISA.

2. Where appropriate and with common agreement, the competent authorities of various Member States may carry out joint supervisory actions.

## CHAPTER VIII

## DELEGATED AND IMPLEMENTING ACTS

## Article 38

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 24(2) shall be conferred on the Commission for a period of five years from 16 January 2023.
3. The delegation of power referred to in Article 24(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 24(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

## Article 39

**Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a committee member so requests.

## CHAPTER IX

## FINAL PROVISIONS

## Article 40

**Review**

By 17 October 2027 and every 36 months thereafter, the Commission shall review the functioning of this Directive, and report to the European Parliament and to the Council. The report shall in particular assess the relevance of the size of the entities concerned, and the sectors, subsectors and types of entity referred to in Annexes I and II for the functioning of the economy and society in relation to cybersecurity. To that end and with a view to further advancing the strategic and operational cooperation, the Commission shall take into account the reports of the Cooperation Group and the CSIRTs network on the experience gained at a strategic and operational level. The report shall be accompanied, where necessary, by a legislative proposal.

*Article 41***Transposition**

1. By 17 October 2024, Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from 18 October 2024.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 42***Amendment of Regulation (EU) No 910/2014**

In Regulation (EU) No 910/2014, Article 19 is deleted with effect from 18 October 2024.

*Article 43***Amendment of Directive (EU) 2018/1972**

In Directive (EU) 2018/1972, Articles 40 and 41 are deleted with effect from 18 October 2024.

*Article 44***Repeal**

Directive (EU) 2016/1148 is repealed with effect from 18 October 2024.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex III.

*Article 45***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 46***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 14 December 2022.

*For the European Parliament*  
*The President*  
R. METSOLA

*For the Council*  
*The President*  
M. BEK

## SECTORS OF HIGH CRITICALITY

Sector	Subsector	Type of entity
1. Energy	(a) Electricity	<ul style="list-style-type: none"> <li>— Electricity undertakings as defined in Article 2, point (57), of Directive (EU) 2019/944 of the European Parliament and of the Council <sup>(1)</sup>, which carry out the function of ‘supply’ as defined in Article 2, point (12), of that Directive</li> <li>— Distribution system operators as defined in Article 2, point (29), of Directive (EU) 2019/944</li> <li>— Transmission system operators as defined in Article 2, point (35), of Directive (EU) 2019/944</li> <li>— Producers as defined in Article 2, point (38), of Directive (EU) 2019/944</li> <li>— Nominated electricity market operators as defined in Article 2, point (8), of Regulation (EU) 2019/943 of the European Parliament and of the Council <sup>(2)</sup></li> <li>— Market participants as defined in Article 2, point (25), of Regulation (EU) 2019/943 providing aggregation, demand response or energy storage services as defined in Article 2, points (18), (20) and (59), of Directive (EU) 2019/944</li> <li>— Operators of a recharging point that are responsible for the management and operation of a recharging point, which provides a recharging service to end users, including in the name and on behalf of a mobility service provider</li> </ul>
	(b) District heating and cooling	<ul style="list-style-type: none"> <li>— Operators of district heating or district cooling as defined in Article 2, point (19), of Directive (EU) 2018/2001 of the European Parliament and of the Council <sup>(3)</sup></li> </ul>
	(c) Oil	<ul style="list-style-type: none"> <li>— Operators of oil transmission pipelines</li> <li>— Operators of oil production, refining and treatment facilities, storage and transmission</li> <li>— Central stockholding entities as defined in Article 2, point (f), of Council Directive 2009/119/EC <sup>(4)</sup></li> </ul>
	(d) Gas	<ul style="list-style-type: none"> <li>— Supply undertakings as defined in Article 2, point (8), of Directive 2009/73/EC of the European Parliament and of the Council <sup>(5)</sup></li> <li>— Distribution system operators as defined in Article 2, point (6), of Directive 2009/73/EC</li> <li>— Transmission system operators as defined in Article 2, point (4), of Directive 2009/73/EC</li> <li>— Storage system operators as defined in Article 2, point (10), of Directive 2009/73/EC</li> <li>— LNG system operators as defined in Article 2, point (12), of Directive 2009/73/EC</li> <li>— Natural gas undertakings as defined in Article 2, point (1), of Directive 2009/73/EC</li> <li>— Operators of natural gas refining and treatment facilities</li> </ul>
	(e) Hydrogen	<ul style="list-style-type: none"> <li>— Operators of hydrogen production, storage and transmission</li> </ul>

Sector	Subsector	Type of entity
2. Transport	(a) Air	— Air carriers as defined in Article 3, point (4), of Regulation (EC) No 300/2008 used for commercial purposes
		— Airport managing bodies as defined in Article 2, point (2), of Directive 2009/12/EC of the European Parliament and of the Council <sup>(6)</sup> , airports as defined in Article 2, point (1), of that Directive, including the core airports listed in Section 2 of Annex II to Regulation (EU) No 1315/2013 of the European Parliament and of the Council <sup>(7)</sup> , and entities operating ancillary installations contained within airports
		— Traffic management control operators providing air traffic control (ATC) services as defined in Article 2, point (1), of Regulation (EC) No 549/2004 of the European Parliament and of the Council <sup>(8)</sup>
	(b) Rail	— Infrastructure managers as defined in Article 3, point (2), of Directive 2012/34/EU of the European Parliament and of the Council <sup>(9)</sup>
		— Railway undertakings as defined in Article 3, point (1), of Directive 2012/34/EU, including operators of service facilities as defined in Article 3, point (12), of that Directive
	(c) Water	— Inland, sea and coastal passenger and freight water transport companies, as defined for maritime transport in Annex I to Regulation (EC) No 725/2004 of the European Parliament and of the Council <sup>(10)</sup> , not including the individual vessels operated by those companies
		— Managing bodies of ports as defined in Article 3, point (1), of Directive 2005/65/EC of the European Parliament and of the Council <sup>(11)</sup> , including their port facilities as defined in Article 2, point (11), of Regulation (EC) No 725/2004, and entities operating works and equipment contained within ports
		— Operators of vessel traffic services (VTS) as defined in Article 3, point (o), of Directive 2002/59/EC of the European Parliament and of the Council <sup>(12)</sup>
	(d) Road	— Road authorities as defined in Article 2, point (12), of Commission Delegated Regulation (EU) 2015/962 <sup>(13)</sup> responsible for traffic management control, excluding public entities for which traffic management or the operation of intelligent transport systems is a non-essential part of their general activity
		— Operators of Intelligent Transport Systems as defined in Article 4, point (1), of Directive 2010/40/EU of the European Parliament and of the Council <sup>(14)</sup>
3. Banking		Credit institutions as defined in Article 4, point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council <sup>(15)</sup>
4. Financial market infrastructures		— Operators of trading venues as defined in Article 4, point (24), of Directive 2014/65/EU of the European Parliament and of the Council <sup>(16)</sup>
		— Central counterparties (CCPs) as defined in Article 2, point (1), of Regulation (EU) No 648/2012 of the European Parliament and of the Council <sup>(17)</sup>

Sector	Subsector	Type of entity
5. Health		<ul style="list-style-type: none"> <li>— Healthcare providers as defined in Article 3, point (g), of Directive 2011/24/EU of the European Parliament and of the Council <sup>(18)</sup></li> <li>— EU reference laboratories referred to in Article 15 of Regulation (EU) 2022/2371 of the European Parliament and of the Council <sup>(19)</sup></li> <li>— Entities carrying out research and development activities of medicinal products as defined in Article 1, point (2), of Directive 2001/83/EC of the European Parliament and of the Council <sup>(20)</sup></li> <li>— Entities manufacturing basic pharmaceutical products and pharmaceutical preparations referred to in section C division 21 of NACE Rev. 2</li> <li>— Entities manufacturing medical devices considered to be critical during a public health emergency (public health emergency critical devices list) within the meaning of Article 22 of Regulation (EU) 2022/123 of the European Parliament and of the Council <sup>(21)</sup></li> </ul>
6. Drinking water		Suppliers and distributors of water intended for human consumption as defined in Article 2, point (1)(a), of Directive (EU) 2020/2184 of the European Parliament and of the Council <sup>(22)</sup> , excluding distributors for which distribution of water for human consumption is a non-essential part of their general activity of distributing other commodities and goods
7. Waste water		Undertakings collecting, disposing of or treating urban waste water, domestic waste water or industrial waste water as defined in Article 2, points (1), (2) and (3), of Council Directive 91/271/EEC <sup>(23)</sup> , excluding undertakings for which collecting, disposing of or treating urban waste water, domestic waste water or industrial waste water is a non-essential part of their general activity
8. Digital infrastructure		<ul style="list-style-type: none"> <li>— Internet Exchange Point providers</li> <li>— DNS service providers, excluding operators of root name servers</li> <li>— TLD name registries</li> <li>— Cloud computing service providers</li> <li>— Data centre service providers</li> <li>— Content delivery network providers</li> <li>— Trust service providers</li> <li>— Providers of public electronic communications networks</li> <li>— Providers of publicly available electronic communications services</li> </ul>
9. ICT service management (business-to-business)		<ul style="list-style-type: none"> <li>— Managed service providers</li> <li>— Managed security service providers</li> </ul>

Sector	Subsector	Type of entity
10. Public administration		— Public administration entities of central governments as defined by a Member State in accordance with national law
		— Public administration entities at regional level as defined by a Member State in accordance with national law
11. Space		Operators of ground-based infrastructure, owned, managed and operated by Member States or by private parties, that support the provision of space-based services, excluding providers of public electronic communications networks

<sup>(1)</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

<sup>(2)</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).

<sup>(3)</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

<sup>(4)</sup> Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (OJ L 265, 9.10.2009, p. 9).

<sup>(5)</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

<sup>(6)</sup> Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009, p. 11).

<sup>(7)</sup> Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

<sup>(8)</sup> Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) (OJ L 96, 31.3.2004, p. 1).

<sup>(9)</sup> Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (OJ L 343, 14.12.2012, p. 32).

<sup>(10)</sup> Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (OJ L 129, 29.4.2004, p. 6).

<sup>(11)</sup> Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security (OJ L 310, 25.11.2005, p. 28).

<sup>(12)</sup> Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (OJ L 208, 5.8.2002, p. 10).

<sup>(13)</sup> Commission Delegated Regulation (EU) 2015/962 of 18 December 2014 supplementing Directive 2010/40/EU of the European Parliament and of the Council with regard to the provision of EU-wide real-time traffic information services (OJ L 157, 23.6.2015, p. 21).

<sup>(14)</sup> Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (OJ L 207, 6.8.2010, p. 1).

<sup>(15)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>(16)</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

<sup>(17)</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

<sup>(18)</sup> Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011, p. 45).

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- <sup>(19)</sup> Regulation (EU) 2022/2371 of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health and repealing Decision No 1082/2013/EU (OJ L 314, 6.12.2022, p. 26).
- <sup>(20)</sup> Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).
- <sup>(21)</sup> Regulation (EU) 2022/123 of the European Parliament and of the Council of 25 January 2022 on a reinforced role for the European Medicines Agency in crisis preparedness and management for medicinal products and medical devices (OJ L 20, 31.1.2022, p. 1).
- <sup>(22)</sup> Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (OJ L 435, 23.12.2020, p. 1).
- <sup>(23)</sup> Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ L 135, 30.5.1991, p. 40).
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## OTHER CRITICAL SECTORS

Sector	Subsector	Type of entity
1. Postal and courier services		Postal service providers as defined in Article 2, point (1a), of Directive 97/67/EC, including providers of courier services
2. Waste management		Undertakings carrying out waste management as defined in Article 3, point (9), of Directive 2008/98/EC of the European Parliament and of the Council <sup>(1)</sup> , excluding undertakings for whom waste management is not their principal economic activity
3. Manufacture, production and distribution of chemicals		Undertakings carrying out the manufacture of substances and the distribution of substances or mixtures, as referred to in Article 3, points (9) and (14), of Regulation (EC) No 1907/2006 of the European Parliament and of the Council <sup>(2)</sup> and undertakings carrying out the production of articles, as defined in Article 3, point (3), of that Regulation, from substances or mixtures
4. Production, processing and distribution of food		Food businesses as defined in Article 3, point (2), of Regulation (EC) No 178/2002 of the European Parliament and of the Council <sup>(3)</sup> which are engaged in wholesale distribution and industrial production and processing
5. Manufacturing	(a) Manufacture of medical devices and <i>in vitro</i> diagnostic medical devices	Entities manufacturing medical devices as defined in Article 2, point (1), of Regulation (EU) 2017/745 of the European Parliament and of the Council <sup>(4)</sup> , and entities manufacturing <i>in vitro</i> diagnostic medical devices as defined in Article 2, point (2), of Regulation (EU) 2017/746 of the European Parliament and of the Council <sup>(5)</sup> with the exception of entities manufacturing medical devices referred to in Annex I, point 5, fifth indent, of this Directive
	(b) Manufacture of computer, electronic and optical products	Undertakings carrying out any of the economic activities referred to in section C division 26 of NACE Rev. 2
	(c) Manufacture of electrical equipment	Undertakings carrying out any of the economic activities referred to in section C division 27 of NACE Rev. 2
	(d) Manufacture of machinery and equipment n.e.c.	Undertakings carrying out any of the economic activities referred to in section C division 28 of NACE Rev. 2
	(e) Manufacture of motor vehicles, trailers and semi-trailers	Undertakings carrying out any of the economic activities referred to in section C division 29 of NACE Rev. 2
	(f) Manufacture of other transport equipment	Undertakings carrying out any of the economic activities referred to in section C division 30 of NACE Rev. 2

Sector	Subsector	Type of entity
6. Digital providers		— Providers of online marketplaces
		— Providers of online search engines
		— Providers of social networking services platforms
7. Research		Research organisations

<sup>(1)</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

<sup>(2)</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

<sup>(3)</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

<sup>(4)</sup> Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117, 5.5.2017, p. 1).

<sup>(5)</sup> Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on *in vitro* diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ L 117, 5.5.2017, p. 176).

## ANNEX III

## CORRELATION TABLE

Directive (EU) 2016/1148	This Directive
Article 1(1)	Article 1(1)
Article 1(2)	Article 1(2)
Article 1(3)	-
Article 1(4)	Article 2(12)
Article 1(5)	Article 2(13)
Article 1(6)	Article 2(6) and (11)
Article 1(7)	Article 4
Article 2	Article 2(14)
Article 3	Article 5
Article 4	Article 6
Article 5	-
Article 6	-
Article 7(1)	Article 7(1) and (2)
Article 7(2)	Article 7(4)
Article 7(3)	Article 7(3)
Article 8(1) to (5)	Article 8(1) to (5)
Article 8(6)	Article 13(4)
Article 8(7)	Article 8(6)
Article 9(1), (2) and (3)	Article 10(1), (2) and (3)
Article 9(4)	Article 10(9)
Article 9(5)	Article 10(10)
Article 10(1), (2) and (3), first subparagraph	Article 13(1), (2) and (3)
Article 10(3), second subparagraph	Article 23(9)
Article 11(1)	Article 14(1) and (2)
Article 11(2)	Article 14(3)
Article 11(3)	Article 14(4), first subparagraph, points (a) to (q) and (s), and paragraph (7)
Article 11(4)	Article 14(4), first subparagraph, point (r), and second subparagraph
Article 11(5)	Article 14(8)
Article 12(1) to (5)	Article 15(1) to (5)
Article 13	Article 17
Article 14(1) and (2)	Article 21(1) to (4)
Article 14(3)	Article 23(1)
Article 14(4)	Article 23(3)
Article 14(5)	Article 23(5), (6) and (8)

Directive (EU) 2016/1148	This Directive
Article 14(6)	Article 23(7)
Article 14(7)	Article 23(11)
Article 15(1)	Article 31(1)
Article 15(2), first subparagraph, point (a)	Article 32(2), point (e)
Article 15(2), first subparagraph, point (b)	Article 32(2), point (g)
Article 15(2), second subparagraph	Article 32(3)
Article 15(3)	Article 32(4), point (b)
Article 15(4)	Article 31(3)
Article 16(1) and (2)	Article 21(1) to (4)
Article 16(3)	Article 23(1)
Article 16(4)	Article 23(3)
Article 16(5)	–
Article 16(6)	Article 23(6)
Article 16(7)	Article 23(7)
Article 16(8) and (9)	Article 21(5) and Article 23(11)
Article 16(10)	–
Article 16(11)	Article 2(1), (2) and (3)
Article 17(1)	Article 33(1)
Article 17(2), point (a)	Article 32(2), point (e)
Article 17(2), point (b)	Article 32(4), point (b)
Article 17(3)	Article 37(1), points (a) and (b)
Article 18(1)	Article 26(1), point (b), and paragraph (2)
Article 18(2)	Article 26(3)
Article 18(3)	Article 26(4)
Article 19	Article 25
Article 20	Article 30
Article 21	Article 36
Article 22	Article 39
Article 23	Article 40
Article 24	–
Article 25	Article 41
Article 26	Article 45
Article 27	Article 46
Annex I, point (1)	Article 11(1)
Annex I, points (2)(a)(i) to (iv)	Article 11(2), points (a) to (d)

Directive (EU) 2016/1148	This Directive
Annex I, point (2)(a)(v)	Article 11(2), point (f)
Annex I, point (2)(b)	Article 11(4)
Annex I, points (2)(c)(i) and (ii)	Article 11(5), point (a)
Annex II	Annex I
Annex III, points (1) and (2)	Annex II, point (6)
Annex III, point (3)	Annex I, point (8)

**EXHIBIT JJN-6**

# The NIS2 Directive

## A high common level of cybersecurity in the EU

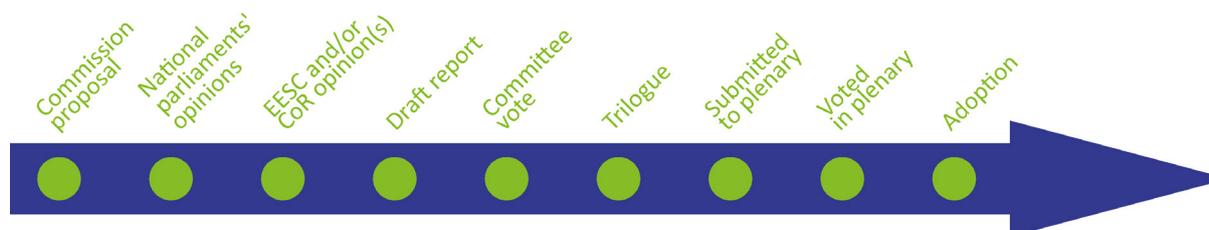
### OVERVIEW

The Network and Information Security (NIS) Directive is the first piece of EU-wide legislation on cybersecurity, and its specific aim was to achieve a high common level of cybersecurity across the Member States. While it increased the Member States' cybersecurity capabilities, its implementation proved difficult, resulting in fragmentation at different levels across the internal market.

To respond to the growing threats posed with digitalisation and the surge in cyber-attacks, the Commission has submitted a proposal to replace the NIS Directive and thereby strengthen the security requirements, address the security of supply chains, streamline reporting obligations, and introduce more stringent supervisory measures and stricter enforcement requirements, including harmonised sanctions across the EU. The proposed expansion of the scope covered by NIS2, by effectively obliging more entities and sectors to take measures, would assist in increasing the level of cybersecurity in Europe in the longer term.

Within the European Parliament, the file was assigned to the Committee on Industry, Research and Energy. The committee adopted its report on 28 October 2021, while the Council agreed its position on 3 December 2021. The co-legislators reached a provisional agreement on the text on 13 May 2022. The political agreement was formally adopted by the Parliament and then the Council in November 2022. It entered into force on 16 January 2023, and Member States now have 21 months, until 17 October 2024, to transpose its measures into national law.

<b>Proposal for a directive on measures for a high common level of cybersecurity across the Union</b>		
<i>Committee responsible:</i>	Industry, Research and Energy (ITRE)	COM(2020) 823
<i>Rapporteur:</i>	Bart Groothuis (Renew, the Netherlands)	16.12.2021
<i>Shadow rapporteurs:</i>	Eva Maydell (EPP, Bulgaria) Eva Kaili (S&D, Greece) Rasmus Andresen (Greens/EFA, Germany) Thierry Mariani (ID, France) Evžen Tošenovský (ECR, Czechia) Marisa Matias (The Left, Portugal)	2020/0359(COD)  Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Procedure completed.</i>	Directive (EU) 2022/2555 <a href="#">OJ L 333, 27.12.2022, pp 80-152.</a>	



## Introduction

Cyber-attacks, besides being among the fastest-growing form of crime worldwide, are also growing in scale, cost and sophistication. In 2017, [Cybersecurity Ventures](#) forecast that global ransomware damage costs would reach US\$20 billion by 2021, 57 times more than the amount in 2015. It also predicted that companies would be suffering a ransomware attack every 11 seconds by 2021, up from every 40 seconds in 2016. As a result, businesses have to invest more money to make cyberspace safer for themselves and their customers. Not only companies but also citizens and entire countries have been affected; the first known cyber-attack on a country was mounted on Estonia in April 2007, affecting the online services of banks, media outlets and government bodies for weeks. Since then, many other countries have suffered cyber-attacks, including on critical infrastructure, such as on [electric power systems](#), [hospitals](#) or [water plants](#). According to a [Eurobarometer survey](#), about three quarters (76 %) of respondents believe that they are facing an increasing risk of falling victim to cybercrime. In 2019, [about 64 %](#) of the US population experienced a data breach and [88 % of organisations worldwide](#) experienced 'spear-phishing' attempts.

Given the growing number and cost of cyber-attacks, spending on information security is also increasing worldwide. The global security market is currently worth around US\$150 billion, a figure that [many predict](#) will rise to US\$208 billion in 2023 and US\$400 billion in 2026.

Critical sectors, such as transport, energy, health and finance, have become increasingly dependent on digital technologies to run their core business. While growing digital connectivity brings enormous opportunities, it also exposes economies and societies to cyber-threats. The number, complexity and scale of cybersecurity incidents are growing, as is their economic and social impact.

The coronavirus pandemic has triggered an unforeseen acceleration in the [digital transformation](#) of societies around the world. Yet, it has also exacerbated existing problems, such as the digital divide, and contributed to a global rise in cybersecurity incidents. During this unprecedented situation, there has been an increase in malicious cyber-activity across Member States, as revealed by a recent Europol [report](#). Cybersecurity issues are becoming a day-to-day struggle for the EU.

According to monitoring reports from the EU Agency for Network Information Security (ENISA), cybercrime is becoming increasingly monetised, particularly in the case of major cyber-attacks that use ransomware. Likewise, increased [e-commerce and cashless payments](#) bring heightened risks of cybercrime attacks and cybersecurity breaches. With payments becoming increasingly cashless, online theft – of money and also of personal data – has been on the rise. An ENISA Threat Landscape 2021 report demonstrates that cyber-attacks are becoming more sophisticated, targeted, widespread and undetected, and concludes that societies face a long road ahead before they can ensure a more secure digital environment. According to [Verizon](#), 86 % of breaches committed in 2019 were financially motivated and 10 % by espionage. About 45 % of breaches featured hacking, 17 % involved malware and 22 % involved phishing. This trend is expected to increase further, in parallel with technological developments such as the proliferation of devices linked to the Internet of Things (IoT). In an increasingly connected world, where 22.3 billion IoT devices are expected to be in use by 2024, the growing challenges in the cybersecurity landscape have led the EU to reflect on how to enhance the protection of its citizens and companies against cyber-threats and attacks.

## Existing situation

The first step towards the creation and development of an EU cybersecurity ecosystem was the adoption of a cybersecurity strategy in 2013. The [strategy](#) identified the achievement of cyber-resilience and the development of industrial and technological resources for cybersecurity as its key objectives. The [Directive on Security of Network and Information Systems across the EU](#) (the NIS Directive), which had to be transposed by Member States by 9 May 2018, represents the first piece of EU-wide legislation on cybersecurity. It provided for legal measures to boost the overall level of cybersecurity in the EU, with a focus on protecting critical infrastructure. Among other things, it

established the NIS Cooperation Group, and the network of Computer Security Incident Response Teams (CSIRTs), to ensure both the exchange of information on cybersecurity and cooperation on specific cybersecurity incidents.

In view of the impending deadlines for its transposition into national legislation (by 9 May 2018) and the identification of operators of essential services (by 9 November 2018), the Commission adopted on 13 September 2017 a [communication](#) aimed at supporting Member States in their efforts to implement the directive swiftly and coherently across the EU. It introduced an NIS toolkit providing information to Member States on the best practices related to implementing the directive as well as clarifications on some of its provisions.

By 2020, all Member States had [communicated](#) to the Commission that they had fully transposed the directive into their national legislation.

Other legislative initiatives linked to cybersecurity date back to 2017, when the Commission submitted a [package of cybersecurity measures](#) to further improve the resilience and incident-response capacities of public and private entities, competent authorities and the EU as a whole in the field of cybersecurity and critical infrastructure protection. It also asked for a permanent and enhanced role for the EU cybersecurity agency and the creation of the first EU cybersecurity certification framework, which resulted in the [Cybersecurity Act](#).

Since then, a new EU [cybersecurity strategy](#) for 2020-2025 has been adopted, proposing among many things the review of the NIS Directive, the adoption of a new critical entities resilience (CER) directive, a network of security operations centres (SOCs) and new measures to strengthen the EU cyber-diplomacy toolbox. It is in line with the Commission's priorities to make [Europe fit for the digital age](#) and to build a future-ready economy that works for the people.

The threat landscape has changed considerably since the NIS Directive was adopted in 2016, and the scope of the directive needs updating and expanding to meet current risks and future challenges, one such challenge being to ensure that 5G technology is secure. In addition, its transposition and implementation has brought to light inherent flaws in certain provisions or approaches, such as the unclear delimitation of the scope of the directive. Furthermore, since the onset of the coronavirus crisis, the EU economy has grown more dependent on network and information systems than ever before, and sectors and services are increasingly interconnected.

The pandemic has more than confirmed the importance of preparing the EU for the digital decade as well as the need to continually improve cyber-resilience, particularly for those who operate essential services such as healthcare and energy.

Funding for EU cybersecurity initiatives has increased in the 2021-2027 programming period through a mix of instruments such as the [Digital Europe Programme](#), [Horizon Europe](#), the [European Defence Fund](#), and the [EU Recovery and Resilience Facility](#). The EU objective is to reach up to [€4.5 billion](#) of combined investment. Notably to go to SMEs under the recently established [Cybersecurity Competence Centre and Network of Coordination Centres](#).

In terms of existing case law, the Court of Justice of the EU in its judgment in [Case C-58/08 Vodafone and others](#) has shown the need for establishing clear common rules on the scope of application of the NIS Directive and on harmonising the rules on cybersecurity risk management and incident reporting. Current disparities in this area at the legislative, supervisory, national and EU level are obstacles to the internal market, because entities that engage in cross-border activities face different, and possibly overlapping, regulatory requirements and/or their application, to the detriment of the exercise of their freedoms of establishment and of provision of services.

## Parliament's starting position

In a [resolution](#) of 12 March 2019, the European Parliament called '... on the Commission to assess the need to further enlarge the scope of the NIS Directive to other critical sectors and services that are not covered by sector-specific legislation'.

In a [resolution](#) of 3 October 2017 on the fight against cybercrime, in the light of the increasing number of connected appliances, Parliament called for attention to be drawn to the safety of all devices and for action to promote the security-by-design approach. It urged Member States to speed up the setting-up of computer emergency response teams to which businesses and consumers can report malicious emails and websites, as envisaged by the NIS Directive.

In its [resolution](#) of 16 January 2016, Towards a Digital Single Market Act, Parliament called for the Commission to put in place a strong cybersecurity agency. More specifically, it called for efforts to be made to improve resilience against cyber-attacks, with an increased role for ENISA.

## Council and European Council starting position

In its [conclusions](#) of 2 December 2020 on the security of connected devices, the Council encouraged the Commission to assess the complementary sector-specific regulations that should define what level of cybersecurity should be met by the connected device to ensure that specific security and privacy requirements are put in place for devices with higher security risks.

In its [conclusions](#) of 2 October 2020, the Council called for accelerating the deployment of very high capacity and secure network infrastructures (including fibre and 5G) all over the EU, and for enhancing the EU's ability to protect itself. It furthermore called on the EU and the Member States to make full use of the 5G cybersecurity toolbox adopted on 29 January 2020.

In its [conclusions](#) of 9 June 2020, the Council welcomed '...the Commission's plans to ensure consistent rules for market operators and facilitate secure, robust and appropriate information-sharing on threats as well as incidents, including through a review of the Directive on security of network and information systems (NIS Directive), to pursue options for improved cyber-resilience and more effective responses to cyber-attacks, particularly on essential economic and societal activities, whilst respecting Member States' competences, including the responsibility for their national security'.

## Preparation of the proposal

To underpin the proposal and collect evidence, the Commission [ran](#) an open public consultation (OPC), launched stakeholder interviews, country visits, workshops and surveys, carried out a study on NIS investment and an impact assessment, and drew up a roadmap.

The main results of some of the finalised input activities are briefly described below.

### Open public consultation

The [OPC](#) contributed to the evaluation and impact assessment of the NIS Directive. It included questions targeting citizens, stakeholders and cybersecurity experts. The OPC was carried out over a 12-week period, starting on 7 July 2020 and closing on 2 October 2020. A total of 206 replies were collected online, 182 of which were from respondents located in the EU-27. The hottest topic was the lack of a harmonised approach, resulting in significant inconsistencies in the way Member States draw up lists of operators of essential services (OESs) and digital service providers (DSPs). Consequently, companies of the same type might face different requirements depending on the Member State in which they operate. Likewise, a company might be identified as an OES in one Member State and a DSP in another Member State,<sup>1</sup> or as a service provider, thus being excluded from the scope of the NIS Directive in yet another Member State. The responses relating to the identification of OESs suggest that Member States' approaches are often highly heterogeneous. To that end, it was suggested to establish a common set of criteria to ensure a harmonised process of OES identification.

The OPC concluded that some identification practices used by Member States can have a negative impact on the level playing field in the internal market, and potentially render entities more vulnerable to cross-border cyber-threats.

An overwhelming majority of the OPC respondents agreed that common EU rules are needed to address cyber-threats, given that cyber-risks can propagate across borders at high speed.

The overall results revealed that OPC respondents on average show significantly more support for the inclusion of public administrations and data centres within the scope of the NIS Directive.

Figure 1: The number of OESs identified differs significantly across the EU

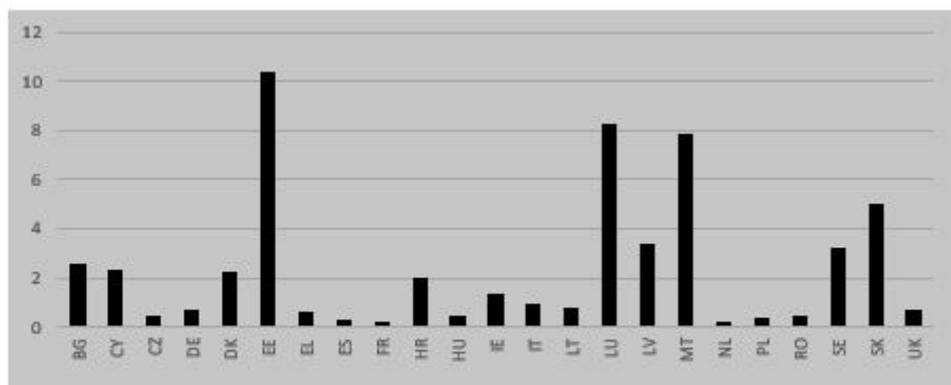


Figure 1: Operators of essential services identified by Member States across all sectors per 100 000 inhabitants<sup>1</sup>

Source: European Commission, 2020.

## ENISA study on investments

A December 2020 ENISA [NIS investments report](#) presents the findings of a survey of 251 organisations of OESs and DSPs from France, Germany, Italy, Spain and Poland, examining their approaches to cybersecurity spending. The survey showed that 82 % of OESs and DSPs find that the NIS Directive has had a positive effect. However, gaps in investment still exist. When comparing organisations from the EU to their US counterparts, data shows that EU organisations allocate on average 41 % less to cybersecurity than their US counterparts.

## Impact assessment

The Commission conducted an [impact assessment \(IA\)](#) for the current proposal, comprising three different documents. The IA explored four different policy options for the NIS review, including the baseline option: 0) maintaining the status quo; 1) non-legislative measures to align the transposition; 2) limited changes to the NIS Directive for further harmonisation; and 3) systemic and structural changes to the NIS Directive. Option 1 was discarded at an early stage, as it does not depart considerably from the status quo. The analysis led to the conclusion that option 3 – systemic and structural changes to the NIS framework – is the preferred one. Option 3 would envisage a more fundamental shift of approach towards covering a wider segment of the economies across the EU, yet with a more focused supervision targeting proportionally big and key companies, while clearly determining the scope of application. It would also streamline and further harmonise companies' security-related obligations, create a more effective setting for operational aspects, establish a clear basis for shared responsibilities and accountability of the entities concerned, and incentivise information sharing.

The IA was submitted to the Regulatory Scrutiny Board (RSB) on 23 October 2020 and received its feedback in the form of a positive opinion with [comments](#) on 20 November 2020. The RSB insisted that the IA should clearly distinguish between 'essential' and 'important' sectors, clarify the criteria for establishing these categories, and consider whether alternative approaches are possible. It asked the Commission to expand on whether the definition of sectoral coverage risks shifting the danger of exposure to other sectors and to analyse how the choice of sectors could be made future proof.

The RSB also observed that the IA should reinforce the problem analysis to better focus on the problems the directive aims to solve. Furthermore, the IA should include a more complete set of options on reporting, supervision and crisis response. It should include ways to interact with the linked European Critical Infrastructure Directive, which is also under revision. Finally, the IA should strengthen the analysis of compliance costs, especially for medium-sized enterprises.

The [initial appraisal drawn up by EPRS provides a detailed analysis of the IA](#). According to it, the NIS2 proposal appears to follow the general considerations of the IA. The preferred option identified in the IA is at the core of the proposal. The monitoring provisions however do not appear to have been laid out in the proposal with the same level of detail as in the IA.

## NIS evaluation

Article 23 of the NIS Directive requires the Commission to review the functioning of the NIS Directive periodically. As part of its key policy objective to make 'Europe fit for the digital age' as well as in line with the objectives of the security union, the Commission announced in its [work programme 2020](#) that it would conduct the review by the end of 2020.

On 25 June 2020, the Commission published a [combined evaluation roadmap/inception impact assessment](#) on the revision of the NIS Directive, according to which it planned to 'evaluate the functioning of the NIS Directive based on the level of security of network and information systems in the Member States'. The Commission underlined that in addition to the requirement under Article 23 of the NIS Directive, the revision was 'further justified by the sudden increase in the dependence on information technology during the Covid-19 crisis'. The Commission stated that 'depending on the results from the evaluation of the functioning of the NIS Directive, an open public consultation and an impact assessment, the Commission might propose measures aimed at enhancing the level of cybersecurity within the Union'.

The Commission evaluation analysed the NIS directive for its relevance, EU added value, coherence, effectiveness and efficiency. Its main findings were that the scope of the NIS Directive is too limited in terms of the sectors covered, mainly due to: i) increased digitalisation in recent years and a higher degree of interconnectedness; and ii) the scope of the NIS Directive no longer reflecting all digitalised sectors providing key services to the economy and society as a whole.

Furthermore, the evaluation concluded that the NIS Directive does not provide sufficient clarity as regards the scope criteria for OESs or the national competence over digital service providers. This has led to a situation in which certain types of entities have not been identified in some Member States and are therefore not required to put in place security measures and report incidents. For example, certain major hospitals in a Member State do not fall within the scope of the NIS Directive and hence are not required to implement the resulting security measures, while in another Member State almost every single healthcare provider is covered by the NIS security requirements.

The NIS Directive afforded Member States broad discretion when laying down security and incident reporting requirements for OESs. The evaluation shows that in some instances Member States have implemented these requirements in significantly different ways, creating an additional burden for companies operating in more than one Member State.

The supervision and enforcement regime of the NIS Directive is ineffective. The financial and human resources set aside by Member States for fulfilling their tasks (such as OES identification or supervision), and consequently the different levels of proficiency in dealing with cybersecurity risks, vary greatly. This further exacerbates the differences in cyber-resilience among Member States.

Member States do not share information systematically with one another, with negative consequences in particular for the effectiveness of the cybersecurity measures and the level of joint situational awareness at EU level. This is also the case for information-sharing among private entities and for the engagement between the EU level cooperation structures and private entities.

## The changes the proposal would bring

The Commission [presented](#) on 16 December 2020 a proposal for a directive on measures for a high common level of cybersecurity across the Union (NIS 2), which would repeal and replace the existing NIS Directive (NIS1). The proposed directive aims to tackle the limitations of the current NIS1 regime. The legal basis for both NIS1 and the proposed NIS2 is Article 114 of the Treaty on the Functioning of the European Union, whose objective is the establishment and functioning of the internal market by enhancing measures for the approximation of national rules.

The proposed expansion of the scope covered by NIS2, which would effectively oblige [more entities and sectors](#) to take measures, would assist in increasing the level of cybersecurity in Europe in the longer term.

Overall, the NIS2 proposal sets itself three general objectives:

- Increase the level of cyber-resilience of a comprehensive set of businesses operating in the European Union across all relevant sectors, by putting in place rules that ensure that all public and private entities across the internal market, which fulfil important functions for the economy and society as a whole, are required to take adequate cybersecurity measures.<sup>2</sup> For instance, the proposal extends significantly the scope of the current directive by adding new sectors such as telecoms, social media platforms and the public administration (see this [factsheet](#)). It establishes that all medium-sized and large entities active in the sectors covered by the NIS2 framework would hence have to comply with the security rules put forward in the proposal, and removes the possibility for Member States to tailor the requirements in certain cases<sup>3</sup> (which had led to much fragmentation with NIS1 implementation, see impact assessment). It removes the distinction made between OESs and digital DSPs, which currently fall into three categories: online marketplaces, search engines and cloud service providers. Finally, it addresses, for the first time, cybersecurity of the ICT supply chain (of special importance in the case of the IoT).
- Reduce inconsistencies in resilience across the internal market in the sectors already covered by the directive, by further aligning i) the de facto scope; ii) the security and incident reporting requirements; iii) the provisions governing national supervision and enforcement; and iv) the capabilities of the Member States' relevant competent authorities. The proposal includes a list of seven key elements that all companies must address or implement as part of the measures they take, including incident response, supply chain security, encryption and vulnerability disclosure. In addition, the proposal envisages a two-stage approach to incident reporting. Affected companies have 24 hours from when they first become aware of an incident to submit an initial report, followed by a final report no later than one month later. Regarding enforcement, it establishes a minimum list of administrative sanctions whenever entities breach the rules regarding cybersecurity risk management or their reporting obligations laid down in the NIS Directive. These sanctions include binding instructions, an order to implement the recommendations of a security audit, an order to bring security measures into line with NIS requirements, and administrative fines (up to €10 million or 2 % of the entities' total turnover worldwide, whichever is higher).
- Improve the level of joint situational awareness and the collective capability to prepare and respond, by i) taking measures to increase the level of trust between competent authorities; ii) by sharing more information; and iii) setting rules and procedures in the event of a large-scale incident or crisis. The proposed new rules improve the way the EU prevents, handles and responds to large-scale cybersecurity incidents and crises by introducing clear responsibilities, appropriate planning and more EU cooperation. The revised directive would establish an EU crisis management

framework, requiring Member States to adopt a plan and designate national competent authorities responsible for participating in the response to cybersecurity incidents and crises at the EU level. The proposed directive would establish an EU-Cyber Crises Liaison Organisation Network (EU-CyCLONe) to support the coordinated management of EU-wide cybersecurity incidents, as well as to ensure the regular exchange of information. The proposed directive would also strengthen the role of the [NIS Cooperation Group](#) in making decisions and increasing cooperation between Member States. Member States would still be required to adopt a national cybersecurity strategy and to designate one or more national competent authorities to supervise compliance with the directive; and to designate CSIRTs to handle incident notifications and single points of contact (SPOC) to act as a liaison point with other Member States.

In order to ensure consistency and coherence with related EU legislation, the NIS Directive review in particular takes into account the following three Commission initiatives:

- the [review of the Resilience of Critical Entities \(CER\) Directive](#), which was proposed alongside the NIS2 proposal, with the objective of improving the resilience of critical entities against physical threats in a large number of sectors. The proposal expands both the scope and depth of the current 2008 directive, including the coverage of 10 sectors: energy, transport, banking, financial market infrastructures, health, drinking water, waste water, digital infrastructure, public administration and space;
- the [initiative](#) on a digital operational resilience act for the financial sector (DORA);
- the [initiative](#) on a network code on cybersecurity with sector-specific rules for cross-border electricity flows (see [snapshot](#) analysis from the SPEAR project).

As regards the financial sector, [the DORA proposal](#) would provide legal clarity on whether and how digital operational provisions apply, especially to cross-border financial entities, and it would eliminate the need for Member States to individually improve rules, standards and expectations regarding operational resilience and cybersecurity as a response to the current limited coverage of EU rules and the general nature of the NIS1 Directive. At the same time, it is important to maintain a strong relationship for the exchange of information between the financial sector and the other sectors covered by NIS2. To that end, under the DORA proposal, all financial supervisors, the European supervisory authorities (ESAs) for the financial sector and the financial sector-related national competent authorities would be able to participate in the discussions of the NIS Cooperation Group, and to exchange information and cooperate with the single points of contact and with the national CSIRTs under NIS2. Moreover, Member States should continue to include the financial sector in their cybersecurity strategies, and national CSIRTs may cover the financial sector in their activities.

Furthermore, the Commission has aligned the scope in the NIS2 proposal with the proposal for a review of the CER Directive.

As regards ENISA, it would see increased responsibilities within its existing mandate, which involves overseeing the implementation of the NIS. ENISA would be tasked to prepare a report every two years on the state of cybersecurity in the EU and to maintain a European vulnerability registry providing access to information on the vulnerabilities of ICT products and services disclosed on a voluntary basis by essential and important entities and their ICT suppliers. At the same time, ENISA would be required to create and maintain a registry, in which certain types of entities including domain name system service providers, top level domain name registries, cloud computing service providers, data centre service providers, content delivery network providers, as well as online marketplaces, online search engines and social networking platforms would notify where they are established in the EU. This is to ensure that such entities do not face a multitude of different legal requirements, given that they provide services across borders to a particularly high extent.

To address key supply chain risks and to assist entities in managing cybersecurity risks related to the ICT supply chain, the NIS Cooperation Group, together with the Commission and ENISA, would be tasked to carry out a coordinated risk assessment per sector of critical ICT services, systems, or products including relevant threats and vulnerabilities. The supply chain risk assessments would consider both technical factors (hardware- or software-related) and, where relevant, non-technical factors (such as suppliers being subject to interference by a non-EU country or state-backed players). This approach largely builds on the previous work of the Commission and the NIS Cooperation Group on the security of 5G networks. The Commission [published](#) on 29 January 2020 the 5G risk management toolbox, which listed measures to mitigate the security threats associated with 5G networks. Among others, the EU 5G risk assessment identified security risks related to 5G networks and the 5G supply chain at the EU level. To ensure that entities comply with their obligations addressing ICT supply chain security, the new directive would enable Member States to require essential and important entities to certify specific ICT products, services and processes under the [EU Cybersecurity Act](#). In this context, the draft directive would empower the Commission to lay down which categories of essential entities (due to their criticality) would be required to obtain certification.

The [European Electronic Communications Code \(EECC\)](#) regulates since December 2020 the security of telecoms providers when they are providing electronic communications services in the EU. However, telecoms providers are covered by the current NIS framework if they provide non-telecoms services that fall within the scope of the directive, i.e. cloud computing services. The proposed directive would therefore repeal the corresponding EECC security provisions and entirely regulate the security of telecoms providers, also in cases where they are providing ECS-related services. The same would apply to the security provisions for trust service providers currently found in the [eIDAS Regulation](#).

## Advisory committees

The European Economic and Social Committee (EESC) adopted [an opinion](#) on the proposal during its plenary session of 27-28 April 2021.

The EESC notes that some of the provisions in both the NIS2 and CER proposals overlap, as they are closely linked and complementary. The EESC therefore calls for the possibility of combining the two proposals to form one single text. Furthermore, given the relevance and sensitivity of the objectives pursued by the two proposals, it finds that a regulation would have been preferable to a directive.

In addition, the EESC points out that clearer guidelines are needed for distinguishing between 'essential' and 'important' entities, and that the respective requirements to be met should be more precisely defined.

Finally, the EESC agrees that ENISA plays a key role in the overall European institutional and operational cybersecurity system. Thus, in addition to the proposed two-yearly report on the state of cybersecurity in the Union, it should also publish regular, up-to-date information on cybersecurity incidents and sector-specific warnings online.

The European Committee of the Regions (CoR) has not prepared an opinion on the proposal.

## National parliaments

The subsidiarity deadline for the submission of reasoned opinions was 17 March 2021. No national parliament submitted any reasoned [opinion](#).

## Stakeholder views<sup>4</sup>

From 25 June 2020 to 13 August 2020, all interested stakeholders could provide feedback on the inception impact assessment and roadmap on a dedicated Commission [webpage](#). A total of 42 responses were received from stakeholders, the private sector, research organisations and

citizens from the EU and internationally. Stakeholders broadly pointed to the current fragmentation in the implementation of NIS at the national level, particularly regarding OESs and DSPs. They furthermore emphasised the need to improve EU-level coordination of cyber-attack responses and with other related EU legislation.

The [GSMA](#) mobile association strongly recommends that the Commission address the shortcomings and persisting inefficiencies in the NIS Directive by: including software and hardware providers in the scope of the NIS, to ensure robust end-to-end security; reducing red tape and fragmentation, by streamlining processes, security requirements and incident notifications obligations; and improving harmonisation and consistency for providers of Electronic Communications Services, by closely aligning the NIS Directive with other legal instruments (the Cybersecurity Act, the EEC Directive and the European Critical Infrastructure (ECI) Directive).

[Eurosmart](#), the association representing the European digital security industry, believes that 'DSPs should use physical infrastructure exclusively located in Europe. The NIS Directive should leverage the European certification schemes created in the framework of the Cybersecurity Act (CSA) to demonstrate the ability of OES and DSP to meet a high level of protection. Following a risk-based approach, certification of highly critical products must be done at a level 'High' pursuant to the CSA. Security certificate at level 'High' ensures continuous monitoring and maintenance of the certification scheme by a community of recognised experts from the industry. It is the only way to ensure "the state of the art" of security for critical infrastructures'.

The [Software Alliance \(BSA\)](#) states that the general spirit of the existing provisions should be kept, but with a better level of harmonisation and implementation, in particular with regard to service definitions, thresholds, reporting modalities, and the categories of (sub-)sectors recognised as OESs and DSPs across the EU. With regard to the call to expand the scope of the NIS to software products, the BSA also underlines that the sector is already covered by force of the inclusion of cloud services in Annex III, notably through the 'software as a service' principle. For the very limited cases where software would not be delivered or serviced through the cloud (i.e. when embedded), the incident-reporting obligations would be irrelevant, as the manufacturer would not have the visibility of the incident affecting that specific piece of software.

[Digital Europe](#), the industry association, believes that the current NIS scope should be maintained. The review should, however, ensure that Member States are more closely aligned in defining OESs and DSPs to avoid fragmentation.

[BEUC](#), the European consumer association, states that the scope of the NIS is not broad enough, especially when it comes to DSPs. As regards OESs, the discrepancies in their selection criteria has created legal fragmentation in the EU.

The [European Data Protection Supervisor](#) (EDPS) published an opinion on the cybersecurity strategy and the NIS 2 Directive on 11 March 2021 in which, among other things, he issues specific recommendations to ensure that the proposal correctly and effectively complements existing Union legislation on personal data protection, in particular the GDPR and the ePrivacy Directive. He also asks to clarify the different use of the terms 'cybersecurity' and 'security of network and information systems' across the text: to use the term 'cybersecurity' in general, and the term 'security of network and information systems' only for technical purposes when the context allows it.

The Body of European Regulators for Electronic Communications (BEREC) has published [an opinion](#) on 19 May 2021, on the NIS2 proposal recommending that the security of the telecoms sector should continue to be regulated under the EEC Directive. According to BEREC, including the telecoms sector under the scope of NIS2 risks reducing the security level already established through sector-specific regulatory practice since the Framework Directive came into effect in 2009.

## Legislative process

In the European Parliament, the Committee on Industry, Research and Energy (ITRE) was assigned the [file](#) (rapporteur: Bart Groothuis, Renew, the Netherlands). The Committees on Foreign Affairs (AFET), on Internal Market and Consumer Protection (IMCO), on Transport and Tourism (TRAN) and on Civil Liberties, Justice and Home Affairs (LIBE) all submitted opinions.

On 13 April 2021, the European Commission presented the legislative proposal to Parliament's lead committee, ITRE. MEPs welcomed the proposed review of NIS. The most common concern raised by MEPs was about its compatibility with other proposed or existing EU legislation, including DORA, CER, the Cybersecurity Act, the EECC and the GDPR.

The ITRE draft report was published on 3 May 2021, and the four committee opinions were adopted in July 2021. The ITRE committee adopted its [report](#) on 28 October 2021, with 70 votes in favour to 3 against, with 1 abstention. MEPs also voted to open trilogue negotiations with Council, with this mandate confirmed in plenary in November.

The report calls for tighter cybersecurity obligations in terms of risk management, reporting obligations and information-sharing. It aims to lower the administrative burden and to improve cybersecurity incident reporting. In addition, the report states that EU countries would have to meet stricter supervisory and enforcement measures, and harmonise their sanctions regimes.

The report also states that the Commission should ensure that appropriate guidance is given to all micro- and small enterprises falling within the scope of the NIS2 Directive. The report also supports policies promoting the use of open-source cybersecurity tools, which are of particular importance for SMEs as they face significant costs for implementing cybersecurity tools.

Among other things, the rapporteur added the notion of 'active defence'<sup>15</sup> in his draft report. The report as adopted says that Member States should adopt policies on the promotion of active cyber-defence as part of their national cybersecurity strategies.

The report intends to broaden the sectorial scope to also include academic, knowledge and research institutions which had been left outside the scope of NIS2 by the Commission, while many national cybersecurity strategies cover them.

In June 2021, the Council took stock of [progress](#) on NIS2. One of its concerns related to the interaction of NIS2 with sectoral legislation, in particular CER and DORA. During the discussions, most Member States stated that it was imperative to view NIS2 as the horizontal framework for cybersecurity in the EU and that it should serve as a baseline standard for minimum harmonisation of all relevant sectoral legislation in this field. Other concerns raised related to the significant expansion of the scope of the revised rules, the size-cap criteria as the sole element to be considered when identifying essential and important entities to be covered, the proposed legal basis (i.e. single market), and national security concerns.

The Council [adopted](#) its negotiating position on 3 December 2021. Compared to the initial proposal for NIS2, the Council introduced a number of significant changes. For instance it introduced additional criteria to determine the entities to be covered by NIS2, excluding from its scope entities operating in defence and national security, public security, law enforcement and the judiciary, as well as parliaments and central banks. It aligned the text with other related proposed legislation, such as the CER Directive and DORA. Furthermore, it simplified the incident-reporting obligations, to avoid over-reporting, and extended the period for Member States to transpose NIS2 into national law to two years, instead of 18 months.

Interinstitutional trilogue negotiations started on 13 January 2022 and a second meeting took place on 17 February. On 13 May, during the third trilogue meeting, the Parliament and Council reached a political agreement. The revised directive sets out minimum rules for a regulatory framework, and lays down cooperation mechanisms among relevant authorities in each Member State. It expands the list of sectors and activities subject to cybersecurity obligations, and improves their

enforcement, providing for remedies and sanctions which would vary between essential services and important entities. Parliament negotiators had insisted on the need for clear and precise rules for companies. The reporting obligations have been simplified and streamlined to give entities more time to report than the initial 24 hours proposed by the Commission. This is in order to avoid over-reporting and creating an excessive burden on the entities covered. The text has been aligned with sector-specific legislation, in particular with the DORA Regulation and the CER Directive, to provide legal clarity and ensure coherence.

The NIS2 directive would introduce a size-cap rule for determining which entities meet the criteria to qualify as operators of essential services and important entities. This means that all medium-sized and large entities operating within the sectors covered by the directive or providing services covered by the directive would fall within its scope. The co-legislators maintain this general rule but with additional provisions to ensure proportionality and clear-cut criticality criteria for determining them. Such entities would fall under the jurisdiction of the Member State in which they are established, not of the Member State in which they provide their services.

The directive would also formally establish the EU-CyCLONe network, which will support the coordination and management of large-scale incidents.

In addition, a voluntary peer-learning mechanism would be established to support learning from good practice.

As demanded by the Council, the directive would not apply to entities carrying out activities in areas such as defence and national security, public security, law enforcement and the judiciary. Parliaments and central banks are also excluded from the scope. However, as demanded by the Parliament it will apply to public administration entities at central and regional level. In addition, Member States may also decide that it applies to entities at local level.

The political agreement was endorsed by the ITRE committee on 13 July 2022, and then adopted by Parliament in plenary on 10 November 2022, with 577 votes in favour, 6 against and 31 abstentions. The text was then adopted by the Council on 28 November 2022 and signed by both co-legislators on 14 December 2022. It was published in the [Official Journal](#) on 27 December 2022, and entered into force on 16 January 2023. Member States have 21 months – until 17 October 2024 – to transpose the directive into national law.

## EP SUPPORTING ANALYSIS

Zygierewicz A., [Directive on security of network and information systems \(NIS Directive\)](#), Implementation appraisal briefing, EPRS, European Parliament, November 2020.

Kononenko V., [Improving the common level of cybersecurity across the EU](#), Initial Appraisal of a European Commission Impact Assessment, EPRS, European Parliament, February 2021.

Erbach G. with O'Shea J., [Cybersecurity of critical energy infrastructure](#), Briefing, EPRS, European Parliament, October 2019.

Negreiro M., [ENISA and a new cybersecurity act](#), Briefing, EPRS, European Parliament, July 2019.

Negreiro M. with Belluomini A., [The new European cybersecurity competence centre and network](#), Briefing, EPRS, European Parliament, July 2020.

## OTHER SOURCES

[High common level of cybersecurity across the Union – NIS 2 Directive](#), European Parliament Legislative Observatory.

[Challenges to effective EU cybersecurity policy](#), European Court of Auditors (ECA) Briefing Paper, March 2019.

[Report](#) assessing the consistency of the approaches in the identification of operators of essential services, European Commission, 2020.

[Internet organised crime threat assessment \(IOCTA\) 2020](#), Europol, 2020.

## ENDNOTES

- <sup>1</sup> In addition to the OPC, the Commission gathered evidence through a [commissioned study](#) assessing the consistency of the approaches in the identification of operators of essential services. Besides giving an overview of how Member States have identified operators of essential services, the study assesses whether the methodologies used are consistent across the EU.
- <sup>2</sup> The Commission proposal covers the following sectors and subsectors: i) 'essential entities': energy (electricity, district heating and cooling, oil and gas); transport (air, rail, water and road); banking; financial market infrastructures; health; manufacture of pharmaceutical products including vaccines; drinking water; waste water; digital infrastructure (internet exchange points; DNS providers; TLD name registries; cloud computing service providers; data centre service providers; content delivery networks; trust service providers; and public electronic communications networks and electronic communications services); public administration; and space. ii) 'important entities': postal and courier services; waste management; chemicals; food; manufacturing of medical devices, computers and electronics, machinery equipment, motor vehicles; and digital providers (online market places, online search engines, and social networking service platforms).
- <sup>3</sup> Under the NIS2 proposal, 'essential' and 'important' entities are deemed to be under the jurisdiction of the Member State where they provide their services. If the entity provides services in more than one Member State, it should fall under the jurisdiction of each of these Member States. At the same time, certain types of entities would be under the jurisdiction of the Member State in which they have their main establishment in the EU. These entities include, but are not limited to, domain name system service providers, top level domain name registries, cloud computing service providers, data centre service providers, content delivery network providers, as well as online marketplaces, online search engines and social networking platforms.
- <sup>4</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.
- <sup>5</sup> Active cyber defence is the proactive prevention, detection, monitoring, analysis and mitigation of network security breaches, combined with the use of capabilities deployed within and outside the victim network.

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[www.europarl.europa.eu/thinktank](http://www.europarl.europa.eu/thinktank) (internet)

<http://epthinktank.eu> (blog)

Fourth edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

**EXHIBIT JJN-7**

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**PRESS RELEASE**

# CISA Announces Transfer of the .gov Top-level Domain from U.S. General Services Administration

**Released:** March 08, 2021

**Revised:** March 08, 2021

**RELATED TOPICS:** [CYBERSECURITY BEST PRACTICES](#), [CYBER THREATS AND ADVISORIES](#),

WASHINGTON – The Cybersecurity and Infrastructure Security Agency (CISA) announced today it will begin overseeing the .gov top-level domain (TLD) in April 2021. CISA is working closely with the U.S. General Services Administration, who currently oversees the TLD, to ensure a seamless transition of daily operations for .gov customers.

“Using .gov and increasing trust that government communications are authentic will improve our collective cybersecurity,” said Eric Goldstein, Executive Assistant Director for CISA’s Cybersecurity Division. “People see a .gov website or email address and know they are interacting with an official, U.S.-based government organization. Using .gov also provides security benefits, like two-factor authentication on the .gov registrar and notifications of DNS changes to administrators, over other TLDs. We’ll endeavor to make the TLD more secure for the American public and harder for malicious actors to impersonate.”

.gov is one of the six original TLDs in the internet’s domain name system (DNS). The TLD is actively used by each branch of the federal government, every state in the nation, hundreds of counties and cities, and many tribes and territories as they serve the public on the internet. The DOTGOV Act of 2020 shifted responsibility for managing .gov to CISA as the nation’s civilian cybersecurity agency.

Because the TLD is central to the availability and integrity of thousands of online services relied upon by millions of users, .gov is critical infrastructure for governments throughout the country and all aspects of its administration have cybersecurity significance. Under the actions required by the Act, CISA will work to increase security and decrease complexity for our government partners.

To learn more, see CISA and GSA’s blog post at <https://home.dotgov.gov/moving-to-cisa> <<https://home.dotgov.gov/moving-to-cisa>>.

###

## Related Articles

JUN 13, 2023      PRESS RELEASE

**[CISA Directs Federal Agencies to Secure Internet-Exposed Management Interfaces](#)** </news-events/news/cisa-directs-federal-agencies-secure-internet-exposed-management-interfaces>

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**[CISA and FBI Release Advisory on CL0P Ransomware Gang Exploiting MOVEit Vulnerability](#)** </news-events/news/cisa-and-fbi-release-advisory-cl0p-ransomware-gang-exploiting-moveit-vulnerability>

JUN 06, 2023      PRESS RELEASE

**[Joint Guide to Securing Remote Access Software Released by CISA and Partners](#)** </news-events/news/joint-guide-securing-remote-access-software-released-cisa-and-partners>

MAY 24, 2023      PRESS RELEASE

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**EXHIBIT JJN-8**



## Verisign Reports Fourth Quarter and Full Year 2022 Results

**RESTON, VA - Feb. 9, 2023** - VeriSign, Inc. (NASDAQ: VRSN), a global provider of domain name registry services and internet infrastructure, today reported financial results for the fourth quarter and full year 2022.

### *Fourth Quarter Financial Results*

VeriSign, Inc. and subsidiaries (“Verisign”) reported revenue of \$369 million for the fourth quarter of 2022, up 8.5 percent from the same quarter in 2021. The operating margin was 66.5 percent for the fourth quarter of 2022 compared to 65.3 percent for the same quarter of 2021. Verisign reported net income of \$179 million and diluted earnings per share (diluted “EPS”) of \$1.70 for the fourth quarter of 2022, compared to net income of \$330 million and diluted EPS of \$2.97 for the same quarter in 2021. Net income for the fourth quarter of 2021 included recognition of a deferred income tax benefit related to the transfer of certain non-US intellectual property between subsidiaries which increased net income by \$165.5 million and increased diluted EPS by \$1.49.

### *2022 Financial Results*

Verisign reported revenue of \$1.42 billion for 2022, up 7.3 percent from 2021. The operating margin for 2022 was 66.2 percent compared to 65.3 percent in 2021. Verisign reported net income of \$674 million and diluted EPS of \$6.24 for 2022, compared to net income of \$785 million and diluted EPS of \$7.00 in 2021. Net income for 2021 included the recognition of a deferred income tax benefit related to the transfer of certain non-US intellectual property between subsidiaries which increased net income by \$165.5 million and increased diluted EPS by \$1.48.

“In 2022, we marked 25 years of uninterrupted availability for our global .com and .net resolution infrastructure. We also delivered solid financial performance for the quarter and the full year,” said Jim Bidzos, Executive Chairman and Chief Executive Officer.

### **Financial Highlights**

- Verisign ended 2022 with cash, cash equivalents, and marketable securities of \$980 million, a decrease of \$225 million from year-end 2021.
- Cash flow from operations was \$217 million for the fourth quarter of 2022 and \$831 million for the full year of 2022 compared with \$206 million for the same quarter in 2021 and \$807 million for the full year of 2021.
- Deferred revenues as of Dec. 31, 2022, totaled \$1.22 billion, an increase of \$66 million from year-end 2021.
- During the fourth quarter of 2022, Verisign repurchased 1.1 million shares of its common stock for \$212 million. During the full year of 2022, Verisign repurchased 5.5 million shares of its common stock for \$1.03 billion. As of Dec. 31, 2022, there was \$859 million remaining for future share repurchases under the share repurchase program which has no expiration date.

## **Business Highlights**

- Verisign ended the fourth quarter of 2022 with 173.8 million .com and .net domain name registrations in the domain name base, a 0.2 percent increase from the end of the fourth quarter of 2021, and a net decrease of 0.4 million registrations during the fourth quarter of 2022.
- In the fourth quarter of 2022, Verisign processed 9.7 million new domain name registrations for .com and .net, as compared to 10.6 million for the same quarter in 2021.
- The final .com and .net renewal rate for the third quarter of 2022 was 73.7 percent compared to 75.0 percent for the same quarter in 2021. Renewal rates are not fully measurable until 45 days after the end of the quarter.
- Verisign announces that it will increase the annual registry-level wholesale fee for each new and renewal .com domain name registration from \$8.97 to \$9.59, effective Sept. 1, 2023.

## **Today's Conference Call**

Verisign will host a live conference call today at 4:30 p.m. (EST) to review the fourth quarter and full year 2022 results. The call will be accessible by direct dial at (888) 676-VRSN (U.S.) or (786) 789-4797 (international), conference ID: Verisign. A listen-only live web cast of the conference call and accompanying slide presentation will also be available at <https://investor.verisign.com>. An audio archive of the call will be available at <https://investor.verisign.com/events.cfm>. This news release and the financial information discussed on today's conference call are available at <https://investor.verisign.com>.

## **About Verisign**

Verisign, a global provider of domain name registry services and internet infrastructure, enables internet navigation for many of the world's most recognized domain names. Verisign enables the security, stability, and resiliency of key internet infrastructure and services, including providing root zone maintainer services, operating two of the 13 global internet root servers, and providing registration services and authoritative resolution for the .com and .net top-level domains, which support the majority of global e-commerce. To learn more about what it means to be Powered by Verisign, please visit [verisign.com](https://verisign.com).

## **VRSNF**

Statements in this announcement other than historical data and information constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 as amended and Section 21E of the Securities Exchange Act of 1934 as amended. These statements involve risks and uncertainties that could cause our actual results to differ materially from those stated or implied by such forward-looking statements. The potential risks and uncertainties include, among others, attempted security breaches, cyber-attacks, and DDoS attacks against our systems and services; the introduction of undetected or unknown defects in our systems; vulnerabilities in the global routing system; system interruptions or system failures; damage or interruptions to our data centers, data center systems or resolution systems; risks arising from our operation of root servers and our performance of the Root Zone Maintainer functions; any loss or modification of our right to operate the .com and .net gTLDs; changes or challenges to the pricing provisions of the .com Registry Agreement; new or existing governmental laws and regulations in the U.S. or other applicable non-U.S. jurisdictions; economic, legal and political risks associated with our international operations; the impact of unfavorable tax rules and regulations; risks from the adoption of ICANN's consensus and temporary policies, technical standards and other processes; the weakening of, changes to, the multi-stakeholder model of internet governance; the outcome of claims, lawsuits, audits or investigations; the effects of the COVID-19 pandemic; our ability to compete in the highly competitive business environment in which we operate; changes in internet practices and behavior and the adoption of substitute technologies, or the negative impact of wholesale price increases; our ability to expand our services into developing and emerging economies; our ability to maintain strong relationships with registrars and their resellers; our ability to attract, retain and motivate highly skilled employees; and our ability to protect and enforce our intellectual property rights. More information about potential factors that could affect our business and financial results is included in our filings with the SEC, including in our Annual Report on Form 10-K for the year ended Dec. 31, 2021, when filed, our Annual Report on Form 10-K for the year ended Dec. 31, 2022, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Verisign undertakes no obligation to update any of the forward-looking statements after the date of this announcement.

## **Contacts**

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Media Relations: David McGuire, [davmcguire@verisign.com](mailto:davmcguire@verisign.com), 703-948-3800

**VERISIGN, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(In millions, except par value)  
(Unaudited)

	<u>December 31,</u> 2022	<u>December 31,</u> 2021
<b><u>ASSETS</u></b>		
Current assets:		
Cash and cash equivalents.....	\$ 373.6	\$ 223.5
Marketable securities.....	606.8	982.3
Other current assets .....	58.3	62.9
Total current assets.....	<u>1,038.7</u>	<u>1,268.7</u>
Property and equipment, net.....	232.0	251.2
Goodwill.....	52.5	52.5
Deferred tax assets.....	234.6	230.7
Deposits to acquire intangible assets .....	145.0	145.0
Other long-term assets .....	30.6	35.7
Total long-term assets.....	<u>694.7</u>	<u>715.1</u>
Total assets .....	<u>\$ 1,733.4</u>	<u>\$ 1,983.8</u>
<b><u>LIABILITIES AND STOCKHOLDERS' DEFICIT</u></b>		
Current liabilities:		
Accounts payable and accrued liabilities.....	\$ 226.5	\$ 226.6
Deferred revenues .....	890.4	847.4
Total current liabilities .....	<u>1,116.9</u>	<u>1,074.0</u>
Long-term deferred revenues.....	328.7	306.0
Senior notes .....	1,787.9	1,785.7
Long-term tax and other liabilities .....	62.1	78.6
Total long-term liabilities .....	<u>2,178.7</u>	<u>2,170.3</u>
Total liabilities.....	<u>3,295.6</u>	<u>3,244.3</u>
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock—par value \$.001 per share; Authorized shares: 5.0; Issued and outstanding shares: none .....	—	—
Common stock and additional paid-in capital—par value \$.001 per share; Authorized shares: 1,000.0; Issued shares: 354.5 at December 31, 2022 and 354.2 at December 31, 2021; Outstanding shares: 105.3 at December 31, 2022 and 110.5 at December 31, 2021....	12,644.5	13,620.1
Accumulated deficit .....	(14,204.0)	(14,877.8)
Accumulated other comprehensive loss .....	(2.7)	(2.8)
Total stockholders' deficit .....	<u>(1,562.2)</u>	<u>(1,260.5)</u>
Total liabilities and stockholders' deficit.....	<u>\$ 1,733.4</u>	<u>\$ 1,983.8</u>

**VERISIGN, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(In millions, except per share data)  
(Unaudited)

	Three Months Ended December 31,		Year Ended December 31,	
	2022	2021	2022	2021
Revenues .....	\$ 369.2	\$ 340.3	\$ 1,424.9	\$ 1,327.6
Costs and expenses:				
Cost of revenues.....	50.5	49.3	200.7	191.9
Research and development.....	21.5	20.8	85.7	80.5
Selling, general and administrative .....	51.7	48.1	195.4	188.4
Total costs and expenses .....	123.7	118.2	481.8	460.8
Operating income .....	245.5	222.1	943.1	866.8
Interest expense.....	(18.8)	(18.9)	(75.3)	(83.3)
Non-operating income (loss), net.....	5.6	0.2	12.4	(1.3)
Income before income taxes.....	232.3	203.4	880.2	782.2
Income tax (expense) benefit .....	(52.8)	126.7	(206.4)	2.6
Net income .....	179.5	330.1	673.8	784.8
Other comprehensive income.....	—	—	0.1	—
Comprehensive income.....	\$ 179.5	\$ 330.1	\$ 673.9	\$ 784.8
Earnings per share:				
Basic.....	\$ 1.70	\$ 2.98	\$ 6.24	\$ 7.01
Diluted .....	\$ 1.70	\$ 2.97	\$ 6.24	\$ 7.00
Shares used to compute earnings per share				
Basic.....	105.8	110.9	107.9	112.0
Diluted .....	105.9	111.1	108.0	112.2

**VERISIGN, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In millions)  
(Unaudited)

	Year Ended December 31,	
	2022	2021
Cash flows from operating activities:		
Net income.....	\$ 673.8	\$ 784.8
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation of property and equipment .....	46.9	47.9
Stock-based compensation expense.....	58.6	53.4
Other, net .....	(3.9)	6.0
Changes in operating assets and liabilities:		
Other assets .....	9.5	(14.0)
Accounts payable and accrued liabilities .....	(0.1)	15.6
Deferred revenues .....	65.7	90.5
Net deferred income taxes and other long-term tax liabilities .....	(19.4)	(177.0)
Net cash provided by operating activities.....	<u>831.1</u>	<u>807.2</u>
Cash flows from investing activities:		
Proceeds from maturities and sales of marketable securities.....	1,721.5	2,654.5
Purchases of marketable securities .....	(1,338.4)	(2,870.7)
Purchases of property and equipment.....	(27.4)	(53.0)
Net cash provided by (used in) investing activities .....	<u>355.7</u>	<u>(269.2)</u>
Cash flows from financing activities:		
Repurchases of common stock .....	(1,048.1)	(722.6)
Proceeds from employee stock purchase plan .....	12.3	12.4
Repayment of borrowings .....	—	(750.0)
Proceeds from borrowings, net of issuance costs .....	—	741.1
Net cash used in financing activities .....	<u>(1,035.8)</u>	<u>(719.1)</u>
Effect of exchange rate changes on cash, cash equivalents and restricted cash .....	(0.8)	(0.7)
Net increase (decrease) in cash, cash equivalents and restricted cash.....	150.2	(181.8)
Cash, cash equivalents, and restricted cash at beginning of period.....	228.8	410.6
Cash, cash equivalents, and restricted cash at end of period.....	<u>\$ 379.0</u>	<u>\$ 228.8</u>
Supplemental cash flow disclosures:		
Cash paid for interest .....	\$ 72.8	\$ 85.6
Cash paid for income taxes, net of refunds received .....	<u>\$ 211.7</u>	<u>\$ 178.4</u>

**EXHIBIT JJN-9**

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2022

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 000-23593

**VERISIGN, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)  
12061 Bluemont Way,  
Reston, Virginia  
(Address of principal executive offices)

94-3221585  
(I.R.S. Employer  
Identification No.)  
  
20190  
(Zip Code)

Registrant's telephone number, including area code: (703) 948-3200  
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	VRSN	Nasdaq Global Select Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.): Yes  No

The aggregate market value of the voting and non-voting common equity stock held by non-affiliates of the Registrant as of June 30, 2022, was \$12.4 billion based upon the last sale price reported for such date on the Nasdaq Global Select Market. For purposes of this disclosure, shares of Common Stock held by persons known to the Registrant (based on information provided by such persons and/or the most recent Schedule 13Gs filed by such persons) to beneficially own more than 5% of the Registrant's Common Stock and shares held by officers and directors of the Registrant have been excluded because such persons may be deemed to be affiliates. This determination is not necessarily a conclusive determination for other purposes.

Number of shares of Common Stock, \$0.001 par value, outstanding as of the close of business on February 10, 2023: 104,879,307 shares.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Registrant's definitive proxy statement to be delivered to stockholders in connection with the 2023 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated.

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For purposes of this Annual Report on Form 10-K (this “Form 10-K”), the terms “Verisign”, “the Company”, “we”, “us”, and “our” refer to VeriSign, Inc. and its consolidated subsidiaries.

## PART I

### ITEM 1. BUSINESS

#### Overview

We are a global provider of domain name registry services and internet infrastructure, enabling internet navigation for many of the world’s most recognized domain names. We enable the security, stability, and resiliency of key internet infrastructure and services, including providing Root Zone Maintainer services, operating two of the 13 global internet root servers, and providing registration services and authoritative resolution for the .com and .net top-level domains (“TLDs”), which support the majority of global e-commerce.

We were incorporated in Delaware on April 12, 1995. Our principal executive offices are located at 12061 Bluemont Way, Reston, Virginia 20190. Our telephone number at that address is (703) 948-3200. Our common stock is traded on the Nasdaq Global Select Market under the ticker symbol VRSN. VERISIGN, the VERISIGN logo, and certain other product or service names are registered or unregistered trademarks in the U.S. and other countries. Other names used in this Form 10-K may be trademarks of their respective owners. Our primary website is <https://www.verisign.com>. The information available on, or accessible through, this website is not incorporated in this Form 10-K by reference.

Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), are available, free of charge, on the Investor Relations section of our website as soon as is reasonably practicable after filing such reports with the Securities and Exchange Commission (the “SEC”). The SEC maintains an internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC at <https://www.sec.gov>.

Pursuant to our agreements with the Internet Corporation for Assigned Names and Numbers (“ICANN”), we make available files containing all active domain names registered in the .com and .net registries. Further, we also make available a summary of the active zone count registered in the .com and .net registries and the number of .com and .net domain name registrations in the domain name base. The zone counts and information on how to obtain access to the zone files can be found at <https://www.verisign.com/zone>. The domain name base is the active zone plus the number of domain names that are registered but not configured for use in the respective top-level domain zone file plus the number of domain names that are in a client or server hold status. The domain name base may also reflect compensated or uncompensated judicial or administrative actions to add or remove from the active zone an immaterial number of domain names. These files and the related summary data are updated at least once per day. The update times may vary each day. The number of domain names provided in this Form 10-K are as of midnight of the date reported.

We announce material financial information to our investors using our investor relations website <https://investor.verisign.com>, SEC filings, investor events, news and earnings releases, public conference calls and webcasts. We use these channels as well as social media to communicate with our investors and the public about our company, our products and services, and other issues. It is possible that the information we post on social media could be deemed to be material information. Therefore, we encourage investors, the media, and others interested in our company to review the information we post on the social media channels and websites listed below. This list may be updated from time to time on our investor relations website.

<https://facebook.com/Verisign>  
<https://twitter.com/Verisign>  
<https://linkedin.com/company/Verisign>  
<https://youtube.com/user/Verisign>  
<https://verisign.com>  
<https://blog.Verisign.com>

The contents of these websites are not intended to be incorporated by reference into this Form 10-K or in any other report or document we file.

#### Services

We operate the authoritative directory of and/or the back-end systems for all .com, .net, .cc, .gov, .edu and .name domain names, among others. Our services allow individuals and organizations to establish their online identities, while providing the secure, always-on access they need to communicate and transact reliably with online audiences.

We are the exclusive registry of domain names within the *.com*, *.net*, and *.name* generic top-level domains (“gTLDs”), among others, under agreements with ICANN and also, with respect to the *.com* gTLD, the U.S. Department of Commerce (“DOC”). We are also the exclusive registry of domain names within certain transliterations of *.com* and *.net* in a number of different native languages and scripts (“IDN gTLDs”). As a registry, we maintain the authoritative directory of all second-level domain names (e.g., *example.com* and *example.net*) in these gTLDs and IDN gTLDs. Our global constellation of DNS servers provides internet protocol (“IP”) address information in response to queries, enabling the use of browsers, email systems, and other systems on the internet. In addition, we own and maintain our shared registration system that allows registrars to enter new second-level domain names into Verisign-operated central directories and to submit modifications, transfers, re-registrations, and deletions for existing second-level domain names (“Shared Registration System”).

In addition to our registry agreements with ICANN, we have an agreement with Cocos (Keeling) Islands to operate the country code top-level domain (“ccTLD”) registry for *.cc*, and other agreements to operate the technical systems for the *.gov* and *.edu* sponsored gTLDs. These gTLDs and ccTLDs are also supported by our global constellation of DNS servers and Shared Registration System. On November 15, 2022, we transitioned the operation of the *.tv* ccTLD to another service provider. We also anticipate transitioning the operation of the *.gov* registry to another operator during 2023, but will continue to operate it until such transition.

We also perform the Root Zone Maintainer function under an agreement with ICANN for the core of the internet’s DNS and operate two of the 13 root zone servers that contain authoritative data for the top of the DNS hierarchy.

Domain names can be registered for between one and 10 years. Unlike other gTLDs, the prices we charge for *.com*, *.net* and *.name* domain name registrations are controlled by pricing provisions in our agreements with ICANN and our prices may be increased only according to those provisions. Retail pricing for these domain name registrations is established by registrars. For *.com* and *.name* domain name registrations, we pay ICANN on a quarterly basis \$0.25 for each annual domain name registration. For *.net* domain name registrations, we remit to ICANN a \$0.75 fee per annual *.net* domain name registration that is collected from registrars.

Revenues for *.cc* domain names and our IDN gTLDs are based on prices that are not subject to the same pricing restrictions as those for *.com*, *.net* and *.name*. The fees received from operating the *.gov* gTLD are based on the terms of our agreement with the U.S. government. The fees from our performance of the technical operations for back-end registry services for other gTLDs are based on the terms of our agreements with those respective registry operators.

## Operations Infrastructure

Our main operations infrastructure consists of secure data centers in Dulles, Virginia; Ashburn, Virginia; and New Castle, Delaware; as well as more than 200 other points of presence around the world. Our domain name servers refer requestors to the associated authoritative name servers for second level domains under the gTLDs and ccTLDs we operate, thus enabling DNS resolution for *.com* and *.net* domain names and for domain names in a number of other gTLDs and ccTLDs that we manage, or for which we provide back-end registry services. Our servers process hundreds of billions of transactions daily. Our operations infrastructure operates continuously, supporting the security, integrity and availability of our services, which are critical for our business and internet users. The performance and availability of our infrastructure are critical for our business. Key features of our operations infrastructure include:

- *Distributed Servers:* We operate a large number of high-speed servers globally to support localized transaction volume and performance demands. In conjunction with our proprietary software, processes and procedures, this purpose-built global constellation of servers offers rapid failover, global and local load balancing, and threshold monitoring on critical servers.
- *Networking:* We deploy and maintain a redundant and diverse global network, maintain high-speed, redundant connections to numerous internet service providers, and maintain network interconnection relationships globally to ensure that our critical services are readily accessible to end users.
- *Security and Availability:* We incorporate architectural concepts such as protected domains, restricted nodes, and distributed access control in our system architecture. In addition, we employ firewalls and intrusion detection software, endpoint and network detection and response systems as well as proprietary security mechanisms at many points across our infrastructure. We perform continuous internal vulnerability testing and periodic controls audits, and also contract with third-party security organizations to perform periodic penetration tests and security risk assessments on our systems. We have engineered resiliency and diversity into how we host classes of products throughout our set of interconnected sites to reduce the risk of unknown vendor defects and zero-day security vulnerabilities.
- *Data Integrity:* We use several proprietary systemic integrity checks and validations to ensure data correctness when updating and publishing the DNS records for the gTLDs and ccTLDs we operate.

We continuously enhance our infrastructure and capabilities to meet demands to support normal and peak system load and attack volumes based on what we have experienced historically, as well as to address projected internet attack trends.

*Call Centers and Service Desk:* We provide customer support services over the phone, by email and through web-based self-help systems. Our support teams are staffed with trained technical customer support agents. Support is available for customers 24 hours a day.

*Operations Support and Monitoring:* Through our network operations center, we have an extensive monitoring capability that enables us to track the status and performance of our critical systems, network and services. Our network operations center monitors our systems continuously.

*Disaster Recovery Plans:* We have disaster recovery and business continuity capabilities that are designed to deal with the loss of entire data centers and other facilities. We maintain data centers with mirrored services that allow failover with no data loss and no loss of function or capacity. Our critical data services (including domain name registration and global resolution) use advanced storage systems that provide data protection through techniques such as synchronous mirroring and remote replication. We periodically operate services at alternate data centers during maintenance windows to ensure the availability of our data centers for disaster recovery.

## **Marketing, Sales and Distribution**

We seek to expand our business through focused marketing campaigns and programs that target growth in the *.com* and *.net* domain name base, both domestically and internationally. We provide tools to be used by both registrars and end users to enable them to find relevant domain names. We have marketing and sales offices in several countries around the world.

## **Research and Development**

We believe that timely development of new and enhanced services, including monitoring and visualization, registry provisioning platforms, navigation and resolution services, data services, value added services, and new and enhanced ways to ensure the security, stability, and resiliency of our services, is necessary to remain competitive in the marketplace.

Our future success will depend, in large part, on our ability to continue to maintain and enhance our current technologies and services and to develop new ones. We actively investigate and incubate new concepts and evaluate new business ideas through our innovation pipeline. We expect that most of the future enhancements to our existing services and our new services will be the result of internal development efforts in collaboration with suppliers, other vendors, customers, and the technology community. Under certain circumstances, we may also acquire or license technology from third parties.

## **Competition**

We face competition in the domain name registry space from other gTLD and ccTLD registries that are competing for the business of entities and individuals that are seeking to obtain a domain name registration. In addition to the gTLD and ccTLD registries we operate or for which we provide back-end registry services, there are numerous other operational gTLD registries, ASCII ccTLD registries, IDN ccTLD registries, and IDN gTLD registries. Under our agreements with ICANN, we are subject to certain restrictions in the operation of *.com*, *.net* and *.name* on pricing, bundling, marketing, methods of distribution, introduction of new registry services, and use of registrars, that do not apply to ccTLDs and other gTLDs and therefore may create a competitive disadvantage. Among our competitors operating gTLD and ccTLD registries are China Internet Network Information Center (CNNIC), DENIC, Nominet, Identity Digital, Public Interest Registry (PIR), CentralNic, Google, *.xyz*, GoDaddy, and Radix.

To the extent end-users navigate using search engines or social media, as opposed to direct navigation via domain names, or transact on e-commerce platforms, we face competition from search engines such as Google, Bing, Yahoo!, and Baidu, social media networks such as Facebook and WeChat, e-commerce platforms such as Amazon, eBay and Taobao, and microblogging tools such as Twitter. In addition, we face competition from these social media and e-commerce platforms if they are used by businesses and individuals to establish an online presence rather than through the use of a domain name. Furthermore, we face competition from providers of web and mobile applications that allow end-users to locate and access content.

New technologies and the expansion of existing technologies may increase competitive pressure. Our industry is characterized by collaborative relationships involving our competitors. In the past, certain of our competitors have consolidated. Our ability to participate and benefit from such collaborative arrangements or consolidations may be limited and such collaborative arrangements and consolidations could harm our competitive position and adversely impact our business.

## Industry Regulation

The DNS is governed under a multi-stakeholder model comprising civil society, the private sector, including for-profit and not-for-profit organizations such as ICANN, governments, including the U.S. government, academia, non-governmental organizations, and international organizations. ICANN plays a central coordination role in this bottom-up multi-stakeholder system. ICANN is mandated through its bylaws to uphold a private sector-led multi-stakeholder approach to internet governance for the public benefit. ICANN's multi-stakeholder policy development processes have created, and will continue to create, policies, programs, and standards that directly or indirectly impact our business. Certain policies can be adopted as Consensus or Temporary Policies, which we are obligated to follow under our agreements with ICANN. For example, in response to the General Data Protection Regulation, ICANN issued a Temporary Policy modifying public access to information from Whois services.

We are also subject to country-level laws and regulations in the United States and in international locations. In China, we are required to maintain licenses for *.com*, *.net*, and *.cc* under regulations issued by the Ministry of Industry and Information Technology. The applications to renew the licenses for *.com* and *.net* are currently under review by the Ministry of Industry and Information Technology. Additionally, in many jurisdictions in which we operate, including California, the European Union, the United Kingdom, China and elsewhere, strict new data security and data privacy regulations have been, or are being, adopted. Because we do not possess extensive personal registrant information, we have not yet experienced significant impacts from these regulations. However, compliance costs and other business impacts could become significant if we begin to receive personal registrant information in our *.com* and *.net* gTLDs, as regulatory enforcement increases, as courts interpret these regulations, and as new laws and regulations are adopted. Other regulations, or changes to regulations, may also significantly impact our business operations, including changes to the Digital Services Act or Network and Information Security Directive, in the European Union, or the Communications Decency Act, in the United States, or the Personal Information Protection Law, in China.

### *.com* Generic Top-Level Domain

Our operation of the *.com* gTLD is subject to the terms of a registry agreement with ICANN (as amended, the "*.com* Registry Agreement"). The current term of the *.com* Registry Agreement is six years and must be renewed or extended by November 30, 2024. Although the *.com* Registry Agreement contains a "presumptive" right of renewal, ICANN could terminate or refuse to renew the Registry Agreement in certain prescribed circumstances. See "Risk Factors - Any loss or modification of our right to operate the *.com* and *.net* gTLDs could have a material adverse impact on our business and result in loss of revenues." in Part I, Item 1A of this Form 10-K for further information.

Other significant terms within the *.com* Registry Agreement include performance specifications and service level agreements, including by example, for the availability of our DNS resolution services, our Shared Registration System, and our Whois services. The *.com* Registry Agreement contains marketing limitations, including limitations on our ability to bundle products and the manner in which we provide marketing support to ICANN-accredited registrars. We are also required under the *.com* Registry Agreement to provide ICANN-accredited registrars with nondiscriminatory access to our systems to register or take other actions related to domain names. In order to introduce new Registry Services or make material changes to existing Registry Services, we must follow prescribed procedures which permit ICANN to review and approve such services.

Amendment 3 to the *.com* Registry Agreement permits an increase to the Maximum Price (as defined in the *.com* Registry Agreement) of *.com* domain name registrations by up to 7% over the previous year in each of the final four years of each six-year period. The first such six-year period began on October 26, 2018. Amendment 3 also clarified that the restrictions in the *.com* Registry Agreement relating to vertical integration apply solely to the *.com* gTLD and also clarified that our ability to increase prices by 7% over the previous year due to new ICANN Consensus Policies or documented extraordinary expense may occur only in years where we do not otherwise take the price increases described above.

Our operation of the *.com* gTLD is also subject to the terms of a Cooperative Agreement with the DOC. The Cooperative Agreement has undergone various amendments with the most recent, Amendment 35, on October 26, 2018. Amendment 35 extended the term of the Cooperative Agreement until November 30, 2024, which will automatically renew on the same terms for successive six-year terms unless the DOC provides written notice of non-renewal 120 days prior to the end of the then-current term.

Amendment 35 includes the DOC's consent to the modification of the pricing terms in the *.com* Registry Agreement (as described above). The Cooperative Agreement further provides that we shall be entitled at any time during the term of the *.com* Registry Agreement to seek to remove the pricing restrictions contained in the *.com* Registry Agreement if we demonstrate to the DOC that market conditions no longer warrant pricing restrictions in the *.com* Registry Agreement, as determined by the DOC.

DOC approval of changes to or the renewal of the *.com* Registry Agreement was limited by Amendment 35 to only the following circumstances: (1) changes to the pricing provisions (other than as approved in Amendment 35), (2) changes to the vertical integration provisions (other than the clarification approved in Amendment 35), (3) changes to the security, stability

and resiliency posture as reflected in the functional or performance specifications (including the service level agreements), (4) changes to the conditions for renewal or termination of the .com Registry Agreement, or (5) changes to the Whois service (except as mandated by ICANN through Temporary or Consensus Policies). As was the case with prior amendments, Amendment 35 is not intended to confer federal antitrust immunity on the Company with respect to the .com Registry Agreement.

Finally, Amendment 35 clarified that the restrictions in the .com Registry Agreement relating to vertical integration apply solely to the .com gTLD. As to the .com gTLD, we are not permitted to acquire, directly or indirectly, control of, or a greater than 15% ownership interest in, any ICANN-accredited registrar that sells .com domain names. In addition, under Amendment 35, we have agreed to continue to operate the .com gTLD in a content-neutral manner and to work within ICANN processes to promote the development of content-neutral policies for the operation of the DNS.

#### *.net Generic Top-Level Domain*

Our operation of the .net gTLD is subject to the terms of a registry agreement with ICANN (as amended, the “.net Registry Agreement”). The current term of this agreement is six years and must be renewed or extended by July 1, 2023. The terms of the .net Registry Agreement are substantially similar to the terms of the .com Registry Agreement, except as to ICANN fees as described earlier and that the annual price for new and renewal .net domain name registrations may be increased by 10% each year. Our operation of the .net gTLD is not subject to the terms of the Cooperative Agreement.

#### *Root Operations*

We operate two of the world’s thirteen root servers. Along with the ICANN community, we are involved in discussions to establish criteria for operations of the root server system including the root servers that we operate. We also publish the root zone file, as the Root Zone Maintainer, under the Root Zone Maintainer Service Agreement (“RZMA”) with ICANN. The RZMA will expire on October 19, 2024, with an automatic renewal, unless earlier terminated.

The descriptions of the .com Registry Agreement, the Cooperative Agreement, and the .net Registry Agreement are qualified in their entirety by reference to the text of the complete agreements that are incorporated by reference as exhibits in this Form 10-K.

### **Human Capital Management**

Our employees are mission driven and values focused. Their dedication to these principles forms the backbone that enables Verisign to provide secure, stable, and resilient global connectivity. We recognize the importance of talent and culture in driving an environment that fosters high performance, inclusion, and integrity in all aspects of our work.

We are committed to attracting, developing, and retaining the best talent, and we routinely monitor and present our progress in these areas to executive management and the Compensation Committee of our Board of Directors. As of December 31, 2022, we had 917 employees, of which 914 were full-time. 853 employees (representing approximately 93% of our total workforce) were based in the U.S., and 64 employees (representing approximately 7% of our total workforce) were based outside the U.S. As of December 31, 2022, approximately 28% of our global workforce was female, and approximately 43% of our U.S. employees were ethnically and racially diverse. No U.S.-based employees are represented under collective bargaining agreements. Based on periodic monitoring, we believe that our employee turnover is relatively low compared to competitive benchmarks and historical trends. We attribute our strong retention rates to our passion and focus on the Company’s mission and values, continual development of talent, and the delivery of competitive and equitable reward programs. We regularly review our workforce policies, procedures, and training programs, as well as our overall workforce demographics, in an effort to create a work environment that is diverse, equitable, inclusive, and free from discrimination.

*Employee Engagement:* In order to deliver on our mission, it is essential to have an engaged workforce that exhibits our values, which include: being stewards of the internet, being passionate about technology, respecting others, exhibiting integrity, taking responsibility, and holding ourselves to a higher standard. These principles are integrated into our operating model and are foundational to our ability to attract, retain, and develop top talent. This commitment serves to create engagement and drives a collaborative and inclusive environment where our employees can thrive. To monitor engagement levels and well-being we routinely conduct employee surveys. In our most recent survey in October of 2022, approximately 85% of our employee population participated. The survey results indicated that our employees remain highly engaged and connected with our mission and values. Another engagement indicator is that the average tenure of our employees is approximately 9 years.

*Diversity, Equity and Inclusion (DEI):* We are a diverse organization, and we believe that drives stronger performance, better decision making, and an inclusive culture where differences are valued. We continue to focus on the hiring, retention, and advancement of women and underrepresented populations. In 2022, we continued to build on our strong foundation through roundtable discussions to support open dialogue, training sessions for all employees on the importance of a diverse and inclusive workplace, and growing our employee resource group representation. Verisign continues to partner with organizations that are dedicated to resisting and reversing historical injustice. Our progress is evident through our October 2022 employee

survey results where participants indicated that they understand how to support an inclusive work environment and that Verisign demonstrates a visible commitment to diversity.

*Compensation, Pay Equity, and Employee Benefits:* To align with our philosophy of providing compelling total rewards, we have practices in place to deliver fair and equitable compensation for employees based on their contribution and performance. We benchmark and regularly review our compensation and benefits against the market to confirm they remain competitive. We offer a broad and comprehensive set of benefits to meet the diverse needs of our workforce. In addition, we regularly perform analyses on base pay, annual incentives, and long-term incentives to help calibrate compensation and ensure pay equity.

*Talent Development and Acquisition:* We are committed to the continued development of our people. Strategic talent reviews and succession planning occur on a regular basis. Our management training is designed to increase capability in the areas of communication, engagement, coaching, conflict management, and business skills, while fostering an ethical, supportive work environment free from bias and harassment. We sponsor skill development for all employees through our online learning and development platform. In addition, we host a series of instructor-led and on-demand learning sessions designed to build our team's skills and knowledge required for the future. Our managers regularly hold conversations with employees about career management, coaching, and other development opportunities to help encourage and drive the growth of our talent. We are focused on the competitive labor market, and we are working diligently to attract the best talent from a diverse range of sources. We continue to broaden our sourcing strategies, refresh our employment branding, and develop targeted recruitment strategies for specialized skill sets and underrepresented populations. In 2022, these strategies enabled us to hire a significant number of female and racially or ethnically diverse employees.

*Hybrid Work Posture:* After shifting to remote work during the COVID 19 pandemic, we are now transitioning to a hybrid work posture. Over the latter half of 2022, we piloted our new hybrid work posture with a focus on how work gets done versus where it gets done. Leaders met with their teams to develop team agreements that summarized the operating norms and protocols their teams need to use in this new hybrid environment. The team agreements created the foundation for employees to create work schedules that align with corporate and individual needs as well as provide employees the flexibility to manage work-life balance. Our managers received training on managing in a hybrid environment. The training focused on leading with inclusive practices, effective communication, empathy, and accountability. Our offices remain a place for collaboration, networking, and strategic discussion. We continue to provide our employees with the equipment and resources that they require to accomplish their work regardless of location.

The following table shows a comparison of our consolidated employee headcount, by function:

	As of December 31,		
	2022	2021	2020
Employee headcount by function:			
Cost of revenues	242	235	235
Research and development	255	250	260
Selling, general and administrative	420	419	414
Total	917	904	909

## Intellectual Property

We rely on a combination of copyrighted software, trademarks, service marks, patents, trade secrets, know-how, restrictions on disclosure, and other methods to protect our proprietary assets. We also enter into confidentiality and/or intellectual property assignment agreements with our employees, consultants and current and potential affiliates, customers and business partners. We also control access to and distribution of proprietary documentation and other confidential information.

We have been issued numerous patents in the U.S. and abroad, covering a wide range of our technologies. Additionally, we continue to file patent applications with respect to certain of our technologies in the U.S. Patent and Trademark Office and internationally. Patents may not be awarded with respect to these applications and even if such patents are awarded, such patents may not provide sufficient protection of our technologies. We continue to consider opportunities for strategic growth and use of our patent portfolio.

We have obtained trademark registrations for the VERISIGN mark and VERISIGN logo in the U.S. and certain countries, and have pending trademark applications for the VERISIGN logo in a number of other countries. We have common law rights in other proprietary names. We take steps to enforce and police Verisign's trademarks. We rely on the strength of our Verisign brand to help differentiate ourselves in the marketing of our products and services.

Our principal intellectual property consists of, and our success is dependent upon, proprietary software used in our business and certain methodologies (many of which are patented or for which patent applications are pending) and technical expertise and proprietary know-how we use in both the design and implementation of our current and future registry services. We own our proprietary Shared Registration System through which registrars submit second-level domain name registrations for each of the registries we operate, as well as the ATLAS distributed lookup system which processes hundreds of billions of queries per day. Some of the software and protocols used in our business are in the public domain or are otherwise available to our competitors, and some are based on open standards set by organizations such as the Internet Engineering Task Force. To the extent any of our patents are considered “standard essential patents,” we may be required to license such patents to our competitors on reasonable and non-discriminatory terms or otherwise be limited in our ability to assert such patents.

### Information About Our Executive Officers

The following table sets forth information regarding our executive officers as of February 17, 2023:

<u>Name</u>	<u>Age</u>	<u>Position</u>
D. James Bidzos	67	Executive Chairman and Chief Executive Officer
Todd B. Strubbe	59	President and Chief Operating Officer
George E. Kilguss, III	62	Executive Vice President, Chief Financial Officer
Danny R. McPherson	48	Executive Vice President, Engineering, Operations and Chief Security Officer
Thomas C. Indelicarto	59	Executive Vice President, General Counsel and Secretary

**D. James Bidzos** has served as Executive Chairman since August 2009 and Chief Executive Officer since August 2011. He served as President from August 2011 to February 2020. He served as Executive Chairman and Chief Executive Officer on an interim basis from June 2008 to August 2009 and served as President from June 2008 to January 2009. He served as Chairman of the Board since August 2007 and from April 1995 to December 2001. He served as Vice Chairman of the Board from December 2001 to August 2007. Mr. Bidzos served as a director of VeriSign Japan from March 2008 to August 2010 and served as Representative Director of VeriSign Japan from March 2008 to September 2008. Mr. Bidzos served as Vice Chairman of RSA Security Inc., an internet identity and access management solution provider, from March 1999 to May 2002, and Executive Vice President from July 1996 to February 1999. Prior thereto, he served as President and Chief Executive Officer of RSA Data Security, Inc. from 1986 to February 1999.

**Todd B. Strubbe** has served as Chief Operating Officer since April 2015 and President since February 2020. From September 2009 to April 2015, he served as the President of the Unified Communications Business Segment for West Corporation, a provider of technology-driven communications services. Prior to this, he was a co-founder and Managing Partner of Arbor Capital, LLC. He has also served in executive leadership positions at First Data Corporation and CompuBank, N.A. and as an associate and then as an engagement manager with McKinsey & Company, Inc. He also served for five years as an infantry officer with the United States Army. Mr. Strubbe holds an M.B.A. degree from Harvard Business School and a B.S. degree from the United States Military Academy at West Point.

**George E. Kilguss, III** has served as Chief Financial Officer since May 2012. From April 2008 to May 2012, he was the Chief Financial Officer of Internap Network Services Corporation, an IT infrastructure solutions company. From December 2003 to December 2007, he served as the Chief Financial Officer of Towerstream Corporation, a company that delivers high speed wireless internet access to businesses. From 1997 to 2000, he served as the Chief Financial Officer of Stratos Global Corporation, a mobile satellite services company. Mr. Kilguss holds an M.B.A. degree from the University of Chicago’s Graduate School of Business and a B.S. degree in Economics and Finance from the University of Hartford.

**Danny R. McPherson**, has served as Executive Vice President, Engineering, Operations, and Chief Security Officer since April 2022. From May 2010 to April 2022, he served in various roles of increasing responsibility, including as Chief Security Officer. Prior to joining the Company, Mr. McPherson was Chief Security Officer with Arbor Networks, a cybersecurity solutions company, and prior to that held technical leadership positions in architecture, engineering and operations with Amber Networks, a network technology company, Qwest Communications, Inc., a telecommunications company, Genuity, Inc., a technology company, MCI Communications, Inc., a telecommunications company, and the U.S. Army Signal Corps.

**Thomas C. Indelicarto** has served as General Counsel and Secretary since November 2014. From September 2008 to November 2014, he served as Vice President and Associate General Counsel. From January 2006 to September 2008, he served as Litigation Counsel. Prior to joining the Company, Mr. Indelicarto was in private practice as an associate at Arnold & Porter LLP and Buchanan Ingersoll (now, Buchanan Ingersoll & Rooney, PC). Mr. Indelicarto also served as a U.S. Army officer for nine years. Mr. Indelicarto holds a J.D. degree from the University of Pittsburgh School of Law and a B.S. degree from Indiana University of Pennsylvania.

## ITEM 1A. RISK FACTORS

*Please carefully consider the following discussion of significant factors, events and uncertainties that make an investment in our securities risky. In addition to other information in this Form 10-K, the following risk factors should be carefully considered in evaluating us and our business. When the factors, events and contingencies described below or elsewhere in this Form 10-K materialize, our business, operating results, financial condition, reputation, cash flows or prospects can be materially adversely affected. In such case, the trading price of our common stock could decline and you could lose part or all of your investment. Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also materially adversely affect our business, operating results, financial condition, reputation, cash flows and prospects. Actual results could differ materially from those projected in the forward-looking statements contained in this Form 10-K as a result of the risk factors discussed below and elsewhere in this Form 10-K and in other filings we make with the SEC.*

### **Cybersecurity and Technology Risk Factors**

**Attempted security breaches, including from the exploitation of vulnerabilities, cyber-attacks and Distributed Denial of Service (“DDoS”) attacks against our systems and services increase our costs, expose us to potentially material liability, and could materially harm our business and reputation.**

As an operator of critical internet infrastructure, we experience a high rate of cyber-attacks and attempted security breaches targeting our systems and services, including the most sophisticated forms of attacks, such as advanced persistent threat attacks, exploitation of zero-day vulnerabilities, ransomware attacks, and social engineering attacks. The forms of these attacks are constantly evolving and may involve methods, tools, and strategies that may not have been previously identified and may not have been observed until the moment of launch, or until sometime after, making these attacks virtually impossible to anticipate and difficult to defend against. In addition to external threats, our systems and services are subject to insider threat risks, including physical or electronic break-ins, sabotage, and risks from suppliers, such as consultants and advisors, SaaS providers, hardware, software, and network systems manufacturers, regional internet registries, and other vendors, or from current or former contractors or employees. These threats and any resulting security breaches can arise from intentional or unintentional actions. Our continued exposure to these threats and the potential that they could lead to material liability claims against us requires us to expend significant financial and other resources. We have developed policies, standards, and procedures to identify, protect, detect, respond, and recover from threats posed by cybersecurity risks, and failure to comply with these policies, standards, and procedures by our employees or suppliers could limit our ability to effectively manage threats from these cybersecurity risks. In addition, we must ensure that our employees stay focused on cybersecurity threats especially in our hybrid work environment, or our ability to effectively manage cybersecurity risks could be impacted. Our failure to effectively manage these security risks, including insider threats, could result in material harm to our business, including loss of or delay in revenues, failure to meet service level agreements, material liability claims, failure to maintain market acceptance, injury to our reputation, and increased costs, and could call into question our ability to preserve the security and stability of the internet.

Security vulnerabilities in our systems and our vendors’ systems, including vulnerabilities in third party software and hardware, pose a material risk to our operations. We use externally-developed technology, systems, and services, including both hardware and software, for a variety of purposes, including compute, storage, encryption and authentication, back-office support, and other functions. We have developed policies, standards, and procedures to reduce the impact of security vulnerabilities in system components, as well as at any vendors where our data is stored or processed. However, such measures cannot provide absolute security. While we strive to remediate known vulnerabilities on a timely basis, such vulnerabilities could be exploited before our remediation is effective and if so, could cause systems and service interruptions, data loss and other damages. Our failure to identify, remediate and mitigate security vulnerabilities, including any potential failure to timely replace and upgrade hardware, software, or other technology assets, could result in material harm to our business, including loss of or delay in revenues, failure to meet service level agreements, material liability claims, failure to maintain market acceptance, injury to our reputation, increased costs, and call into question our ability to preserve the security and stability of the internet.

In addition, our networks have been, and likely will continue to be, subject to DDoS attacks. Recent industry experience has demonstrated that DDoS attacks continue to grow in size and sophistication and have the ability to widely disrupt internet services. While we have adopted mitigation techniques, procedures, and strategies to defend against DDoS attacks, and have successfully mitigated DDoS attacks to date, there can be no assurance that we will be able to defend against every attack, especially as the attacks increase in size and sophistication. Any attack, even if only partially successful, could disrupt our networks, increase response time, negatively impact our ability to meet our service level agreements, and generally impede our ability to provide reliable service to our customers and the broader internet community. We have historically incurred, and will continue to incur, significant costs to enable our infrastructure to process levels of attack traffic that can be substantially larger than our normal transaction volume. We are employing new technologies and new and different services and capabilities to help mitigate DDoS attacks. If these new technologies, services and capabilities are not effective, our infrastructure could be

disrupted, our response times could increase, our ability to meet our service level agreements could be negatively impacted, and our ability to provide reliable service to our customers and the broader internet community could be impeded.

In addition, we are subject to social engineering attacks including phishing, spear phishing, whaling, vishing, smishing, and domain spoofing, which are designed to entice people to divulge sensitive information or take actions that, if successful, could pose a material risk to our operations. The number of such attacks is increasing. Social engineering attacks have occurred in concert with ransomware attacks. While we deploy advanced tools and conduct continuous security awareness training to address social engineering attacks, such measures cannot provide absolute security. Similarly, although we implement redundant architecture and multiple recovery solutions, and conduct periodic exercises to mitigate the threat of ransomware, we still may be subject to successful ransomware attacks. Our failure to prevent such attacks, including any successful social engineering attack, could result in our inability to meet our service legal agreements and could otherwise materially harm our business, including from legal claims, governmental investigations and scrutiny, injury to our reputation, and increased costs.

We do not maintain specific reserves for security breaches, cyber-attacks and DDoS attacks against our systems and the amount of insurance coverage we maintain may be inadequate to cover claims or liabilities relating to such attacks.

**We may introduce undetected or unknown defects into our systems or services, which could materially harm our business and harm our vendors or our customers.**

Despite testing, services as complex as those we offer or develop could contain undetected defects or errors, which could result in service outages or disruptions, compromised customer data, including DNS data, diversion of development resources, injury to our reputation, legal claims, increased insurance costs or increased service costs. Performance of our services, whether or not defective, could have unforeseen or unknown adverse effects on the networks over which they are delivered, on internet users and consumers, and on third-party applications and services that use our services, any of which could result in legal claims against us. While we strive to prevent, detect and remediate defects or errors, they can and do occur and they could result in our inability to meet customer expectations in a timely manner, failure to meet our service level agreements, injury to our reputation, and increased costs.

**Our infrastructure and services are subject to vulnerabilities in the global routing system for the internet, as well as risks arising from internet services providers' increasing adoption of the Resource Public Key Infrastructure system.**

Routing on the internet depends on the Border Gateway Protocol ("BGP"), which is a protocol that relies on networks within the internet infrastructure acting in a trustworthy manner when sharing information about destinations for connectivity and the routing of internet traffic. As a trust-based protocol, BGP has a number of vulnerabilities that may lead to outages or disrupt our services, including as a result of "route hijacks" that involve accidental or malicious rerouting of internet traffic, or "route leaks" that involve the malicious or unintentional propagation of routing information beyond the intended scope of the originator, receiver, and/or one of the networks along the route's path. Both route hijacks and route leaks can result in partial or full rerouting of internet traffic for the impacted destinations. These types of events, which are generally beyond our control, could enable an array of attack conditions or service disruptions, and could result in adverse publicity and adversely affect the public's perception of the security of e-commerce and communications over the internet, as well as of the security or reliability of our services.

To address internet routing system vulnerabilities, many internet service providers have adopted and apply internet reachability policies based on a system known as the Resource Public Key Infrastructure ("RPKI") operated by the regional internet registries ("RIRs"). The RIRs allocate internet number resources, such as internet protocol addresses, to enterprises and network operators. We have limited visibility into the maturity of and investment in the RIRs' operational and security controls, which are outside of our control. When the availability, integrity, or confidentiality of any of the information in the RPKI system, or systems used to maintain and administer RPKI data and systems, are impacted or otherwise compromised in any of the RIRs, or any network operator that is a relying party of the RPKI system, or the operations or ingestion of data from the RPKI system are otherwise impacted by a known or unknown vulnerability, our services may be negatively impacted. Such impacts may include degraded or full loss of reachability of service addresses in the global internet routing system, resulting in degradation or complete loss of availability of our registration and resolution services. A compromise of the RPKI system and related services, or unintentional or unauthorized manipulation of data therein, may also result in other denial of service attack conditions for our infrastructure and services. The systemic dependencies introduced by RPKI and the relying parties of the RPKI system, including network service providers, are outside of our control, and systems that depend upon the RPKI may be only as secure as the weakest elements of the RPKI system. Contracting with RIRs for the provision of and access to RPKI services carries material operational risks, as described above, as well as material contractual risks, which may expose us to service disruptions and material liability.

**We could encounter system interruptions or systems failures resulting from activities beyond our direct control that could materially harm our business.**

We depend on the uninterrupted operation of our various systems, secure data centers, and other computer and communication networks. Our systems and operations are vulnerable to damage or interruption from power loss, transmission cable cuts and other telecommunications failures, damage or interruption caused by fire, earthquake, and other natural disasters, intentional acts of vandalism, terrorist attacks, unintentional mistakes, or errors. Our systems and operations also face risks inherent in, or arising from, the terms and conditions of our agreements with service providers to operate our networks and data centers. We are also subject to the risk of state suppression of internet operations. Any of these problems or outages could create potential liability and exposure, including from a failure to meet our service level agreements, and could decrease customer satisfaction, harming our business, or resulting in adverse publicity and damage to our reputation or call into question our ability to preserve the security and stability of the internet.

**Our data centers, our data center systems, including the Shared Registration Systems located at our data centers, and our resolution systems are vulnerable to damage or interruption, which could impede our ability to provide our services, expose us to material liability, and materially harm our reputation.**

Most of the computing infrastructure for our Shared Registration System is located at, and most of our customer information is stored in, data centers we own or lease and operate. In 2019, we expanded some of our data center services to a leased data center facility. These data centers are vulnerable to damage or interruption, including from natural disasters, such as fires, earthquakes, hurricanes, and floods, power loss, hardware or system failures, physical or electronic break-ins, human error or interference. We are also updating our network architecture in several of our new and existing data centers. If our data center facilities or the updated network architecture do not operate as expected, including the ability to quickly switch over between sites, we could experience service interruptions or outages. A failure in the operation of our Shared Registration System could result in the inability of one or more registrars to register or manage domain names for a period of time. If such a registrar has not implemented robust services in a manner that preserves transactions until processed by the registry, then the failure in the operation of our Shared Registration System could result in permanent loss of transactions at the registrar during that period. A failure in the operation of our Shared Registration System could also impact our ability to provide up-to-date information in our resolution systems, which could result in breaches of our service level agreements pertaining to our resolution services and impact the resolution of domain names on the internet. Although we carry insurance, we do not carry insurance or designated financial reserves for such interruptions.

In addition, our services depend on the secure and efficient operation of the internet connections to and from customers to our Shared Registration System residing in our secure data centers. These connections depend upon the secure and efficient operation of internet service providers, internet exchange point operators, and internet backbone service providers. Such providers have encountered periodic operational problems or experienced outages in the past beyond our scope of control and may continue to encounter problems and outages or may choose to discontinue their service. If the providers that our connections depend upon do not protect, maintain, improve, and reinvest in their networks or present inconsistent, incorrect, or invalid data regarding DNS responses through their networks, our business could be harmed.

A failure in the operation or update of the root zone servers, the root zone file, the Root Zone Management System, the TLD name servers, the TLD zone files that we operate, or other network functions, could result in, among other problems, (1) a DNS resolution or other service outage or degradation, (2) the deletion of one or more gTLDs or ccTLDs from the internet, (3) the deletion of one or more second-level domain names from the internet, or (4) a misdirection of one or more domain names to different servers. A failure in the operation or update of the supporting cryptographic and other operational infrastructure that we maintain could result in similar consequences. Any of these problems or outages could create potential material liability and exposure from litigation and investigations, could result in a failure to meet our service level agreements, and could decrease customer satisfaction, harming our business. These problems could also result in adverse publicity, decrease the public's trust in the security of e-commerce, or call into question our ability to preserve the security and stability of the internet.

We retain certain customer and employee information in our data centers and various domain name registration systems. Any physical or electronic break-in or other security breach or compromise of the information stored at our data centers or domain name registration systems may jeopardize the security of information we retain or that is retained in the computer systems and networks of our customers. In such an event, we could face material liability and exposure from litigation and investigations, fail to meet service level agreements, or be at risk for loss of various security and standards-based compliance certifications needed for operation of our businesses, and customers could be reluctant to use our services, any of which could also adversely affect our reputation and harm our business or cause financial losses that are either not insured against or not fully covered through any insurance.

**We face risks from the operation of the root server system and our performance of the Root Zone Maintainer functions under the RZMA.**

Although the overall root server system is redundant and dispersed, a failure or interruption in the operation of the root server system could impact the effectiveness of our *.com* and *.net* authoritative servers and therefore negatively impact directory services necessary for the operation of the internet. We also have an important operational role in support of a key Internet Assigned Numbers Authority (“IANA”) function as the Root Zone Maintainer. In this role, we provision and publish the authoritative root zone data and make it available to all root server operators under the RZMA with ICANN. If we make errors in the publication of the root zone, we may be subject to material claims challenging the RZMA or our performance under it, including tort claims, and we may not have immunity from, or sufficient indemnification or insurance for, such claims.

**Contractual, Regulatory, Legal and Compliance Risk Factors**

**Any loss or modification of our right to operate the *.com* and *.net* gTLDs could have a material adverse impact on our business and result in loss of revenues.**

Substantially all of our revenues are derived from our operation of the *.com* gTLD under our Cooperative Agreement with the DOC and our *.com* Registry Agreement as well as our operation of the *.net* gTLD under our *.net* Registry Agreement. Any loss or modification of our right to operate the *.com* and *.net* gTLDs could materially and adversely impact our ability to conduct our business and result in loss of revenues. Our *.com* and *.net* Registry Agreements contain “presumptive” rights of renewal upon the expiration of their current terms on November 30, 2024 and June 30, 2023, respectively. ICANN could refuse to renew upon expiration or terminate our *.com* Registry Agreement or our *.net* Registry Agreement if, upon proper notice, (1) we fail to cure a fundamental and material breach of certain specified obligations, and (2) we fail to timely comply with a final decision of an arbitrator or court. Additionally, each of the *.com* and *.net* Registry Agreements provide that if certain terms of these agreements are not similar to such terms generally in effect in the registry agreements of the five largest gTLDs, then a renewal of these agreements would be upon terms reasonably necessary to render such terms to be similar to the registry agreements for those other gTLDs. Any such terms, if they apply, could be unfavorable to us and have a material adverse impact on our business.

Standard renewals of the *.com* Registry Agreement do not require further DOC approval, although the prior written approval of the DOC is required for the removal of, or any changes to the pricing section (other than as approved in Amendment 35 to the Cooperative Agreement), and for changes to certain other specified terms whether such removal or changes are made at a renewal or otherwise. We can provide no assurances that DOC approval would be provided upon our request for any of these changes.

In addition, under Amendment 35 to the Cooperative Agreement, we have agreed to continue to operate the *.com* gTLD in a content-neutral manner and to work within ICANN processes to promote the development of content-neutral policies for the operation of the DNS, and under our binding letter of intent with ICANN, we have agreed to work with the ICANN community to develop certain best practices and other commitments for the security, stability and resiliency of the DNS and the internet. Such policies and processes could expose us to compliance costs and substantial liability and result in costly and time-consuming investigations or litigation.

**Changes or challenges to the pricing provisions in the *.com* Registry Agreement could have a material adverse impact on our business.**

Under the terms of the *.com* Registry Agreement, we may increase the annual fee of each *.com* domain name registration or renewal by up to 7% over the previous year in each of the final four years of each six-year period. We can provide no assurance that we will exercise such right to increase the annual fee. In addition to this contractual right, we are entitled to increase the annual fee of each *.com* domain name registration or renewal by up to 7% due to the imposition of any new specifications or policies adopted by ICANN pursuant to the procedures set forth in its bylaws and due process (“Consensus Policies”) or documented extraordinary expense resulting from an attack or threat of attack on the security and stability of the DNS (an “Extraordinary Expense”). In addition, our ability to increase the price for *.com* domain name registrations and renewals due to a Consensus Policy or Extraordinary Expense may occur only in years in which we do not increase the price for *.com* domain name registrations and renewals as described above. It is uncertain whether circumstances would arise that would permit us to take a price increase due to a Consensus Policy or Extraordinary Expense, or if they do, whether we would seek to increase the price for *.com* domain name registrations for this reason. A failure to seek and obtain a price increase due to a Consensus Policy or Extraordinary Expense, when available, could negatively affect our operating results. We also have the right under the Cooperative Agreement to seek the removal of these pricing restrictions on the *.com* gTLD if we demonstrate to the DOC that market conditions no longer warrant these restrictions. However, we can provide no assurances whether we will seek the removal of these restrictions, or whether the DOC would approve the removal of these restrictions.

Our .com Registry Agreement, including its pricing provisions, has faced, and could face in the future, challenges, including possible legal challenges, or challenges under ICANN's accountability mechanisms, from ICANN, registrars, registrants, and others, and any adverse outcome from these challenges could have a material adverse effect on our business.

**Government regulation and the application of new and existing laws in the U.S. and internationally may slow business growth, increase our costs of doing business, create potential material liability and could have a material adverse effect on our business.**

Application of new and existing laws and regulations in the U.S. or internationally to the internet or the domain name industry have imposed and may in the future impose new costs and new restrictions on our business. Laws and regulations, including those designed to restrict who can register and who can distribute domain names or to require registrants to provide additional documentation to register domain names, have, and may in the future, impose significant additional costs on our business and subject us to additional liabilities or could prevent us from operating in certain jurisdictions. For example, the government of China has indicated that it will issue, and has issued, new regulations, and has begun to enforce existing regulations, that impose additional costs on, and risks to, our provision of registry services in China and could impact the demand for domain name registrations in China. Registries, including us, and China-based registrars are also required by some of these regulations to obtain a government-issued license for each gTLD or ccTLD operating in China. Any failure to obtain or renew the required licenses, or to comply with any license requirements or any updates thereto, by us or our China-based registrars could impact our current and future business in China.

We are also subject to changing laws and regulations that impact whether, how, and under what circumstances we may transfer, process and/or receive certain data that is critical to our operations, including data shared between countries or regions in which we operate and data shared among our products and services. For example, following the invalidation of the U.S.-EU Safe Harbor by the European Court of Justice ("EUCJ") in 2015, the European Union and United States agreed to an alternative framework for data transferred from the European Union to the United States, called Privacy Shield. In 2018, Privacy Shield was also invalidated by the EUCJ. In 2022, the United States and European Union announced a new, but undefined data transfer framework, which once finalized, also could be subject to further legal challenges.

**New laws, regulations, directives or ICANN policies that require us to obtain and maintain personal information of registrants of domain names in the .com and .net gTLDs could impose material compliance costs and could create new, material legal and others risks to our business.**

If we are required to, or choose to, obtain and maintain personal information of registrants of domain names in the .com and .net gTLDs we could be required to incur significant compliance and legal costs as a result of GDPR and other similar regulations. For example, we could incur material costs to protect such information from unauthorized disclosure and, under GDPR, to ensure authorized disclosures are permitted. Failure to properly protect such information, or failure to comply with GDPR, could expose the Company to material costs and penalties. In addition, new obligations to obtain and maintain personal information of registrants in the .com and .net gTLDs could conflict with certain laws and regulations that may require such personal information be maintained solely within the jurisdiction of the data subject. In addition, any such new obligations could increase the cost and risks associated with complying with regulations that require verification of registrant personal information, including for purposes of complying with the economic and trade sanctions programs administered by the Office of Foreign Assets Control ("OFAC").

Such laws, regulations, directives or ICANN policies, could give rise to significant claims, inquiries, investigations or other actions against us, which could result in significant costs, damages, fines or penalties and could delay the development of new products, change our current business practices, result in negative publicity, require significant management time and attention, all or any of which could materially harm our business.

**Our international operations expose us and our business to additional economic, legal, regulatory and political risks that could have a material adverse impact on our revenues and business.**

A significant portion of our revenues is derived from customers outside the U.S. Our business operations in international locations have required, and will continue to require, significant management attention and resources. We may also need to tailor some of our services for a particular location and to enter into international distribution and operating relationships. We may fail to maintain our ability to conduct business, including potentially material business operations in some international locations, or we may not succeed in expanding our services into new international locations or expand our presence in existing locations. Failure to do so could materially harm our business. Moreover, local laws and customs in many countries differ significantly from those in the U.S. In many foreign countries, particularly in those with developing economies, it is common for others to engage in business practices that are prohibited by our internal policies and procedures or U.S. law or regulations applicable to us. There can be no assurance that our employees, contractors and agents will not take actions in violation of such policies, procedures, laws and/or regulations. Violations of laws, regulations or internal policies and procedures by our employees, contractors or agents could result in financial reporting problems, investigations, fines, penalties, or prohibition on

the importation or exportation of our products and services and could have a material adverse effect on our business. In addition, we face risks inherent in doing business internationally, including:

- competition with companies in international locations or other domestic companies entering international locations in which we operate, as well as local governments actively promoting ccTLDs that we do not operate;
- political and economic tensions between governments and changes in international trade policies and/or the economic and trade sanctions programs administered by OFAC of the U.S. Department of the Treasury;
- tariffs and other trade barriers and restrictions;
- difficulties in staffing and managing international operations;
- potential problems associated with adapting our services to technical conditions existing in different countries;
- additional vulnerability from terrorist groups targeting U.S. interests abroad;
- potentially conflicting or adverse tax consequences;
- reliance on third parties in international locations in which we only recently started doing business; and
- potential concerns of international governments or customers and prospects regarding doing business with U.S. technology companies due to alleged U.S. government data collection policies.

Escalating political tensions between the United States and China in particular may pose additional risks to our business in China. In 2020 and 2021, the U.S. government announced restrictions on trading with certain Chinese companies. The Chinese government subsequently announced actions that, if implemented, could impose additional restrictions on the Chinese operations of non-Chinese companies. These and future government actions impacting our ability to operate in China may cause our management's attention to be diverted, our reputation to be damaged, or our business in China to be adversely affected.

**Changes in, or interpretations of, tax rules and regulations or our tax positions may materially and adversely affect our income taxes.**

We are subject to income taxes in both the U.S. and numerous international jurisdictions. Significant judgment is required in determining our worldwide provision for income taxes. In the ordinary course of our business, there are many transactions and calculations where the ultimate tax determination is uncertain. Our effective tax rates may fluctuate significantly on a quarterly basis because of a variety of factors, including changes in the mix of earnings and losses in countries with differing statutory tax rates, changes in our business or structure, changes in tax laws that could adversely impact our income or non-income taxes or the expiration of or disputes about certain tax agreements in a particular country. We are subject to audit by various tax authorities. In accordance with U.S. GAAP, we recognize income tax benefits, net of required valuation allowances and accrual for uncertain tax positions. Although we believe our tax estimates are reasonable, the final determination of tax audits and any related litigation could be materially different than that which is reflected in historical income tax provisions and accruals. Should additional taxes be assessed as a result of an audit or litigation, an adverse effect on our results of operations, financial condition and cash flows in the period or periods for which that determination is made could result.

The Organization for Economic Cooperation and Development ("OECD") continues to issue guidance that will provide a long-term, multilateral proposal on the taxation of the digital economy. Similarly, some international tax jurisdictions, independent of the OECD, have enacted or may enact new tax regimes aimed at income resulting from digital services. Although we cannot predict the nature or outcome of such changes or the likelihood of such legislative proposals being adopted in the U.S. or throughout the world, any or all of these changes in tax laws could increase our taxes and adversely impact our financial condition and cash flow.

**Our business faces risks arising from ICANN's consensus and temporary policies, technical standards and other processes.**

Our Registry Agreements with ICANN require us to implement Consensus Policies and changes mandated by ICANN through temporary specifications or policies ("Temporary Policies"). ICANN could adopt Consensus Policies or Temporary Policies that (1) are unfavorable to us as the registry operator of .com, .net and other gTLDs we operate, (2) are inconsistent with our current or future plans, (3) impose substantial costs on our business, (4) subject the Company to additional legal risks, or (5) affect our competitive position. These Consensus Policies or Temporary Policies could have a material adverse effect on our business.

Our Registry Agreements with ICANN require us to implement and comply with various technical standards and specifications published by the Internet Engineering Task Force ("IETF"). ICANN could impose requirements on us through changes to these IETF standards, or new standards, that are inconsistent with our current or future plans, that impose substantial

costs on our business, that subject the Company to additional legal risks, or that affect our competitive position. Any such changes to the IETF standards, or new standards, could have a material adverse effect on our business.

**Weakening of, or changes to, the multi-stakeholder form of internet governance could materially and adversely impact our business.**

The internet is governed under a multi-stakeholder model comprising civil society, the private sector, including for-profit and not-for-profit organizations such as ICANN, governments, including the U.S. government, academia, non-governmental organizations and international organizations. If ICANN fails to uphold, or if the multi-stakeholder model is significantly redefined, it could harm our business. For example, certain governments, governmental organizations, and private actors continue to express dissatisfaction with the multi-stakeholder form of internet governance and have proposed alternatives including oversight by the United Nations or by international treaties. Furthermore, national legislation has been proposed on topics such as information security and access to personal information that effectively supplants the multi-stakeholder process for policy development in the DNS. Substantially weakening or replacing the multi-stakeholder form of internet governance could materially harm our business.

In addition, in 2016 the U.S. government transferred key internet functions to ICANN, who adopted new and enhanced accountability mechanisms in its bylaws such as the creation of the Empowered Community. There can be no assurance that the removal of the U.S. government oversight of these key functions, or the changes to ICANN's bylaws, will not negatively impact our business.

**Claims, lawsuits, audits or investigations in which we are or could become involved may result in material adverse outcomes to our business.**

We are, and may in the future become, involved in claims, lawsuits, audits, and investigations, including intellectual property litigation and infringement claims. Litigation is inherently unpredictable, and unexpected judgments or excessive verdicts do occur. In addition, proceedings that we initially view as immaterial could prove to be material. Adverse outcomes in lawsuits, audits and investigations, could result in significant monetary damages, including indemnification payments, or injunctive relief that could adversely affect our ability to conduct our business, and may have a material adverse effect on our financial condition, results of operations and cash flows. For example, we are engaged in activities to help mitigate security threats and other forms of DNS abuse in the gTLDs and ccTLDs we operate and we are involved in community efforts that could increase and expand such activities including potential new contractual obligations. Such activities include, for example, receiving reports of suspected threats and abuse from appropriate "trusted notifiers" (typically involving national and international law enforcement) and notifying registrars or others of domain names associated with suspected malicious or illegal activity. Our activities may also include disabling one or more domain names in the gTLDs or ccTLDs we operate including in response to governmental directives and orders in those jurisdictions in which we operate. Activities such as these have resulted in, and could in the future result in, significant litigation and could harm our reputation. Given the inherent uncertainties in litigation, even when we are able to reasonably estimate the amount of possible loss or range of loss and therefore record an aggregate litigation accrual for probable and reasonably estimable loss contingencies, the accrual may change in the future due to new developments or changes in approach. In addition, such claims, lawsuits, audits and investigations could involve significant expense and diversion of management's attention and resources from other matters.

**Strategic, Business and Operating Risk Factors**

**Deterioration of economic conditions could materially harm our business.**

Our business is, and could continue to be, adversely affected by the deterioration in national or global economic conditions, including high inflation rates, increasing interest rates, disruption in the supply chain, and currency fluctuations, resulting from the continuing economic effects of the COVID-19 pandemic, war and civil unrest, and other political and economic developments. The severity and duration of a these economic conditions, as well as the timing, strength, and sustainability of any recovery, are unknown and are not within the Company's control.

**The business environment is highly competitive and, if we do not compete effectively, we may suffer material adverse impact to our business, including lower demand for our products, reduced gross margins, and loss of market share.**

We face competition from services that provide an online identity or presence, including other gTLDs and ccTLDs. In order to remain competitive, we must continually demonstrate the security, stability, and resiliency of our services and must adopt and support new technologies to adapt our services to changing technologies, market conditions, and our customers' and internet users' preferences and practices. Also to remain competitive, we have undertaken important initiatives such as our efforts to acquire the .web gTLD, and we may in the future undertake other important initiatives. Any of these initiatives require significant resources, can subject us to regulatory scrutiny and/or negative publicity, and divert management attention from our existing business. Such undertakings, including our efforts to acquire the .web gTLD, may be unsuccessful and costly. In addition, competing technologies developed by others or the emergence of new industry standards may adversely affect our competitive position or render our services or technologies noncompetitive or obsolete. Finally, consolidation within our

industry has occurred and is likely to continue to occur. Our ability to participate and benefit from such consolidations may be limited and consolidation within our industry among our competitors could harm our competitive position and adversely impact our business.

We have been designated as the registry operator for certain new gTLDs, including certain IDN gTLDs. Our new gTLDs may not be as or more successful than the new gTLDs obtained by our competitors. In addition, our new gTLDs may face additional universal acceptance and usability challenges and it is possible that resolution of domain names within some of these new gTLDs may be blocked within certain state or organizational environments, challenging universal resolvability of these strings and their general acceptance and usability.

See the “Competition” section in Part I, Item 1 of this Form 10-K for further information.

**The evolution of technologies or internet practices and behaviors, the adoption of substitute technologies, or wholesale price increases of domain names in the gTLDs we operate may materially and negatively impact the demand for the domain names for which we are the registry operator.**

Technologies relating to online presence, including social media, mobile devices, apps, and search engines, have evolved and continue to evolve, changing the internet practices and behaviors of consumers and businesses. These ongoing changes can negatively impact the demand for our domain names. In addition, registrants purchase domain names for a variety of reasons, including personal, commercial, and investment reasons. Changes in the motivation of domain name registrants can negatively impact our business.

Technology changes to web browser or internet search technologies could reduce demand for domain names. Similarly, if internet users’ preferences or practices shift away from recognizing and relying on web addresses or if internet users were to significantly decrease the use of web browsers in favor of applications to locate and access content, demand for domain names in the gTLDs we operate could be negatively impacted. Demand for domain names in the gTLDs we operate could be negatively impacted by new technologies that significantly decrease the use of traditional domain names to present and protect an online identity. New technologies that encourage internet users to expand the use of third-level domains or alternate identifiers, such as identifiers from social networking, e-commerce platforms and microblogging sites, could also negatively impact the demand for domain names in the gTLDs we operate. In addition, the demand for domain names in the gTLDs we operate could be impacted by alternative namespaces with domain-name-like identifiers that are operated outside the single authoritative DNS root zone, including blockchain namespaces. To the extent that web browsers, applications, DNS registrars and DNS resolvers recognize and support such namespaces, and that internet users are able to perform online operations with identifiers from such namespaces, demand for domain names in gTLDs and ccTLDs in the single authoritative DNS root zone, including the gTLDs we operate, could be negatively impacted.

Some registrars and registrants purchase and resell domain names at an increased price in a secondary market. Adverse changes in the resale value of domain names, changes in the business models for such domain name registrars and registrants, or other factors, including regulations limiting the resale of domain names, could result in a decrease in the demand and/or renewal rates for domain names in the gTLDs we operate.

Some registrars and registrants seek to generate revenues by registering domain names specifically for website advertising. Changes in the way these registrars and registrants are compensated (including changes in methodologies and metrics) by advertisers and advertisement placement networks, such as Google, Baidu and Bing, have adversely affected, and may continue to adversely affect the market for domain names used for this purpose, which has resulted in, and may continue to result in, a decrease in demand and/or the renewal rate for such domain names. In addition, if spending on online advertising and marketing is reduced, this may result in a further decline in the demand for domain names used for this purpose.

Under the terms of the .com and .net Registry Agreements, as amended, we are permitted to increase the annual fee of each .com and .net domain name registration or renewal according to the provisions in these agreements. To the extent we increase our prices, there could be a decrease in the demand and/or renewal rates for .com or .net domain names.

**If we fail to expand our services into developing and emerging economies in international locations, our business may not grow.**

We seek to serve new, developing, and emerging economies in international locations to grow our business. These economies are rapidly evolving and may not grow or even if they do grow, our services may not be widely used or accepted there. Accordingly, the demand for our services in these locations is uncertain. Factors that may affect acceptance or adoption of our services in these locations include:

- regional internet infrastructure development, expansion, penetration and adoption, and the development, maturity and depth of our sales channels;
- acceptance and adoption of substitute products and services that enable online presence without a domain name, including social media, e-commerce platforms, website builders and mobile applications;

- increased acceptance and adoption of other substitute products and services, including ccTLDs or other gTLDs;
- public perception of the security of our products and services;
- the use of mobile applications as the primary engagement mechanism for navigating the internet; and
- government regulations affecting the internet, internet access and availability, domain name registrations or the provision of registry services, data security, privacy, or data localization, e-commerce or telecommunications.

If our services are not widely accepted or adopted in these locations, our business may not grow.

**Our business depends on registrars and their resellers maintaining their focus on marketing our products and services.**

All of the domain name registrations and renewals for the registries we operate occur through registrars. Registrars and their resellers engage in substantial marketing efforts to increase the demand and/or renewal rates for domain names as well as their own associated offerings. Consolidation in the registrar or reseller industry or changes in ownership, management, or strategy among individual registrars or resellers, including vertical integration by registrar or reseller industry participants, could result in significant changes to their businesses, operating models, and cost structures. These changes could include reduced marketing efforts for the gTLDs we operate or other operational changes that could adversely impact the demand and/or the renewal rates for the domain names for which we are the registry operator.

With the introduction of new gTLDs, many of our registrars and resellers have chosen to, and may continue to choose to, focus their short- or long-term marketing efforts on these new offerings and/or reduce the prominence or visibility of our products and services on their e-commerce platforms. Our registrars and resellers sell domain name registrations of other competing registries, including new gTLDs, and some also sell and support their own services for websites such as email, website hosting, and other services. Our registrars and resellers may be more motivated to sell to registrants to whom they can also market their own services. To the extent that registrars and resellers focus more on selling and supporting their services and less on the registration and renewal of domain names in the gTLDs we operate, our revenues could be adversely impacted. Our ability to successfully market our services to, and build and maintain strong relationships with, new and existing registrars or resellers is a factor upon which successful operation of our business is dependent. If we are unable to keep a significant portion of their marketing efforts focused on selling registrations of domain names in the gTLDs we operate, as opposed to other competing gTLDs, including the new gTLDs, or their own services, our business could be harmed.

**We depend on highly skilled employees to maintain and provide innovative solutions for our business, and our business could be materially harmed if we are not able to attract and retain such qualified talent.**

Our business is highly technical and requires individuals skilled and knowledgeable in unique technologies, configurations, operating systems, and software development tools. We depend on the knowledge, experience, and performance of these employees and leaders to effectively manage and provide innovative solutions for our business. For example, we require employees with expertise in DNS operations and with certain cybersecurity specialties. Because such employees are in high demand by our competitors and other companies, we must be able to attract, integrate, retain and motivate such highly skilled employees and leaders. Failure to attract and retain such employees and to effectively implement succession plans for these employees could harm our business.

**Intellectual Property Risk Factors**

**We rely on our intellectual property rights to protect our proprietary assets, and any failure by us to protect or enforce, or any misappropriation of, our intellectual property could materially harm our business.**

Our success depends in part on our internally developed technologies and related intellectual property. Despite our precautions, it may be possible for an external party to copy or otherwise obtain and use our intellectual property without authorization. Furthermore, the laws of other countries may not protect our proprietary rights in those countries to the same extent U.S. law protects these rights in the U.S. In addition, it is possible that others may independently develop substantially equivalent intellectual property. If we do not effectively protect our intellectual property, our business could suffer. Additionally, we have filed patent applications with respect to some of our technology in the U.S. Patent and Trademark Office and patent offices outside the U.S. Patents may not be awarded with respect to these applications and even if such patents are awarded, third parties may seek to oppose or otherwise challenge our patents, and such patents' scope may differ significantly from what was requested in the patent applications and may not provide us with sufficient protection of our intellectual property. In the future, we may have to resort to litigation to enforce and protect our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. This type of litigation is inherently unpredictable and, regardless of its outcome, could result in substantial costs and diversion of management attention and technical resources. Some of the software and protocols used in our business are based on standards set by standards setting organizations such as the IETF. To the extent any of our patents are considered "standards essential patents," in some cases we

may be required to license such patents to our competitors on reasonable and non-discriminatory terms or otherwise be limited in our ability to assert such patents.

We also license externally developed technology that is used in some of our products and services to perform key functions. These externally developed technology licenses may not continue to be available to us on commercially reasonable terms or at all. The loss of, or our inability to obtain or maintain, any of these technology licenses could hinder or increase the cost of our services, launching new products and services, entering into new markets and/or otherwise harm our business. Some of the software and protocols used in our business are in the public domain or may otherwise become publicly available, which means that such software and protocols are or may become equally available to our competitors.

We rely on the strength of our Verisign brand to help differentiate Verisign in the marketing of our products. Dilution of the strength of our brand could harm our business. We are at risk that we will be unable to fully register, build equity in, or enforce the Verisign logo in all markets where Verisign products and services are sold.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

#### **ITEM 2. PROPERTIES**

As of December 31, 2022, we owned each of our significant properties, which include our corporate headquarters facility in Reston, Virginia, and data center facilities in New Castle, Delaware and Dulles, Virginia. We also lease a number of smaller office and data center locations around the world. We believe that our existing facilities, both owned and leased, are in good condition and suitable for the conduct of our business.

#### **ITEM 3. LEGAL PROCEEDINGS**

As previously disclosed, Afilius Domains No. 3 Limited (now called Altanovo Domains Limited) (“Afilius”), a competitor and losing bidder in the .web auction, filed a form of arbitration proceeding against ICANN, an Independent Review Process (“IRP”) under ICANN’s bylaws, on November 14, 2018. Afilius alleges that the agreement between Verisign and Nu Dotco, LLC (“NDC”) pertaining to .web violated ICANN’s new gTLD Applicant Guidebook. As a result, Afilius claims that ICANN had a duty to disqualify NDC’s bid and award the .web gTLD to Afilius. Afilius also claims that ICANN would violate its bylaws pertaining to competition by awarding the .web gTLD to Verisign. Afilius amended its IRP request on March 21, 2019 in part to oppose Verisign’s and NDC’s participation in the IRP. A hearing was held on Verisign’s and NDC’s applications for participation and, on February 12, 2020, the IRP panel permitted Verisign and NDC to participate in aspects of the IRP. In early August 2020, the IRP panel held a hearing on Afilius’ claims.

The IRP panel issued its final decision on May 20, 2021. Consistent with Verisign’s position, the IRP panel dismissed Afilius’ claims for relief seeking to invalidate the .web auction and to award the .web gTLD to Afilius, concluding that such issues were beyond the IRP panel’s jurisdiction. Furthermore, as expected, the IRP panel’s ruling recommended that ICANN’s Board of Directors consider the objections made regarding the .web auction and then make a decision on the delegation of .web. With respect to ICANN, the final decision said that certain actions and/or inaction by ICANN in response to Afilius’ objections did violate aspects of ICANN’s bylaws related to transparency and fairness.

On June 19, 2021, Afilius filed an application to the IRP panel requesting that it interpret certain terms of, and make certain amendments to, the final decision. The IRP panel denied that application in its entirety on December 21, 2021 finding that it was “frivolous” and sanctioning Afilius by directing it to pay ICANN’s attorney fees. On January 16, 2022, ICANN’s Board directed its Board Accountability Mechanisms Committee (“BAMC”) to review the IRP panel’s final decision and to provide the Board with its findings to consider and recommendations to act upon regarding the award and delegation of .web. On May 19, 2022, the BAMC requested that the parties submit detailed summaries of their claims along with supporting materials. All parties submitted the requested materials by August 29, 2022. It is expected that after the BAMC makes its findings and recommendations, the ICANN Board will determine the final disposition of .web.

We are also involved in various investigations, claims and lawsuits arising in the normal conduct of our business, none of which, in our opinion, will have a material adverse effect on our financial condition, results of operations, or cash flows. We cannot assure you that we will prevail in any litigation. Regardless of the outcome, any litigation may require us to incur significant litigation expense and may result in significant diversion of management attention.

#### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**PART II****ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Market Information**

Our common stock is traded on the Nasdaq Global Select Market under the symbol VRSN. On February 10, 2023, there were 323 holders of record of our common stock. We cannot estimate the number of beneficial owners since many brokers and other institutions hold our stock on behalf of stockholders.

**Share Repurchases**

The following table presents the share repurchase activity during the three months ended December 31, 2022:

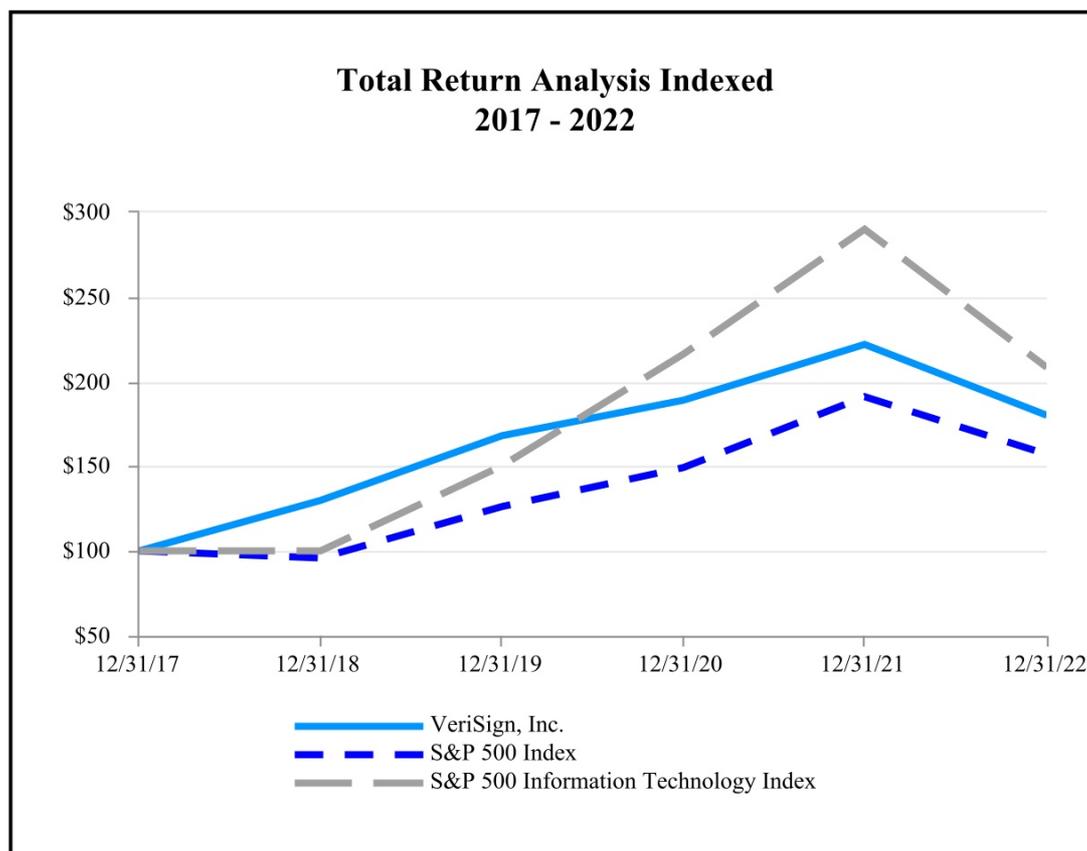
	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	Approximate Dollar Value of Shares That May Yet Be Purchased Under the Plans or Programs (1)(2)
	(Shares in thousands)			
October 1 – 31, 2022	429	\$178.98	429	\$ 993.8 million
November 1 – 30, 2022	339	\$191.75	339	\$ 928.8 million
December 1 – 31, 2022	350	\$200.08	350	\$ 858.8 million
	<u>1,118</u>		<u>1,118</u>	

- (1) Effective February 10, 2022, our Board of Directors authorized the repurchase of our common stock in the amount of \$705.4 million, in addition to the \$294.6 million that remained available for repurchases under the share repurchase program, for a total repurchase authorization of up to \$1.00 billion under the program.
- (2) Effective October 27, 2022, our Board of Directors authorized the repurchase of our common stock in the amount of \$803.0 million, in addition to the \$197.0 million that remained available for repurchases under the share repurchase program, for a total repurchase authorization of up to \$1.00 billion under the program. The share repurchase program has no expiration date. Purchases made under the program could be effected through open market transactions, block purchases, accelerated share repurchase agreements or other negotiated transactions.

**Performance Graph**

The information contained in the Performance Graph shall not be deemed to be “soliciting material” or “filed” with the SEC or subject to the liabilities of Section 18 of the Exchange Act, except to the extent that we specifically incorporate it by reference into a document filed under the Securities Act of 1933, as amended (the “Securities Act”), or the Exchange Act.

The following graph compares the cumulative total stockholder return on our common stock, the Standard and Poor’s (“S&P”) 500 Index, and the S&P 500 Information Technology Index. The graph assumes that \$100 (and the reinvestment of any dividends thereafter) was invested in our common stock, the S&P 500 Index and the S&P 500 Information Technology Index on December 31, 2017, and calculates the return annually through December 31, 2022. The stock price performance on the following graph is not necessarily indicative of future stock price performance.



	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22
VeriSign, Inc.	\$ 100	\$ 130	\$ 168	\$ 189	\$ 222	\$ 180
S&P 500 Index	\$ 100	\$ 96	\$ 126	\$ 149	\$ 191	\$ 157
S&P 500 Information Technology Index	\$ 100	\$ 100	\$ 150	\$ 216	\$ 290	\$ 208

ITEM 6. [Reserved]

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### FORWARD-LOOKING STATEMENTS

*This Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. These forward-looking statements are based on current expectations and assumptions and involve risks and uncertainties, including, statements regarding our expectations about the sufficiency of our existing cash, cash equivalents and marketable securities, and funds generated from operations, together with our borrowing capacity under the unsecured revolving credit facility. Forward-looking statements include, among others, those statements including the words "expects," "anticipates," "intends," "believes" and similar language. Our actual results may differ significantly from those projected in the forward-looking statements. Factors that might cause or contribute to such differences include, but are not limited to, those discussed in the section titled "Risk Factors" in Part I, Item 1A of this Form 10-K. You should also carefully review the risks described in other documents we file from time to time with the SEC, including the Quarterly Reports on Form 10-Q or Current Reports on Form 8-K that we file in 2023. You are cautioned not to place undue reliance on the forward-looking statements, which speak only as of the date of this Form 10-K. We undertake no obligation to update publicly or revise such statements, whether as a result of new information, future events, or otherwise, except as required by law.*

*This section of this Form 10-K generally discusses 2022 and 2021 items and year-to-year comparisons between 2022 and 2021. Discussions of 2020 items and year-to-year comparisons between 2021 and 2020 that are not included in this Form 10-K can be found in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2021.*

#### Overview

We are a global provider of domain name registry services and internet infrastructure, enabling internet navigation for many of the world's most recognized domain names. We enable the security, stability, and resiliency of key internet infrastructure and services, including providing Root Zone Maintainer services, operating two of the 13 global internet root servers, and providing registration services and authoritative resolution for the .com and .net top-level domains, which support the majority of global e-commerce.

As of December 31, 2022, we had approximately 173.8 million .com and .net registrations in the domain name base. The number of domain names registered is largely driven by continued growth in online advertising, e-commerce, and the number of internet users, which is partially driven by greater availability of internet access, as well as marketing activities carried out by us and our registrars. Growth in the number of domain name registrations under our management may be hindered by certain factors, including overall economic conditions, competition from ccTLDs, other gTLDs, services that offer alternatives for an online presence, such as social media, and ongoing changes in the internet practices and behaviors of consumers and businesses. Factors such as the evolving practices and preferences of internet users, and how they navigate the internet, as well as the motivation of domain name registrants and how they will manage their investment in domain names, can negatively impact our business and the demand for new domain name registrations and renewals.

#### 2022 Business Highlights and Trends

- We recorded revenues of \$1,424.9 million in 2022, which represents an increase of 7% compared to 2021.
- We recorded operating income of \$943.1 million during 2022, which represents an increase of 9% as compared to 2021.
- We finished 2022 with 173.8 million .com and .net registrations in the domain name base, which represents a 0.2% increase from December 31, 2021.
- During 2022, we processed 39.9 million new domain name registrations for .com and .net compared to 44.6 million in 2021.
- The final .com and .net renewal rate for the third quarter of 2022 was 73.7% compared to 75.0% for the same quarter of 2021. Renewal rates are not fully measurable until 45 days after the end of the quarter.
- We repurchased 5.5 million shares of our common stock for an aggregate cost of \$1.03 billion in 2022. As of December 31, 2022, there was \$858.8 million remaining for future share repurchases under the share repurchase program.
- We generated cash flows from operating activities of \$831.1 million in 2022, which represents an increase of 3% as compared to 2021.

- On February 9, 2023, we announced that we will increase the annual registry-level wholesale fee for each new and renewal .com domain name registration from \$8.97 to \$9.59, effective September 1, 2023.

### **Critical Accounting Estimates**

The discussion and analysis of our financial condition and results of operations are based upon our Consolidated Financial Statements, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. On an ongoing basis, management evaluates those estimates. Management bases its estimates on historical experience and on various assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily available from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Critical accounting estimates are those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on the financial condition or results of operations of the registrant. We believe the following critical accounting estimates and policies have the most significant impact on our consolidated financial statements:

#### *Income taxes*

We operate in multiple tax jurisdictions in the United States and internationally. Tax laws and regulations in these jurisdictions are complex, interrelated, and periodically changing. Significant judgment or interpretation of these laws and regulations is often required in determining our worldwide provision for income taxes, including, for example, the calculations of taxable income in each jurisdiction, deferred taxes, and the availability and amount of deductions and tax credits. We have recognized \$234.6 million of deferred tax assets, net as of December 31, 2022. Our income tax expense was \$206.4 million for the year ended December 31, 2022.

The final taxes payable are also dependent upon many factors, including negotiations with taxing authorities in various jurisdictions and resolution of disputes arising from various tax examinations. We only recognize or continue to recognize tax positions and tax benefit amounts that are more likely than not to be sustained upon examination. We adjust these amounts in light of changing facts and circumstances; however, due to the complexity of some of these uncertainties, the ultimate resolution may result in an outcome that is materially different from our current estimate of unrecognized tax benefits. See Note 10, "Income Taxes" of our Notes to Consolidated Financial Statements in Item 8 of this Form 10-K for further discussion of the \$165.5 million deferred tax asset and corresponding income tax benefit recognized in the fourth quarter of 2021.

### **Results of Operations**

The following table presents information regarding our results of operations as a percentage of revenues:

	Year Ended December 31,		
	2022	2021	2020
Revenues	100.0 %	100.0 %	100.0 %
Costs and expenses:			
Cost of revenues	14.1	14.5	14.2
Research and development	6.0	6.1	5.9
Selling, general and administrative	13.7	14.1	14.7
Total costs and expenses	33.8	34.7	34.8
Operating income	66.2	65.3	65.2
Interest expense	(5.3)	(6.3)	(7.1)
Non-operating income (loss), net	0.9	(0.1)	1.2
Income before income taxes	61.8	58.9	59.3
Income tax (expense) benefit	(14.5)	0.2	5.1
Net income	47.3 %	59.1 %	64.4 %

#### **Revenues**

Our revenues are primarily derived from registrations for domain names in the .com and .net domain name registries. We also derive revenues from operating domain name registries and technical systems for several other gTLDs and ccTLDs, all of which are not significant in relation to our consolidated revenues. For domain names registered in the .com and .net registries we

receive a fee from registrars per annual registration that is determined pursuant to our agreements with ICANN. Individual customers, called registrants, contract directly with registrars or their resellers, and the registrars, who are our direct customers, in turn register the domain names with Verisign. Changes in revenues are driven largely by changes in the number of new domain name registrations and the renewal rate for existing registrations as well as the impact of new and prior price increases, to the extent permitted by ICANN and the DOC. New registrations and the renewal rate for existing registrations are impacted by continued growth in online advertising, e-commerce, and the number of internet users, as well as marketing activities carried out by us and our registrars. We also offer promotional incentive-based discount programs to registrars based upon market conditions and the business environment in which the registrars operate.

Under the *.com* Registry Agreement, we are permitted to increase the price of a *.com* domain name registration by up to 7% in each of the final four years of each six-year period beginning on October 26, 2018. We increased the annual registry-level wholesale fee for each new and renewal *.com* domain name registration from \$7.85 to \$8.39 effective September 1, 2021, and from \$8.39 to \$8.97 effective September 1, 2022. On February 9, 2023, we announced that we will increase the annual registry-level wholesale fee for each new and renewal *.com* domain name registration from \$8.97 to \$9.59, effective September 1, 2023. We have the contractual right to increase the fees for *.net* domain name registrations by up to 10% each year during the term of our agreement with ICANN, through June 30, 2023. On July 28, 2022, we announced that we will increase the annual registry-level wholesale fee for each new and renewal *.net* domain name registration from \$9.02 to \$9.92, effective February 1, 2023. All fees paid to us for *.com* and *.net* registrations are in U.S. dollars.

A comparison of revenues is presented below:

	Year Ended December 31,				
	2022	% Change	2021	% Change	2020
	(Dollars in millions)				
Revenues	\$ 1,424.9	7 %	\$ 1,327.6	5 %	\$ 1,265.1

The following table compares the *.com* and *.net* domain name registrations in the domain name base:

	As of December 31,				
	2022	% Change	2021	% Change	2020
<i>.com</i> and <i>.net</i> domain name registrations in the domain name base	173.8 million	— %	173.4 million	5 %	165.2 million

Revenues increased by \$97.3 million in 2022 compared to 2021, primarily due to an increase in revenues from the operation of the registry for the *.com* gTLD driven by the price increases that became effective September 1, 2022 and 2021, and to a lesser extent, an increase in the domain name base for *.com*. As discussed in prior periods, we believe that the effects of the COVID-19 pandemic initially led to an increase in the demand for domain names, particularly as businesses and entrepreneurs sought to establish or expand their presence online in the beginning of the pandemic. This increased demand appears to have subsided in 2022. Additionally, revenues from the operation of the *.tv* registry increased by \$6.6 million in 2022 primarily due to the recognition of the remaining deferred revenue as the operation of the *.tv* registry was transitioned to a new operator in November 2022 and upon completion of the transition, we had no remaining performance obligations to our customers.

Demand for domain names has been primarily driven by continued internet growth and marketing activities carried out by us and our registrars. However, competitive pressure from ccTLDs, other gTLDs, services that offer alternatives for an online presence, such as social media, ongoing changes in internet practices and behaviors of consumers and business, as well as the motivation of existing domain name registrants managing their investment in domain names, such as for resale at increased prices or for revenue generation through website advertising, and global economic uncertainty, has limited the demand for domain names and may continue to do so in the future.

### Geographic revenues

We generate revenues in the U.S.; Europe, the Middle East and Africa (“EMEA”); China; and certain other countries, including Canada, Japan and Singapore. The following table presents a comparison of the Company’s geographic revenues:

	Year Ended December 31,				
	2022	% Change	2021	% Change	2020
	(Dollars in millions)				
U.S	\$ 937.6	10 %	\$ 851.3	6 %	\$ 804.7
EMEA	226.0	(2)%	231.7	8 %	214.2
China	106.0	4 %	101.7	(11)%	113.7
Other	155.3	9 %	142.9	8 %	132.5
Total revenues	\$ 1,424.9	7 %	\$ 1,327.6	5 %	\$ 1,265.1

Revenues in the table above are attributed to the country of domicile and the respective regions in which our registrars are located; however, this may differ from the regions where the registrars operate or where registrants are located. Revenue growth for each region may be impacted by registrars reincorporating, relocating, or from acquisitions or changes in affiliations of resellers. Revenues in the U.S. benefited from several such changes during 2022, while revenues in EMEA were negatively impacted. Revenue growth for each region may also be impacted by registrars domiciled in one region, registering domain names in another region. During 2022, revenues increased in all regions except EMEA, which declined due to the factors described above.

### Cost of revenues

Cost of revenues consist primarily of salaries and employee benefits expenses for our personnel who manage the operational systems, depreciation expenses, operational costs associated with the delivery of our services, fees paid to ICANN, customer support and training, costs of facilities and computer equipment used in these activities, telecommunications expense and allocations of indirect costs such as corporate overhead.

A comparison of cost of revenues is presented below:

	Year Ended December 31,				
	2022	% Change	2021	% Change	2020
	(Dollars in millions)				
Cost of revenues	\$ 200.7	5 %	\$ 191.9	7 %	\$ 180.2

Cost of revenues increased by \$8.8 million in 2022 compared to 2021 primarily due to a increases in compensation and benefits expenses, telecommunications expenses, allocated overhead expenses and several other individually insignificant factors. Compensation and benefits expenses increased by \$2.3 million as a result of an increase in expenses related to employee salaries. Telecommunications expenses increased by \$1.9 million due to an increase in network costs supporting our operations. Allocated overhead expenses increased by \$1.9 million primarily due to an increase in total allocable expenses.

### Research and development

Research and development expenses consist primarily of costs related to research and development personnel, including salaries and other personnel-related expenses, consulting fees, facilities costs, computer and communications equipment, support services used in our service and technology development, and allocations of indirect costs such as corporate overhead.

A comparison of research and development expenses is presented below:

	Year Ended December 31,				
	2022	% Change	2021	% Change	2020
	(Dollars in millions)				
Research and development	\$ 85.7	6 %	\$ 80.5	8 %	\$ 74.7

Research and development expenses increased by \$5.2 million in 2022 compared to 2021 primarily due to a decrease in capitalized labor, an increase in allocated overhead expenses and a combination of several other individually insignificant factors. Capitalized labor decreased by \$1.5 million due to a shift in work from capital projects to certain non-capital projects and

maintenance of existing software products. Allocated overhead expenses increased by \$1.3 million primarily due to an increase in total allocable expenses.

### ***Selling, general and administrative***

Selling, general and administrative expenses consist primarily of salaries and other personnel-related expenses for our executive, administrative, legal, finance, information technology, human resources, sales, and marketing personnel, travel and related expenses, trade shows, costs of computer and communications equipment and support services, consulting and professional service fees, costs of marketing programs, costs of facilities, management information systems, support services, and certain tax and license fees, offset by allocations of indirect costs such as facilities and shared services expenses to other cost types.

A comparison of selling, general and administrative expenses is presented below:

	Year Ended December 31,			
	2022	% Change	2021	% Change
	(Dollars in millions)			
Selling, general and administrative	\$ 195.4	4 %	\$ 188.4	1 %
	\$		\$	\$
				186.0

Selling, general and administrative expenses increased by \$7.0 million in 2022 compared to 2021 primarily due to increases in stock-based compensation expenses, equipment and software expenses, compensation and benefits expenses, and several other individually insignificant factors, partially offset by an increase in overhead expenses allocated to other cost types. Stock-based compensation expenses increased by \$3.3 million due to higher projected achievement levels on certain performance-based RSU grants and increases in the total value of RSUs granted in 2022. Equipment and software expenses increased by \$3.1 million due to expenses related to network security and other software services. Compensation and benefits expenses increased by \$1.4 million due to increased employee salaries expenses and insurances related benefits expenses. Overhead expenses allocated to other cost types increased by \$3.1 million due to an increase in the total allocable expenses.

### ***Interest expense***

Interest expense decreased by \$8.0 million in 2022 compared to 2021 primarily due to the lower interest rate on our 2031 Notes compared to the 2023 Notes which were redeemed in June 2021.

### ***Non-operating income (loss), net***

See Note 9, "Non-operating Income (Loss), Net" of our Notes to Consolidated Financial Statements in Item 8 of this Form 10-K.

### ***Income tax expense (benefit)***

	Year Ended December 31,		
	2022	2021	2020
	(Dollars in millions)		
Income tax expense (benefit)	206.4	\$ (2.6)	\$ (64.7)
Effective tax rate	23 %	— %	(9)%

The effective tax rate for each of the periods in the table above differed from the statutory federal rate of 21% due to state income taxes and U.S. taxes on foreign earnings, net of foreign tax credits, offset by a lower foreign effective tax rate.

During 2021, we completed a transfer of intellectual property between certain non-U.S. subsidiaries. This intellectual property did not have any book value, however the transfer created an amortizable tax basis that resulted in the recognition of a \$165.5 million deferred tax asset and a corresponding income tax benefit.

As of December 31, 2022, we had deferred tax assets arising from deductible temporary differences, tax losses, and tax credits of \$236.2 million, net of valuation allowances, but before the offset of certain deferred tax liabilities. With the exception of deferred tax assets related to certain state and foreign net operating loss and foreign tax credit carryforwards, we believe it is more likely than not that the tax effects of the deferred tax liabilities, together with future taxable income, will be sufficient to fully recover the remaining deferred tax assets.

## Liquidity and Capital Resources

The following table presents our principal sources of liquidity:

	As of December 31,	
	2022	2021
	(In millions)	
Cash and cash equivalents	\$ 373.6	\$ 223.5
Marketable securities	606.8	982.3
<b>Total</b>	<b>\$ 980.4</b>	<b>\$ 1,205.8</b>

The marketable securities consist primarily of debt securities issued by the U.S. Treasury meeting the criteria of our investment policy, which is focused on the preservation of our capital through investment in investment grade securities. The cash equivalents consist of amounts invested in money market funds, time deposits and U.S. Treasury bills purchased with original maturities of three months or less. As of December 31, 2022, all of our debt securities have contractual maturities of less than one year. Our cash and cash equivalents are readily accessible. For additional information on our investment portfolio, see Note 2, "Financial Instruments," of our Notes to Consolidated Financial Statements in Item 8 of this Form 10-K.

In 2022, we repurchased 5.5 million shares of our common stock at an average stock price of \$187.07 for an aggregate cost of \$1.03 billion under our share repurchase program. In 2021, we repurchased 3.3 million shares of our common stock at an average stock price of \$215.16 for an aggregate cost of \$700.0 million. Effective October 27, 2022, our Board of Directors authorized the repurchase of our common stock in the amount of \$803.0 million, in addition to the \$197.0 million that remained available for repurchases under the share repurchase program, for a total repurchase authorization of up to \$1.00 billion under the program. As of December 31, 2022, there was approximately \$858.8 million remaining available for future share repurchases under the share repurchase program which has no expiration date.

As of December 31, 2022, we had \$750.0 million principal amount outstanding of the 2.70% senior unsecured notes due 2031, \$550.0 million principal amount outstanding of the 4.75% senior unsecured notes due 2027, \$500.0 million principal amount outstanding of the 5.25% senior unsecured notes due 2025. As of December 31, 2022, there were no borrowings outstanding under our \$200.0 million unsecured revolving credit facility that will expire in 2024.

We believe existing cash, cash equivalents and marketable securities, and funds generated from operations, together with our ability to arrange for additional financing should be sufficient to meet our working capital, capital expenditure requirements, and to service our debt for the next 12 months and beyond. We regularly assess our cash management approach and activities in view of our current and potential future needs. Our most significant future cash requirements include interest and principal payments on the senior notes issuances described above, income tax payments, purchase obligations and registry fees related to the operation of certain top-level domains. These items are detailed in Note 11, "Commitments and Contingencies" of our Notes to Consolidated Financial Statements in Item 8 of this Form 10-K.

In summary, our cash flows for 2022, 2021, and 2020 were as follows:

	Year Ended December 31,		
	2022	2021	2020
	(In millions)		
Net cash provided by operating activities	\$ 831.1	\$ 807.2	\$ 730.2
Net cash provided by (used in) investing activities	355.7	(269.2)	(72.3)
Net cash used in financing activities	(1,035.8)	(719.1)	(764.9)
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(0.8)	(0.7)	—
<b>Net increase (decrease) in cash, cash equivalents and restricted cash</b>	<b>\$ 150.2</b>	<b>\$ (181.8)</b>	<b>\$ (107.0)</b>

### *Cash flows from operating activities*

Our largest source of operating cash flows is cash collections from our customers. Our primary uses of cash from operating activities are for personnel related expenditures, and other general operating expenses, as well as payments related to taxes, interest and facilities.

Net cash provided by operating activities increased in 2022 compared to 2021 primarily due to increases in cash received from customers and interest on investments and a decrease in cash paid for interest, partially offset by an increase in cash paid for income taxes. Cash received from customers increased primarily due to the impact of the .com price increases that were effective on each of September 1, 2021 and September 1, 2022. Cash received from interest on investments increased due to higher interest

rates on our investments in debt securities. Cash paid for interest decreased due to the lower interest rate on our 2031 Notes compared to the 2023 Notes which were refinanced in the second quarter of 2021. Cash paid for income taxes increased primarily due to comparatively higher U.S. federal, state, and foreign income taxes.

#### ***Cash flows from investing activities***

The changes in cash flows from investing activities primarily relate to purchases, maturities and sales of marketable securities, and purchases of property and equipment.

We had net cash inflows from investing activities in 2022, compared to net cash outflows in 2021, primarily due to an increase in proceeds from maturities and sales of marketable securities, net of purchases of marketable securities, and a decrease in purchases of property and equipment.

#### ***Cash flows from financing activities***

The changes in cash flows from financing activities primarily relate to share repurchases, proceeds from borrowings, repayment of borrowings, and our employee stock purchase plan.

Net cash used in financing activities increased in 2022 compared to 2021, primarily due an increase in share repurchases, partially offset by the net impact of the redemption of our 2023 Senior Notes and the issuance of the 2031 Senior Notes during 2021.

#### ***Dilution from RSUs***

Grants of stock-based awards are key components of the compensation packages we provide to attract and retain certain of our employees and align their interests with the interests of existing stockholders. We recognize that these stock-based awards dilute existing stockholders and have sought to control the number granted while providing competitive compensation packages. As of December 31, 2022, there were a total of 0.6 million unvested RSUs which represent potential dilution of less than 1.0%. This maximum potential dilution will only result if all outstanding RSUs vest and are settled. In recent years, our stock repurchase program has more than offset the dilutive effect of RSU grants to employees; however, we may reduce the level of our stock repurchases in the future as we may use our available cash for other purposes.

### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to financial market risks, including changes in interest rates and foreign exchange rates. We have not entered into any market risk sensitive instruments for trading purposes.

#### **Interest Rate Sensitivity**

The fixed income securities in our investment portfolio are subject to interest rate risk. As of December 31, 2022, we had \$776.1 million of fixed income securities, which consisted of U.S. Treasury bills with maturities of less than one year. A hypothetical change in interest rates by 100 basis points would not have a significant impact on the fair value of our investments.

#### **Foreign Exchange Risk Management**

We conduct business in several countries and transact in multiple foreign currencies. The functional currency for all of our international subsidiaries is the U.S. dollar. Our foreign currency risk management program is designed to mitigate foreign exchange risks associated with monetary assets and liabilities of our operations that are denominated in currencies other than the U.S. dollar. The primary objective of this program is to minimize the gains and losses to income resulting from fluctuations in exchange rates. We may choose not to hedge certain foreign exchange exposures due to immateriality, prohibitive economic cost of hedging particular exposures, and limited availability of appropriate hedging instruments. We do not enter into foreign currency transactions for trading or speculative purposes, nor do we hedge foreign currency exposures in a manner that entirely offsets the effects of changes in exchange rates. The program may entail the use of forward or option contracts, which are usually placed and adjusted monthly. These foreign currency forward contracts are derivatives and are recorded at fair market value. We attempt to limit our exposure to credit risk by executing foreign exchange contracts with financial institutions that have investment grade ratings.

As of December 31, 2022, we held foreign currency forward contracts in notional amounts totaling \$32.0 million to mitigate the impact of exchange rate fluctuations associated with certain foreign currencies. Gains or losses on the foreign currency forward contracts would be largely offset by the remeasurement of our foreign currency denominated assets and liabilities, resulting in an insignificant net impact to income.

A hypothetical uniform 10% strengthening or weakening in the value of the U.S. dollar relative to the foreign currencies in which our revenues and expenses are denominated would not result in a significant impact to our financial statements.

**Market Risk Management**

The fair market values of our senior notes are subject to interest rate risk. Generally, the fair market value of fixed interest rate debt will increase as interest rates fall and decrease as interest rates rise. As of December 31, 2022, the aggregate fair value of the senior notes issued in 2015, 2017 and 2021 was \$1.65 billion, based on available market information from public data sources.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

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## Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors  
VeriSign, Inc.:

### *Opinion on the Consolidated Financial Statements*

We have audited the accompanying consolidated balance sheets of VeriSign, Inc. and subsidiaries (the Company) as of December 31, 2022 and 2021, the related consolidated statements of comprehensive income, stockholders' deficit, and cash flows for each of the years in the three-year period ended December 31, 2022, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated February 17, 2023 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

### *Basis for Opinion*

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

### *Critical Audit Matter*

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

#### *Evaluation of accounting for income taxes*

As discussed in Notes 1 and 10 to the consolidated financial statements, the Company recognized \$234.6 million of deferred tax assets, net as of December 31, 2022. The Company's income tax expense was \$206.4 million for the year ended December 31, 2022. The Company conducts business globally and consequently is subject to U.S. federal, state, as well as foreign income taxes in the jurisdictions it operates. The Company exercises judgment in the application of complex tax regulations in multiple jurisdictions.

We identified the evaluation of the accounting for income taxes as a critical audit matter. Evaluating the Company's application of complex tax regulations in the domestic and foreign jurisdictions it operates and the impact of those regulations on U.S. federal, state, and foreign income tax provisions required complex auditor judgment, and the use of tax professionals with specialized skills and knowledge.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls related to the Company's income tax process, including controls related to the application of complex tax regulations in the Company's various tax jurisdictions and the impact on the Company's U.S. federal, state, and foreign income tax provision. We involved domestic and international tax

professionals with specialized skills and knowledge in various tax jurisdictions who assisted in evaluating the Company's analyses over the application of complex tax regulations in those jurisdictions.

/s/ KPMG LLP

We have served as the Company's auditor since 1995.

McLean, Virginia  
February 17, 2023

## Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors  
VeriSign, Inc.:

### *Opinion on Internal Control Over Financial Reporting*

We have audited VeriSign, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control – Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2022 and 2021, the related consolidated statements of comprehensive income, stockholders' deficit, and cash flows for each of the years in the three-year period ended December 31, 2022, and the related notes (collectively, the consolidated financial statements), and our report dated February 17, 2023 expressed an unqualified opinion on those consolidated financial statements.

### *Basis for Opinion*

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### *Definition and Limitations of Internal Control Over Financial Reporting*

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ KPMG LLP

McLean, Virginia  
February 17, 2023

**VERISIGN, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(In millions, except par value)

	December 31, 2022	December 31, 2021
<b><u>ASSETS</u></b>		
Current assets:		
Cash and cash equivalents	\$ 373.6	\$ 223.5
Marketable securities	606.8	982.3
Other current assets	58.3	62.9
Total current assets	1,038.7	1,268.7
Property and equipment, net	232.0	251.2
Goodwill	52.5	52.5
Deferred tax assets	234.6	230.7
Deposits to acquire intangible assets	145.0	145.0
Other long-term assets	30.6	35.7
Total long-term assets	694.7	715.1
Total assets	\$ 1,733.4	\$ 1,983.8
<b><u>LIABILITIES AND STOCKHOLDERS' DEFICIT</u></b>		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 226.5	\$ 226.6
Deferred revenues	890.4	847.4
Total current liabilities	1,116.9	1,074.0
Long-term deferred revenues	328.7	306.0
Senior notes	1,787.9	1,785.7
Long-term tax and other liabilities	62.1	78.6
Total long-term liabilities	2,178.7	2,170.3
Total liabilities	3,295.6	3,244.3
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock—par value \$.001 per share; Authorized shares: 5.0; Issued and outstanding shares: none	—	—
Common stock and additional paid-in capital—par value \$.001 per share; Authorized shares: 1,000; Issued shares: 354.5 at December 31, 2022 and 354.2 at December 31, 2021; Outstanding shares: 105.3 at December 31, 2022 and 110.5 at December 31, 2021	12,644.5	13,620.1
Accumulated deficit	(14,204.0)	(14,877.8)
Accumulated other comprehensive loss	(2.7)	(2.8)
Total stockholders' deficit	(1,562.2)	(1,260.5)
Total liabilities and stockholders' deficit	\$ 1,733.4	\$ 1,983.8

See accompanying Notes to Consolidated Financial Statements.

**VERISIGN, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(In millions, except per share data)

	Year Ended December 31,		
	2022	2021	2020
Revenues	\$ 1,424.9	\$ 1,327.6	\$ 1,265.1
Costs and expenses:			
Cost of revenues	200.7	191.9	180.2
Research and development	85.7	80.5	74.7
Selling, general and administrative	195.4	188.4	186.0
Total costs and expenses	481.8	460.8	440.9
Operating income	943.1	866.8	824.2
Interest expense	(75.3)	(83.3)	(90.2)
Non-operating income (loss), net	12.4	(1.3)	16.2
Income before income taxes	880.2	782.2	750.2
Income tax (expense) benefit	(206.4)	2.6	64.7
Net income	673.8	784.8	814.9
Other comprehensive income (loss)	0.1	—	(0.1)
Comprehensive income	\$ 673.9	\$ 784.8	\$ 814.8
Earnings per share:			
Basic	\$ 6.24	\$ 7.01	\$ 7.08
Diluted	\$ 6.24	\$ 7.00	\$ 7.07
Shares used to compute earnings per share			
Basic	107.9	112.0	115.1
Diluted	108.0	112.2	115.3

See accompanying Notes to Consolidated Financial Statements.

**VERISIGN, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT**  
(In millions)

	Year Ended December 31,		
	2022	2021	2020
<b>Total stockholders' deficit, beginning of period</b>	\$ (1,260.5)	\$ (1,390.2)	\$ (1,490.1)
<b>Common stock and additional paid-in capital</b>			
Beginning balance	13,620.1	14,275.2	14,990.1
Repurchase of common stock	(1,048.1)	(722.6)	(777.5)
Stock-based compensation	60.2	55.1	50.0
Issuance of common stock under stock plans	12.3	12.4	12.6
Balance, end of period	12,644.5	13,620.1	14,275.2
<b>Accumulated deficit</b>			
Beginning balance	(14,877.8)	(15,662.6)	(16,477.5)
Net income	673.8	784.8	814.9
Balance, end of period	(14,204.0)	(14,877.8)	(15,662.6)
<b>Accumulated other comprehensive loss</b>			
Beginning balance	(2.8)	(2.8)	(2.7)
Other comprehensive income (loss)	0.1	—	(0.1)
Balance, end of period	(2.7)	(2.8)	(2.8)
<b>Total stockholders' deficit, end of period</b>	<u>\$ (1,562.2)</u>	<u>\$ (1,260.5)</u>	<u>\$ (1,390.2)</u>

See accompanying Notes to Consolidated Financial Statements

**VERISIGN, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In millions)

	Year Ended December 31,		
	2022	2021	2020
<b>Cash flows from operating activities:</b>			
Net income	\$ 673.8	\$ 784.8	\$ 814.9
<b>Adjustments to reconcile net income to net cash provided by operating activities:</b>			
Depreciation of property and equipment	46.9	47.9	46.4
Stock-based compensation expense	58.6	53.4	48.2
Other, net	(3.9)	6.0	(9.1)
<b>Changes in operating assets and liabilities</b>			
Other assets	9.5	(14.0)	(9.2)
Accounts payable and accrued liabilities	(0.1)	15.6	2.2
Deferred revenues	65.7	90.5	29.0
Net deferred income taxes and other long-term tax liabilities	(19.4)	(177.0)	(192.2)
Net cash provided by operating activities	<u>831.1</u>	<u>807.2</u>	<u>730.2</u>
<b>Cash flows from investing activities:</b>			
Proceeds from maturities and sales of marketable securities	1,721.5	2,654.5	2,305.7
Purchases of marketable securities	(1,338.4)	(2,870.7)	(2,355.4)
Purchases of property and equipment	(27.4)	(53.0)	(43.4)
Proceeds from sale of business	—	—	20.8
Net cash provided by (used in) investing activities	<u>355.7</u>	<u>(269.2)</u>	<u>(72.3)</u>
<b>Cash flows from financing activities:</b>			
Repurchases of common stock	(1,048.1)	(722.6)	(777.5)
Proceeds from employee stock purchase plan	12.3	12.4	12.6
Repayment of borrowings	—	(750.0)	—
Proceeds from borrowings, net of issuance costs	—	741.1	—
Net cash used in financing activities	<u>(1,035.8)</u>	<u>(719.1)</u>	<u>(764.9)</u>
Effect of exchange rate changes on cash, cash equivalents and restricted cash	<u>(0.8)</u>	<u>(0.7)</u>	<u>—</u>
Net increase (decrease) in cash, cash equivalents and restricted cash	150.2	(181.8)	(107.0)
Cash, cash equivalents, and restricted cash at beginning of period	228.8	410.6	517.6
Cash, cash equivalents, and restricted cash at end of period	<u>\$ 379.0</u>	<u>\$ 228.8</u>	<u>\$ 410.6</u>
<b>Supplemental cash flow disclosures:</b>			
Cash paid for interest	<u>\$ 72.8</u>	<u>\$ 85.6</u>	<u>\$ 87.4</u>
Cash paid for income taxes, net of refunds received	<u>\$ 211.7</u>	<u>\$ 178.4</u>	<u>\$ 132.7</u>

See accompanying Notes to Consolidated Financial Statements.

**VERISIGN, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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**Note 1. Description of Business and Summary of Significant Accounting Policies***Description of Business*

VeriSign, Inc. (“Verisign” or “the Company”) was incorporated in Delaware on April 12, 1995. The Company has one reportable segment. The Company enables the security, stability, and resiliency of key internet infrastructure and services, including providing Root Zone Maintainer services, operating two of the 13 global internet root servers, and providing registration services and authoritative resolution for the .com and .net top-level domains, which support the majority of global e-commerce.

*Basis of Presentation*

The accompanying consolidated financial statements of Verisign and its subsidiaries have been prepared in conformity with generally accepted accounting principles (“GAAP”) in the United States (“U.S.”). All significant intercompany accounts and transactions have been eliminated.

The preparation of these consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. Actual results may differ from these estimates under different assumptions or conditions.

*Reclassifications*

Certain reclassifications have been made to prior period amounts to conform to current period presentation. Such reclassifications have no effect on net income as previously reported.

**Significant Accounting Policies***Cash and Cash Equivalents*

Verisign considers all highly-liquid investments purchased with original maturities of three months or less to be cash equivalents. Cash and cash equivalents include certain money market funds, debt securities and various deposit accounts. Verisign maintains its cash and cash equivalents with financial institutions that have investment grade ratings and, as part of its cash management process, performs periodic evaluations of the relative credit standing of these financial institutions.

*Marketable Securities*

Marketable securities primarily consist of debt securities issued by the U.S. Treasury. All marketable securities are classified as available-for-sale and are carried at fair value. Unrealized gains and losses, net of taxes, are reported as a component of Accumulated other comprehensive loss. The specific identification method is used to determine the cost basis of the marketable securities sold. The Company classifies its marketable securities as current based on their nature and availability for use in current operations.

*Property and Equipment*

Property and equipment are stated at cost less accumulated depreciation. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets of 35 to 47 years for buildings, 10 years for building improvements and three years to five years for computer equipment, software, office equipment, and furniture and fixtures. Leasehold improvements are amortized using the straight-line method over the lesser of the estimated useful lives of the assets or associated lease terms.

*Capitalized Software*

Software included in property and equipment includes amounts paid for purchased software and development costs for internally developed software. The Company capitalized \$10.6 million and \$12.1 million of costs related to internally developed software during 2022 and 2021, respectively.

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#### *Goodwill and Other Long-lived Assets*

Goodwill represents the excess of purchase consideration over fair value of net assets of businesses acquired. The Company has only one reporting unit, which has a negative carrying value. Therefore, the goodwill is not subject to impairment.

Long-lived assets, such as property, plant, and equipment are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset, or asset group, may not be recoverable. Such events or circumstances include, but are not limited to, a significant decrease in the fair value of the underlying business. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset, or asset group, to estimated undiscounted future cash flows expected to be generated by the asset, or asset group. An impairment charge is recognized in the amount by which the carrying amount of the asset exceeds its fair value.

As of December 31, 2022, the Company's assets include a deposit related to the purchase of the contractual rights to the .web gTLD. The amount paid to date has been recorded as a deposit until such time that the contractual rights are transferred to the Company. This asset would be tested for recoverability if the Company were to determine that it is no longer probable that the rights will be transferred. At the time of the transfer of the contractual rights, the Company will record the amount as an indefinite-lived intangible asset subject to review for impairment on an annual basis or more frequently if events or changes in circumstances indicate that an impairment is more likely than not.

#### *Foreign Currency Remeasurement*

Verisign conducts business in several different countries and transacts in multiple currencies. The functional currency for all of Verisign's international subsidiaries is the U.S. dollar. The Company's subsidiaries' financial statements are remeasured into U.S. dollars using a combination of current and historical exchange rates and any remeasurement gains and losses are included in Non-operating income (loss), net. Remeasurement gains and losses were not significant in each of the last three years.

Verisign maintains a foreign currency risk management program designed to mitigate foreign exchange risks associated with the monetary assets and liabilities that are denominated in currencies other than the U.S. dollar. The primary objective of this program is to minimize the gains and losses resulting from fluctuations in exchange rates. The Company does not enter into foreign currency transactions for trading or speculative purposes, nor does it hedge foreign currency exposures in a manner that entirely offsets the effects of changes in exchange rates. The program may entail the use of forward or option contracts, which are usually placed and adjusted monthly. These foreign currency forward contracts are derivatives and are recorded at fair market value. The Company records gains and losses on foreign currency forward contracts in Non-operating income (loss), net. Gains and losses related to foreign currency forward contracts were not significant in each of the last three years.

As of December 31, 2022, Verisign held foreign currency forward contracts in notional amounts totaling \$32.0 million to mitigate the impact of exchange rate fluctuations associated with certain assets and liabilities held in foreign currencies.

#### *Revenue Recognition*

Revenues are recognized when control of the promised services is transferred to customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services. Revenues primarily arise from fixed fees charged to registrars for the initial registration or renewal of .com, .net, and other domain names. Individual customers, called registrants, contract directly with registrars or their resellers, and the registrars, who are our direct customers, in turn register the domain names with Verisign. Fees for domain name registrations and renewals are generally due at the time of registration or renewal. Domain name registration terms range from one year up to ten years.

Most customers either maintain a deposit with Verisign or provide an irrevocable letter of credit in excess of the amounts owed. Verisign also offers promotional incentive-based discount programs to its registrars based upon market conditions and the business environment in which the registrars operate. Amounts payable for these programs are recorded as a reduction of revenue.

#### Performance Obligations

A performance obligation is a promise in a contract to transfer a distinct good or service to the customer. A contract's transaction price is allocated to each distinct performance obligation and recognized as revenue when, or as, the performance obligation is satisfied. Each domain name registration or renewal is considered a separate optional purchase and represents a single performance obligation, which is to allow its registration and maintain that registration (by allowing updates, Domain Name System ("DNS") resolution and Whois services, which allow users to find information about registered domain names) through the registration term. These services are provided continuously throughout each registration term, and as such, revenues

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from the initial registration or renewal of domain names are deferred and recognized ratably over the registration term. Fees for renewals and advance extensions to the existing term are deferred until the new incremental period commences. These fees are then recognized ratably over the renewal or extension term.

#### Costs Incurred to Obtain a Contract

The Company recognizes the fees payable to ICANN for each annual term of domain name registrations and renewals, as an asset which is amortized on a straight-line basis over the related registration term. These assets are included in Other current assets and Other long-term assets.

#### *Income Taxes*

Verisign uses the asset and liability method to account for income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and net operating loss carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The Company records a valuation allowance to reduce deferred tax assets to an amount whose realization is more likely than not. For every tax-paying component and within each tax jurisdiction, all deferred tax liabilities and assets are offset and presented as a single net noncurrent asset or liability.

The Company recognizes the U.S. income tax effect of future global intangible low-taxed income inclusions in the period in which they arise.

The Company's income taxes payable is reduced by the tax benefits from restricted stock unit ("RSU") vestings equal to the fair market value of the stock at the vesting date. If the income tax benefit at the vesting date differs from the income tax benefit recorded based on the grant date fair value of the RSUs, the excess or shortfall of the tax benefit is recognized within income tax expense.

Verisign operates in multiple tax jurisdictions in the United States and internationally. Tax laws and regulations in these jurisdictions are complex, interrelated, and periodically changing. Significant judgment or interpretation of these laws and regulations is often required in determining the Company's worldwide provision for income taxes, including, for example, the calculations of taxable income in each jurisdiction, deferred taxes, and the availability and amount of deductions and tax credits. The final taxes payable are dependent upon many factors, including negotiations with taxing authorities in various jurisdictions and resolution of disputes arising from various tax examinations. The Company only recognizes tax positions taken or expected to be taken on its tax returns that are more likely than not to be sustained upon examination, and records a tax benefit amount that is more likely than not to be realized upon ultimate settlement with the taxing authority. The Company adjusts its estimate of unrecognized tax benefits in light of changing facts and circumstances; however, due to the complexity of some of these uncertainties, the ultimate resolution may result in an outcome that is materially different from the estimate. See Note 10, "Income Taxes," for details of the changes to the Company's unrecognized tax benefits for the periods presented.

#### *Stock-based Compensation*

The Company's stock-based compensation consists of RSUs granted to employees and the employee stock purchase plan ("ESPP"). Stock-based compensation expense is typically recognized ratably over the requisite service period. Forfeitures of stock-based awards are recognized as they occur. As substantially all of the RSUs granted by the Company are routine annual grants, none of the awards are designed to be spring-loaded, and as such, the Company does not adjust the market price of its common stock when estimating the grant-date fair value of these awards. The Company also grants RSUs which include performance conditions, and in some cases market conditions, to certain executives. The expense for these performance-based RSUs is recognized based on the probable outcome of the performance conditions. The expense recognized for awards with market conditions is based on the grant date fair value of the awards including the impact of the market conditions, using a Monte Carlo simulation model. The Company uses the Black-Scholes option pricing model to determine the fair value of its ESPP offerings. The determination of the fair value of stock-based payment awards using the Monte Carlo simulation model or the Black-Scholes option-pricing model is affected by the Company's stock price as well as assumptions regarding a number of complex and subjective variables.

#### *Earnings per Share*

The Company computes basic earnings per share by dividing net income by the weighted-average number of common shares outstanding during the period. Diluted earnings per share gives effect to dilutive potential common shares, including unvested RSUs and ESPP offerings, using the treasury stock method.

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*Fair Value of Financial Instruments*

The Company applies the following fair value hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

- Level 1: Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.
- Level 2: Inputs reflect quoted prices for identical assets or liabilities in markets that are not active; quoted prices for similar assets or liabilities in active markets; inputs other than quoted prices that are observable for the assets or liabilities; or inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3: Unobservable inputs reflecting the Company's own assumptions incorporated in valuation techniques used to determine fair value. These assumptions are required to be consistent with market participant assumptions that are reasonably available.

*Legal Proceedings*

Verisign is involved in various investigations, claims and lawsuits arising in the normal conduct of its business, none of which, in its opinion, will have a material adverse effect on its financial condition, results of operations, or cash flows. The Company can provide no assurance that it will prevail in any litigation. Regardless of the outcome, any litigation may require the Company to incur significant litigation expense and may result in significant diversion of management attention.

While certain legal proceedings and related indemnification obligations to which the Company is a party specify the amounts claimed, such claims may not represent reasonably possible losses. Given the inherent uncertainties of the litigation, the ultimate outcome of these matters cannot be predicted at this time, nor can the amount of possible loss or range of loss, if any, be reasonably estimated, except in circumstances where an aggregate litigation accrual has been recorded for probable and reasonably estimable loss contingencies. A determination of the amount of accrual required, if any, for these contingencies is made after careful analysis of each matter. The required accrual may change in the future due to new developments in each matter or changes in approach such as a change in settlement strategy in dealing with these matters. The Company does not believe that any such matter currently being reviewed will have a material adverse effect on its financial condition, results of operations, or cash flows.

**Note 2. Financial Instruments**

*Cash, Cash Equivalents, and Marketable Securities*

The following table summarizes the Company's cash, cash equivalents, and marketable securities and the fair value categorization of the financial instruments measured at fair value on a recurring basis:

	As of December 31,	
	2022	2021
	(In millions)	
Cash	\$ 27.0	\$ 25.8
Time deposits	4.1	3.7
Money market funds (Level 1)	178.6	165.6
Debt securities issued by the U.S. Treasury (Level 1)	776.1	1,016.0
Total	\$ 985.8	\$ 1,211.1
Cash and cash equivalents	\$ 373.6	\$ 223.5
Restricted cash (included in Other long-term assets)	5.4	5.3
Total Cash, cash equivalents, and restricted cash	379.0	228.8
Marketable securities	606.8	982.3
Total	\$ 985.8	\$ 1,211.1

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The gross and net unrealized gains and losses included in the fair value of the debt securities were not significant for the periods presented. All of the debt securities held as of December 31, 2022 have contractual maturities of less than one year.

*Fair Value Measurements*

The fair value of the Company's investments in money market funds approximates their face value. Such instruments are classified as Level 1 and are included in Cash and cash equivalents. The fair value of the debt securities consisting of U.S. Treasury bills is based on their quoted market prices and are classified as Level 1.

As of December 31, 2022, the Company's other financial instruments include cash, accounts receivable, restricted cash, and accounts payable whose carrying values approximated their fair values. The aggregate fair value of the Company's senior notes is \$1.65 billion and \$1.88 billion as of December 31, 2022 and December 31, 2021, respectively. The fair values of these debt instruments are based on available market information from public data sources and are classified as Level 2.

**Note 3. Selected Balance Sheet Items**

*Other Current Assets*

Other current assets consist of the following:

	As of December 31,	
	2022	2021
	(In millions)	
Prepaid expenses	\$ 24.5	\$ 24.8
Prepaid registry fees	24.3	24.2
Accounts receivable, net	6.2	5.3
Taxes receivable	1.9	7.7
Other	1.4	0.9
Total other current assets	<u>\$ 58.3</u>	<u>\$ 62.9</u>

*Property and Equipment, Net*

The following table presents the detail of property and equipment, net:

	As of December 31,	
	2022	2021
	(In millions)	
Computer equipment and software	\$ 402.7	\$ 400.6
Buildings and building improvements	257.5	254.5
Land	31.1	31.1
Office equipment and furniture	10.4	10.1
Capital work in progress	3.6	3.1
Leasehold improvements	1.5	1.5
Total cost	<u>706.8</u>	<u>700.9</u>
Less: accumulated depreciation	<u>(474.8)</u>	<u>(449.7)</u>
Total property and equipment, net	<u>\$ 232.0</u>	<u>\$ 251.2</u>

Substantially all of the Company's property and equipment were held in the U.S. for both periods presented.

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*Goodwill*

The following table presents the detail of goodwill:

	As of December 31,	
	2022	2021
	(In millions)	
Goodwill, gross	\$ 1,537.8	\$ 1,537.8
Accumulated goodwill impairment	(1,485.3)	(1,485.3)
Total goodwill	<u>\$ 52.5</u>	<u>\$ 52.5</u>

There was no impairment of goodwill or other long-lived assets recognized in any of the periods presented.

*Deposits to Acquire Intangible Assets*

The Company's Deposit to acquire intangible assets represents the \$145.0 million paid for the future assignment to the Company of contractual rights to the .web gTLD, pending resolution of objections by other applicants, and approval from ICANN. Upon assignment of the contractual rights, the Company will record the total investment as an indefinite-lived intangible asset.

*Other Long-Term Assets*

Other long-term assets consist of the following:

	As of December 31,	
	2022	2021
	(In millions)	
Long-term prepaid registry fees	\$ 9.1	\$ 8.7
Operating lease right-of-use asset	7.2	8.4
Long-term prepaid expenses	6.6	11.0
Restricted cash	5.4	5.3
Other	2.3	2.3
Total other long-term assets	<u>\$ 30.6</u>	<u>\$ 35.7</u>

The prepaid registry fees in the tables above relate to the fees the Company pays to ICANN for each annual term of .com domain name registrations and renewals which are deferred and amortized over the domain name registration term. The amount of prepaid registry fees as of December 31, 2022 reflects amortization of \$39.5 million during 2022 which was recorded in Cost of Revenues.

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*Accounts Payable and Accrued Liabilities*

Accounts payable and accrued liabilities consist of the following:

	As of December 31,	
	2022	2021
	(In millions)	
Accounts payable and accrued expenses	\$ 9.8	\$ 9.0
Customer deposits	72.0	77.3
Accrued employee compensation	59.0	58.5
Taxes payable	37.4	26.8
Interest payable	19.5	19.5
Accrued registry fees	12.7	12.9
Customer incentives payable	7.1	13.3
Other accrued liabilities	9.0	9.3
<b>Total accounts payable and accrued liabilities</b>	<b>\$ 226.5</b>	<b>\$ 226.6</b>

*Long-term Tax and Other Liabilities*

Long-term tax and other liabilities consist of the following:

	As of December 31,	
	2022	2021
	(In millions)	
Long-term tax liabilities	\$ 60.5	\$ 76.1
Long-term operating lease liabilities	1.6	2.5
<b>Long-term tax and other liabilities</b>	<b>\$ 62.1</b>	<b>\$ 78.6</b>

Long-term tax liabilities include accruals for unrecognized tax benefits and the long-term portion of the U.S. income taxes payable on the Company's accumulated foreign earnings ("Transition Tax") resulting from the 2017 Tax Cuts and Jobs Act.

**Note 4. Debt**

*Senior Notes*

The following table summarizes information related to our Senior notes:

	Issuance Date	Maturity Date	Interest Rate	Principal	
				2022	2021
	As of December 31,				
	(in millions except interest rates)				
Senior notes due 2025	March 27, 2015	April 1, 2025	5.25 %	\$ 500.0	\$ 500.0
Senior notes due 2027	July 5, 2017	July 15, 2027	4.75 %	550.0	550.0
Senior notes due 2031	June 8, 2021	June 15, 2031	2.70 %	750.0	750.0
Principal amount of senior notes				1,800.0	1,800.0
Less: unamortized issuance costs				(12.1)	(14.3)
<b>Total Senior notes</b>				<b>\$ 1,787.9</b>	<b>\$ 1,785.7</b>

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The 2031 Notes were issued at 99.712% of par value. The 2025 and 2027 notes were issued at par and all outstanding senior notes are senior unsecured obligations of the Company. Interest is payable on each of the senior notes semi-annually. Each of the senior notes issuances is redeemable, in whole or in part, at the Company's option at times and redemption prices specified in the indentures.

*2019 Credit Facility*

On December 12, 2019, the Company entered into a credit agreement for a \$200.0 million committed unsecured revolving credit facility (the "2019 Credit Facility"). The 2019 Credit Facility includes a financial covenant requiring that the Company's leverage ratio not exceed 4.0 to 1.0. As of December 31, 2022, there were no borrowings outstanding under the 2019 Credit Facility and the Company was in compliance with the financial covenants. The 2019 Credit Facility was amended in December 2021 to address the LIBOR transition. The 2019 Credit Facility expires on December 12, 2024 at which time any outstanding borrowings are due. Verisign may from time to time request lenders to agree on a discretionary basis to increase the commitment amount by up to an aggregate of \$150.0 million.

**Note 5. Stockholders' Deficit**

*Treasury Stock*

Treasury stock is accounted for under the cost method. Treasury stock includes shares repurchased under stock repurchase programs and shares withheld in lieu of the tax withholding due upon vesting of RSUs.

Effective February 10, 2022, the Company's Board of Directors ("Board") authorized the repurchase of its common stock in the amount of approximately \$705.4 million, in addition to the \$294.6 million that remained available for repurchases under the share repurchase program. Effective October 27, 2022, our Board of Directors authorized the repurchase of our common stock in the amount of \$803.0 million, in addition to the \$197.0 million that remained available for repurchases under the share repurchase program, for a total repurchase authorization of up to \$1.00 billion under the program. The program has no expiration date. Purchases made under the program could be effected through open market transactions, block purchases, accelerated share repurchase agreements or other negotiated transactions. As of December 31, 2022 there was approximately \$858.8 million remaining available for repurchases under the program.

The summary of the Company's common stock repurchases for 2022, 2021 and 2020 are as follows:

	2022		2021		2020	
	Shares	Average Price	Shares	Average Price	Shares	Average Price
(In millions, except average price amounts)						
Total repurchases under the repurchase plans	5.5	\$ 187.07	3.3	\$ 215.16	3.7	\$ 200.06
Total repurchases for tax withholdings	0.1	\$ 202.21	0.1	\$ 209.40	0.2	\$ 208.92
Total repurchases	5.6	\$ 187.28	3.4	\$ 214.97	3.9	\$ 200.48
Total costs		\$ 1,048.1		\$ 722.6		\$ 777.5

Since inception, the Company has repurchased 249.3 million shares of its common stock for an aggregate cost of \$12.75 billion, which is recorded as a reduction of Additional paid-in capital.

*Accumulated Other Comprehensive Loss*

The Accumulated other comprehensive loss balances as of December 31, 2022 and 2021 primarily consists of foreign currency translation adjustment losses. There were no significant changes to accumulated other comprehensive loss balances for the periods presented.

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**Note 6. Calculation of Earnings per Share**

The following table presents the computation of weighted-average shares used in the calculation of basic and diluted earnings per share:

	Year Ended December 31,		
	2022	2021	2020
	(In millions)		
Weighted-average shares of common stock outstanding	107.9	112.0	115.1
Weighted-average potential shares of common stock outstanding:			
Unvested RSUs and ESPP	0.1	0.2	0.2
Shares used to compute diluted earnings per share	<u>108.0</u>	<u>112.2</u>	<u>115.3</u>

The calculation of diluted weighted average shares outstanding excludes performance-based RSUs granted by the Company for which the relevant performance criteria have not been achieved. The number of potential shares excluded from the calculation was not significant in any period presented.

**Note 7. Revenues**

The Company generates revenues in the U.S.; Europe, the Middle East and Africa (“EMEA”); China; and certain other countries, including, but not limited to Canada, Japan and Singapore. The following table presents our revenues disaggregated by geography, based on the billing addresses of our customers:

	Year Ended December 31,		
	2022	2021	2020
	(In millions)		
U.S	\$ 937.6	\$ 851.3	\$ 804.7
EMEA	226.0	231.7	214.2
China	106.0	101.7	113.7
Other	155.3	142.9	132.5
Total revenues	<u>\$ 1,424.9</u>	<u>\$ 1,327.6</u>	<u>\$ 1,265.1</u>

Revenues in the table above are attributed to the country of domicile and the respective regions in which registrars are located; however, this may differ from the regions where the registrars operate or where registrants are located. Revenues for each region may be impacted by registrars reincorporating, relocating, or from acquisitions or changes in affiliations of resellers. Revenues for each region may also be impacted by registrars domiciled in one region, registering domain names in another region.

*Major Customers*

Our largest customer accounted for approximately 32%, 33%, and 34% of revenues in 2022, 2021, and 2020, respectively. The Company does not believe that the loss of this customer would have a material adverse effect on the Company’s business because, in that event, end-users of this customer would transfer to the Company’s other existing customers.

*Deferred Revenues*

As payment for domain name registrations and renewals are due in advance of our performance, we record these amounts as deferred revenues. The increase in the deferred revenues balance in 2022 is primarily driven by amounts billed in 2022 for domain name registrations and renewals to be recognized as revenues in future periods, offset by refunds for domain name renewals deleted during the 45-day grace period, and \$818.4 million of revenues recognized that were included in the deferred revenues balance at December 31, 2021. The balance of deferred revenues as of December 31, 2022 represents our aggregate remaining performance obligations. Amounts included in current deferred revenues are all expected to be recognized in revenues within 12 months, except for a portion of deferred revenues that relates to domain name renewals that are deleted in the 45-day grace period following the transaction. The long-term deferred revenues amounts will be recognized in revenues over several years and in some cases up to ten years. The Company transitioned the operation of the .tv registry to a new operator in November 2022. Upon completion of the transition, the Company had no remaining performance obligations related

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to the .tv ccTLD. As a result, the Company recognized the remaining \$8.4 million of deferred revenues in the fourth quarter of 2022.

**Note 8. Employee Benefits and Stock-based Compensation**

*401(k) Plan*

The Company maintains a defined contribution 401(k) plan (the “401(k) Plan”) for substantially all of its U.S. employees. Under the 401(k) Plan, eligible employees may contribute up to 50% of their pre-tax salary, subject to the Internal Revenue Service (“IRS”) annual contribution limits. The Company matches 50% of up to the first 8% of the employee’s annual salary contributed to the plan. The Company contributed \$5.5 million in 2022, \$5.2 million in 2021, and \$5.0 million in 2020 under the 401(k) Plan. The Company can terminate matching contributions at its discretion at any time.

*Equity Incentive Plan*

The majority of Verisign’s stock-based compensation relates to RSUs granted under the 2006 Equity Incentive Plan (the “2006 Plan”). As of December 31, 2022, a total of 7.8 million shares of common stock remain reserved for issuance upon the vesting of RSUs and for the future grant of equity awards. The 2006 Plan authorizes the award of incentive stock options to employees and non-qualified stock options, restricted stock awards, RSUs, stock bonus awards, stock appreciation rights and performance shares to eligible employees, officers, directors, consultants, independent contractors and advisers. The 2006 Plan is administered by the Compensation Committee which may delegate to a committee of one or more members of the Board or Verisign’s officers the ability to grant certain awards and take certain other actions with respect to participants who are not executive officers or non-employee directors. RSUs are awards covering a specified number of shares of Verisign common stock that may be settled by issuance of those shares (which may be restricted shares). RSUs generally vest over four years. Certain RSUs with performance and market conditions (“PSUs”), granted to the Company’s executives, generally vest over a three year term. Additionally, the Company has granted fully vested RSUs to members of its Board in each of the last three years. The Compensation Committee may authorize grants with a different vesting schedule in the future.

*2007 Employee Stock Purchase Plan*

Eligible employees of the Company may purchase common stock under the 2007 Employee Stock Purchase Plan through payroll deductions by electing to have between 2% and 25% of their compensation withheld to cover the purchase price. Each participant is granted an option to purchase common stock. This option is automatically exercised on the last day of each six-month purchase period during the offering period. The purchase price for the common stock under the ESPP is 85% of the lesser of the fair market value of the common stock on the first day of the applicable offering period or the last day of the applicable purchase period. Offering periods begin on the first business day of February and August of each year. As of December 31, 2022, 2.9 million shares of the Company’s common stock remain reserved for future issuance under this plan.

*Stock-based Compensation*

Stock-based compensation is classified in the Consolidated Statements of Comprehensive Income in the same expense line items as cash compensation. The following table presents the classification of stock-based compensation:

	Year Ended December 31,		
	2022	2021	2020
	(In millions)		
Cost of revenues	\$ 7.2	\$ 6.5	\$ 6.3
Research and development	9.5	8.3	7.1
Selling, general and administrative	41.9	38.6	34.8
Stock-based compensation expense	58.6	53.4	48.2
Capitalization (included in Property and equipment, net)	1.6	1.7	1.8
Total stock-based compensation	<u>\$ 60.2</u>	<u>\$ 55.1</u>	<u>\$ 50.0</u>

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**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**  
**DECEMBER 31, 2022, 2021 AND 2020**

The following table presents the nature of the Company's total stock-based compensation:

	Year Ended December 31,		
	2022	2021	2020
	(In millions)		
RSUs	\$ 43.8	\$ 41.5	\$ 38.2
PSUs	12.1	9.3	7.4
ESPP	4.3	4.3	4.4
Total stock-based compensation	<u>\$ 60.2</u>	<u>\$ 55.1</u>	<u>\$ 50.0</u>

The income tax benefit that was included within Income tax (expense) benefit related to these stock-based compensation expenses for 2022, 2021, and 2020 was \$13.8 million, \$12.4 million, and \$11.0 million, respectively.

*RSUs Information*

The following table summarizes unvested RSUs activity for the year ended December 31, 2022:

	Shares	Weighted-Average Grant-Date Fair Value
	(Shares in millions)	
Unvested at beginning of period	0.6	\$ 192.88
Granted	0.3	\$ 210.94
Vested and settled	<u>(0.3)</u>	<u>\$ 184.74</u>
	<u>0.6</u>	<u>\$ 206.32</u>

The RSUs in the table above include PSUs. The unvested RSUs as of December 31, 2022 include 0.2 million PSUs. The number of shares received upon vesting of these PSUs may range from less than 0.1 million to 0.4 million depending on the level of performance achieved and whether any market conditions are satisfied.

The closing price of Verisign's stock was \$205.44 on December 31, 2022. As of December 31, 2022, the aggregate market value of unvested RSUs was \$129.0 million. The fair values of RSUs that vested during 2022, 2021, and 2020 were \$51.4 million, \$70.3 million, and \$115.0 million, respectively. The weighted-average grant-date fair value of RSUs granted during the years ended December 31, 2021 and 2020, was \$200.64 and \$205.61, respectively. As of December 31, 2022, total unrecognized compensation cost related to unvested RSUs was \$91.4 million which is expected to be recognized over a weighted-average period of 2.4 years.

**Note 9. Non-operating Income (Loss), Net**

The following table presents the components of Non-operating income (loss), net:

	Year Ended December 31,		
	2022	2021	2020
	(In millions)		
Interest income	\$ 14.9	\$ 0.6	\$ 7.8
Loss on extinguishment of debt	—	(2.1)	—
Gain on sale of business	—	—	6.4
Transition services income	—	—	2.1
Other, net	(2.5)	0.2	(0.1)
Total non-operating income (loss), net	<u>\$ 12.4</u>	<u>\$ (1.3)</u>	<u>\$ 16.2</u>

Interest income is earned principally from the Company's surplus cash balances and marketable securities. The increase in interest income in 2022 reflects higher interest rates on our investments in debt securities. The redemption of the 2023 senior notes in 2021 resulted in a loss on debt extinguishment of \$2.1 million related to the unamortized debt issuance costs on the notes. Gain on sale of business and transition services income in 2020 relates to the sale of the Company's security services customer contracts. Other, net in 2022 includes primarily foreign currency related losses.

**VERISIGN, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**  
**DECEMBER 31, 2022, 2021 AND 2020**

**Note 10. Income Taxes**

Income before income taxes is categorized geographically as follows:

	Year Ended December 31,		
	2022	2021	2020
	(In millions)		
United States	\$ 558.5	\$ 489.4	\$ 457.8
Foreign	321.7	292.8	292.4
Total income before income taxes	<u>\$ 880.2</u>	<u>\$ 782.2</u>	<u>\$ 750.2</u>

The provision for income taxes consisted of the following:

	Year Ended December 31,		
	2022	2021	2020
	(In millions)		
Current expense (benefit):			
Federal	\$ 145.1	\$ 97.5	\$ (124.0)
State	41.7	32.2	10.5
Foreign, including withholding tax	26.3	29.8	29.2
	<u>213.1</u>	<u>159.5</u>	<u>(84.3)</u>
Deferred expense (benefit):			
Federal	(18.0)	3.9	4.3
State	(4.8)	(0.2)	17.4
Foreign	16.1	(165.8)	(2.1)
	<u>(6.7)</u>	<u>(162.1)</u>	<u>19.6</u>
Total income tax expense (benefit)	<u>\$ 206.4</u>	<u>\$ (2.6)</u>	<u>\$ (64.7)</u>

The difference between income tax expense (benefit) and the amount resulting from applying the federal statutory rate of 21% to Income before income taxes is attributable to the following:

	Year Ended December 31,		
	2022	2021	2020
	(In millions)		
Income tax expense at federal statutory rate	\$ 184.8	\$ 164.3	\$ 157.6
State taxes, net of federal benefit	29.2	25.5	23.2
Effect of non-U.S. operations	(9.5)	(23.3)	(27.7)
Stock-based compensation	4.7	1.3	(8.6)
Remeasurement of unrecognized tax benefits	(1.5)	(5.1)	(204.7)
Intercompany non-U.S. intellectual property transfer	—	(165.5)	—
Other	(1.3)	0.2	(4.5)
Total income tax expense (benefit)	<u>\$ 206.4</u>	<u>\$ (2.6)</u>	<u>\$ (64.7)</u>

During the fourth quarter of 2021, as part of a legal entity reorganization, the Company completed an internal transfer of certain of its non-U.S. intellectual property which had no book value. This transfer created amortizable tax basis for the receiving entity based on the \$1.20 billion fair value of the intellectual property, which resulted in the recognition of a \$165.5 million deferred tax asset and a corresponding income tax benefit. During 2020, the Company recognized an income tax benefit as a result of the remeasurement of certain previously unrecognized income tax benefits. The majority of these income tax benefits related to the worthless stock deduction taken in 2013. These remeasurements were based on written confirmations from the IRS, indicating no examination adjustments would be proposed related to the worthless stock deduction or certain

**VERISIGN, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**  
**DECEMBER 31, 2022, 2021 AND 2020**

other matters reviewed as part of the audit of the Company's federal income tax returns for 2010 through 2014, and the lapse of statutes of limitations related to other unrecognized income tax benefits.

The tax effects of temporary differences that give rise to significant portions of the Company's deferred tax assets and liabilities are as follows:

	As of December 31,	
	2022	2021
(In millions)		
<b>Deferred tax assets:</b>		
Intellectual property	\$ 147.0	\$ 165.5
Deferred revenues, accruals and reserves	73.7	68.6
Research and development costs	12.0	—
Tax credit carryforwards	3.8	3.5
Net operating loss carryforwards	3.4	4.7
Other	1.8	1.7
Total deferred tax assets	241.7	244.0
Valuation allowance	(5.5)	(5.5)
Net deferred tax assets	236.2	238.5
<b>Deferred tax liabilities:</b>		
Property and equipment	(0.5)	(6.6)
Other	(1.1)	(1.2)
Total deferred tax liabilities	(1.6)	(7.8)
Total net deferred tax assets	\$ 234.6	\$ 230.7

With the exception of deferred tax assets related to certain state and foreign net operating loss and foreign tax credit carryforwards, management believes it is more likely than not that the tax effects of the deferred tax liabilities together with future taxable income, will be sufficient to fully recover the remaining deferred tax assets.

As part of the Tax Cuts and Jobs Act of 2017, domestic and foreign research and development expenses, including costs related to internally developed software, are required to be amortized for income tax purposes, over five and fifteen years, respectively, beginning with our 2022 tax year. As a result, the Company recognized a deferred tax asset of \$12.0 million in 2022.

As of December 31, 2022, the Company's deferred tax assets included \$55.9 million of state net operating loss carryforwards, before applying tax rates for the respective jurisdictions. The tax credit carryforwards as of December 31, 2022 consisted primarily of foreign tax credit carryforwards. The state net operating loss carryforwards expire in various years from 2023 through 2034. The foreign tax credits will expire in 2028.

A reconciliation of the beginning and ending balances of the total amounts of gross unrecognized tax benefits is as follows:

	As of December 31,	
	2022	2021
(In millions)		
Beginning balance	\$ 16.0	\$ 23.7
Increases in tax positions for prior years	0.1	0.1
Decreases in tax positions for prior years	—	(1.3)
Increases in tax positions for current year	1.4	1.1
Decreases in tax positions due to settlement with taxing authorities	—	(1.2)
Lapse in statute of limitations	(2.4)	(6.4)
Ending balance	\$ 15.1	\$ 16.0

**VERISIGN, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS - (Continued)**  
**DECEMBER 31, 2022, 2021 AND 2020**

As of December 31, 2022, approximately \$14.8 million of unrecognized tax benefits, including penalties and interest, could affect the Company's tax provision and effective tax rate. The Company does not expect the balance of unrecognized tax benefits to change materially during the next twelve months.

In accordance with its accounting policy, the Company recognizes accrued interest and penalties related to unrecognized tax benefits as a component of tax expense. These accruals were not material in any period presented.

The Company's major taxing jurisdictions are the U.S., the Commonwealth of Virginia, and Switzerland. The Company's U.S. federal income tax returns are currently under examination by the IRS for 2010 through 2013. The Company's U.S. federal tax returns for 2019, and the years thereafter, also remain subject to examination. The Company's other material tax returns are not currently under examination by their respective taxing jurisdictions. Because the Company has previously used net operating loss carryforwards and other tax attributes to offset its taxable income in income tax returns for the U.S. and Virginia, such attributes can be adjusted by these taxing authorities until the statute of limitations closes on the year in which such attributes were utilized. The open years for examination in Switzerland are the 2012 tax year and forward.

**Note 11. Commitments and Contingencies**

The following table represents the minimum payments required by Verisign under certain purchase obligations, certain U.S. income tax obligations, leases, and the interest payments and principal on the Senior Notes:

	Purchase Obligations	Transition Tax	Operating Leases	Senior Notes	Total
	(In millions)				
2023	\$ 43.0	\$ 14.6	\$ 5.6	\$ 72.6	\$ 135.8
2024	9.7	19.4	1.5	72.6	103.2
2025	5.0	24.3	0.1	559.5	588.9
2026	—	—	—	46.4	46.4
2027	—	—	—	596.4	596.4
Thereafter	—	—	—	820.9	820.9
<b>Total</b>	<b>\$ 57.7</b>	<b>\$ 58.3</b>	<b>\$ 7.2</b>	<b>\$ 2,168.4</b>	<b>\$ 2,291.6</b>

The amounts in the table above exclude \$14.8 million of unrecognized tax benefits, as the Company is unable to reasonably estimate the ultimate amount or time of settlement of those liabilities.

Verisign enters into certain purchase obligations with various vendors. The Company's significant purchase obligations include firm commitments with telecommunication carriers, other service providers and the fixed portion of registry fees related to the operation of certain top-level domains. Registry fees for top-level domains that we operate where the amounts are variable or passed-through to registrars have been excluded from the table above. The Company does not have any significant purchase obligations beyond 2025.

The Company has an agreement with Internet Corporation for Assigned Names and Numbers ("ICANN") to be the sole registry operator for domain names in the .com registry through November 30, 2024. Under this agreement, the Company pays ICANN on a quarterly basis, \$0.25 for each annual term of a domain name registered or renewed during such quarter. The Company incurred registry fees for the .com registry of \$39.9 million in 2022, \$40.6 million in 2021, and \$36.3 million in 2020.

In connection with the .com Registry Agreement with ICANN, the Company is required to make annual payments of \$4.0 million to ICANN through 2025 to support efforts to maintain the security and stability of the DNS. The payments for 2023 through 2025 are included in Purchase obligations in the table above.

The Transition Tax amounts in the table above are the remaining installments of U.S. income taxes payable on our accumulated foreign earnings pursuant to the 2017 Tax Cuts and Jobs Act.

Verisign leases a small portion of its office space and a portion of its data center facilities under operating leases, the longest of which extends into 2025. Rental expenses under operating leases were not material in any period presented.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

Not applicable.

**ITEM 9A. CONTROLS AND PROCEDURES**

**a. Evaluation of Disclosure Controls and Procedures**

Based on our management's evaluation, with the participation of our Chief Executive Officer (our principal executive officer) and our Chief Financial Officer (our principal financial officer), as of December 31, 2022, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) are effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

**b. Management's Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2022 using the criteria established in *Internal Control-Integrated Framework* (2013 Framework) issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO").

Based on our evaluation under the COSO framework, management has concluded that our internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

KPMG LLP, an independent registered public accounting firm, has issued a report concerning the effectiveness of our internal control over financial reporting as of December 31, 2022. See "Report of Independent Registered Public Accounting Firm" in Item 8 of this Form 10-K.

**c. Changes in Internal Control over Financial Reporting**

There was no change in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the three months ended December 31, 2022 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

**d. Inherent Limitations of Disclosure Controls and Internal Control over Financial Reporting**

Because of their inherent limitations, our disclosure controls and procedures and our internal control over financial reporting may not prevent material errors or fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. The effectiveness of our disclosure controls and procedures and our internal control over financial reporting is subject to risks, including that the controls may become inadequate because of changes in conditions or that the degree of compliance with our policies or procedures may deteriorate.

**ITEM 9B. OTHER INFORMATION**

None.

**Item 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.**

None.

## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this item regarding our directors and nominees, Audit Committee, Corporate Governance and Nominating Committee, and Compensation Committee will be included under the captions “Proposal No. 1—Election of Directors,” “Security Ownership of Certain Beneficial Owners” and “Corporate Governance” in our Proxy Statement related to the 2023 Annual Meeting of Stockholders and is incorporated herein by reference (our “2023 Proxy Statement”).

Pursuant to General Instruction G(3) of Form 10-K, the information required by this item relating to our executive officers is included under the caption “Information About Our Executive Officers” in Part I of this Form 10-K.

We have adopted a written Code of Conduct, which is posted on our Investor Relations website under “Ethics and Business Conduct” at <https://investor.verisign.com/corporate-governance>. The Code of Conduct applies to all of our directors, officers, and employees, including our principal executive officer, principal financial officer, and other senior accounting officers. We have also adopted the “Corporate Governance Principles for the Board of Directors,” which provide guidance to our directors on corporate practices that serve the best interests of our company and our stockholders.

We intend to satisfy any disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of the Code of Conduct, to the extent applicable to the principal executive officer, principal financial officer, or other senior accounting officers, by posting such information on our website, on the web page found by clicking through to “Ethics and Business Conduct” as specified above.

### ITEM 11. EXECUTIVE COMPENSATION

Information required by this item is incorporated herein by reference to our 2023 Proxy Statement from the discussions under the captions “Compensation of Directors,” “Non-Employee Director Retainer Fees and Equity Compensation Information” and “Non-Employee Director Compensation Table for 2022,” and “Executive Compensation.”

### ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information required by this item is incorporated herein by reference from the discussions under the captions “Security Ownership of Certain Beneficial Owners and Management” and “Equity Compensation Plan Information” in our 2023 Proxy Statement.

### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required by this item is incorporated herein by reference to our 2023 Proxy Statement from the discussions under the captions “Policies and Procedures with Respect to Transactions with Related Persons,” “Certain Relationships and Related Transactions” and “Independence of Directors.”

### ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Our independent registered public accounting firm is KPMG LLP, McLean, VA, Auditor Firm ID: 185.

Information required by this item is incorporated herein by reference to our 2023 Proxy Statement from the discussions under the captions “Principal Accountant Fees and Services” and “Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Auditors.”

**PART IV****ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES**

## (a) Documents filed as part of this report

## 1. Financial statements

The financial statements are set forth under Item 8 of this Form 10-K, as indexed below.

	<u>Page</u>
<a href="#">Reports of Independent Registered Public Accounting Firm</a>	<a href="#">31</a>
<a href="#">Consolidated Balance Sheets</a>	<a href="#">34</a>
<a href="#">Consolidated Statements of Comprehensive Income</a>	<a href="#">35</a>
<a href="#">Consolidated Statements of Stockholders' Deficit</a>	<a href="#">36</a>
<a href="#">Consolidated Statements of Cash Flows</a>	<a href="#">37</a>
<a href="#">Notes to Consolidated Financial Statements</a>	<a href="#">38</a>

## 2. Financial statement schedules

Financial statement schedules are omitted because the information called for is not material or is shown either in the consolidated financial statements or the notes thereto.

## 3. Exhibits

*(a) Index to Exhibits*

Pursuant to the rules and regulations of the SEC, the Company has filed certain agreements as exhibits to this Form 10-K. These agreements may contain representations and warranties by the parties thereto. These representations and warranties have been made solely for the benefit of the other party or parties to such agreements and (1) may be intended not as statements of fact, but rather as a way of allocating the risk to one of the parties to such agreements if those statements prove to be inaccurate, (2) may have been qualified by disclosures that were made to such other party or parties and that either have been reflected in the Company's filings or are not required to be disclosed in those filings, (3) may apply materiality standards different from what may be viewed as material to investors and (4) were made only as of the date of such agreements or such other date(s) as may be specified in such agreements and are subject to more recent developments. Accordingly, these representations and warranties may not describe the Company's actual state of affairs at the date hereof or at any other time.

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
2.01	<a href="#">Agreement and Plan of Merger dated as of March 6, 2000, by and among the Registrant, Nickel Acquisition Corporation and Network Solutions, Inc.</a>	8-K	3/8/00	2.1	
3.01	<a href="#">Restated Certificate of Incorporation of the Registrant.</a>	10-K	2/17/17	3.01	
3.02	<a href="#">Bylaws of VeriSign, Inc.</a>	10-K	2/19/21	3.02	
4.01	<a href="#">Indenture, dated as of April 16, 2013, between VeriSign, Inc., each of the subsidiary guarantors party thereto and U.S. Bank National Association, as trustee.</a>	8-K	4/17/13	4.1	
4.02	<a href="#">Indenture dated as of March 27, 2015 between VeriSign, Inc. and U.S. Bank National Association, as trustee.</a>	8-K	3/30/15	4.1	
4.03	<a href="#">Indenture, dated as of July 5, 2017, between VeriSign, Inc. and U.S. Bank National Association, as trustee.</a>	8-K	7/5/17	4.1	
4.04	<a href="#">Indenture, dated as of June 8, 2021, between VeriSign, Inc. and U.S. Bank National Association, as trustee.</a>	8-K	6/8/2021	4.1	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
4.05	<a href="#">First Supplemental Indenture, dated as of June 8, 2021, between VeriSign, Inc. and U.S. Bank National Association, as trustee.</a>	8-K	6/8/2021	4.2	
4.06	<a href="#">Description of Securities of the Registrant</a>	10-K	2/19/21	4.04	
10.01	<a href="#">Amended and Restated 2007 Employee Stock Purchase Plan, as adopted August 30, 2007, and amended May 25, 2017.</a> +	DEF 14A	4/12/17	Appendix A	
10.02	<a href="#">Amendment No. Thirty (30) to Cooperative Agreement - Special Awards Conditions NCR-92-18742, between VeriSign and U.S. Department of Commerce managers.</a>	10-K	7/12/07	10.27	
10.03	<a href="#">Form of Amended and Restated Change-in-Control and Retention Agreement [CEO Form of Agreement].</a> +	10-Q	7/27/17	10.01	
10.04	<a href="#">Amended and Restated Change-in-Control and Retention Agreement.</a> +	10-Q	7/27/17	10.02	
10.05	<a href="#">VeriSign, Inc. 2006 Equity Incentive Plan Form of Non-Employee Director Restricted Stock Unit Agreement.</a> +	10-Q	7/27/12	10.03	
10.06	<a href="#">Purchase and Sale Agreement for 12061 Bluemont Way Reston, Virginia between 12061 Bluemont Owner, LLC, a Delaware limited liability company, as Seller and VeriSign, Inc., a Delaware corporation, as Purchaser Dated August 18, 2011.</a>	8-K	9/7/11	10.01	
10.07	<a href="#">Registry Agreement between VeriSign, Inc. and the Internet Corporation for Assigned Names and Numbers, entered into on November 29, 2012.</a>	8-K	11/30/12	10.1	
10.08	<a href="#">Amendment Number Thirty-Two (32) to the Cooperative Agreement between VeriSign, Inc. and Department of Commerce, entered into on November 29, 2012.</a>	8-K	11/30/12	10.2	
10.09	<a href="#">VeriSign, Inc. 2006 Equity Incentive Plan Performance-Based Restricted Stock Unit Agreement</a> +	10-Q	4/28/16	10.01	
10.10	<a href="#">VeriSign, Inc. 2006 Equity Incentive Plan Form of Employee Restricted Stock Unit Agreement</a> +	10-K	2/19/16	10.70	
10.11	<a href="#">Amendment to the .com Registry Agreement between VeriSign, Inc. and the Internet Corporation for Assigned Names and Numbers, entered into on October 20, 2016</a>	8-K	10/20/16	10.1	
10.12	<a href="#">Amendment Number Thirty-Three (33) to the Cooperative Agreement between VeriSign, Inc. and Department of Commerce, entered into on October 20, 2016</a>	8-K	10/20/16	10.2	
10.13	<a href="#">Amendment Number Thirty-Four (34) to the Cooperative Agreement between VeriSign, Inc. and Department of Commerce, entered into on October 20, 2016</a>	8-K	10/20/16	10.3	
10.14	<a href="#">Amended and Restated VeriSign, Inc. 2006 Equity Incentive Plan, as amended and restated</a> +	DEF 14A	4/29/16	Appendix A	
10.15	<a href="#">Net Registry Agreement between VeriSign, Inc. and the Internet Corporation for Assigned Names and Numbers, entered into on June 28, 2017.</a>	8-K	6/28/17	10.1	
10.16	<a href="#">Amendment Thirty-Five (35) to the Cooperative Agreement between VeriSign, Inc. and the U.S. Department of Commerce, entered into on October 26, 2018</a>	8-K	11/1/18	10.1	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Date	Number	
10.17	<a href="#">Asset Purchase Agreement between Verisign, Inc., as the seller and Neustar, Inc., as the buyer, dated as of October 24, 2018</a>	10-K	2/15/19	10.20	
10.18	<a href="#">Second Amendment to the .com Registry Agreement between VeriSign, Inc. and the Internet Corporation for Assigned Names and Numbers, entered into on March 27, 2019</a>	10-K	2/14/20	10.21	
10.19	<a href="#">Amendment to Asset Purchase Agreement and Transition Services Agreement between Neustar, Inc. and VeriSign, Inc., dated as of December 10, 2019</a> <sup>†</sup>	10-K	2/14/20	10.22	
10.20	<a href="#">Third Amendment to the .com Registry Agreement between VeriSign, Inc. and the Internet Corporation for Assigned Names and Numbers, entered into on March 27, 2020.</a>	8-K	03/27/20	10.1	
10.21	<a href="#">First Amendment to the .net Registry Agreement between VeriSign, Inc. and the Internet Corporation for Assigned Names and Numbers, entered into on April 27, 2020.</a>	10-Q	10/22/20	10.01	
10.22	<a href="#">Credit Agreement, amended and restated as of December 23, 2021 among VERISIGN, INC., the Lenders as defined therein and JPMorgan Chase Bank, N.A., as Administrative Agent.</a>	10-K	2/18/22	10.22	
10.23	<a href="#">Form of Indemnity Agreement entered into by the Registrant with each of its directors and executive officers.</a> <sup>+</sup>	10-Q	4/28/10	10.01	
21.01	<a href="#">Subsidiaries of the Registrant.</a>	10-K	2/14/20	21.01	
23.01	<a href="#">Consent of Independent Registered Public Accounting Firm.</a>				X
24.01	<a href="#">Powers of Attorney (Included as part of the signature pages hereto).</a>				X
31.01	<a href="#">Certification of Principal Executive Officer pursuant to Exchange Act Rule 13a-14(a).</a>				X
31.02	<a href="#">Certification of Principal Financial Officer pursuant to Exchange Act Rule 13a-14(a).</a>				X
32.01	<a href="#">Certification of Principal Executive Officer pursuant to Exchange Act Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the U.S. Code (18 U.S.C. 1350).</a> *				X
32.02	<a href="#">Certification of Principal Financial Officer pursuant to Exchange Act Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the U.S. Code (18 U.S.C. 1350).</a> *				X
101	Interactive Data File. The instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.				X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).				X

\* As contemplated by SEC Release No. 33-8212, these exhibits are furnished with this Form 10-K and are not deemed filed with the Securities and Exchange Commission and are not incorporated by reference in any filing of VeriSign, Inc. under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in such filings.

+ Indicates a management contract or compensatory plan or arrangement.

† Certain portions of this exhibit have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K.

**ITEM 16. 10-K SUMMARY**

None.



**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the registration statements (Nos. 333-39212, 333-45237, 333-46803, 333-59458, 333-69818, 333-75236, 333-82941, 333-86178, 333-86188, 333-106395, 333-117908, 333-126352, 333-144590, 333-147136, and 333-223107) on Form S-8, the registration statements (Nos. 333-256347 and 33-72222) on Form S-3, and the registration statements (Nos. 333-190732, 333-204485, and 333-219525) on Form S-4 of our reports dated February 17, 2023, with respect to the consolidated financial statements of VeriSign, Inc. and subsidiaries and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP

McLean, Virginia  
February 17, 2023





**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

I, D. James Bidzos, Chief Executive Officer of VeriSign, Inc. (the “Company”), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. the Annual Report on Form 10-K of the Company for the fiscal year ended December 31, 2022, as filed with the Securities and Exchange Commission (the “Report”), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 17, 2023

/S/ D. JAMES BIDZOS

---

**D. James Bidzos**  
*Chief Executive Officer*  
*(Principal Executive Officer)*

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO  
18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO SECTION 906  
OF THE SARBANES-OXLEY ACT OF 2002**

I, George E. Kilguss, III, Chief Financial Officer of VeriSign, Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. the Annual Report on Form 10-K of the Company for the fiscal year ended December 31, 2022, as filed with the Securities and Exchange Commission (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 17, 2023

/S/ GEORGE E. KILGUSS, III

---

**George E. Kilguss, III**  
*Chief Financial Officer*  
*(Principal Financial Officer)*

**EXHIBIT JJN-10**

[EN](#) [FR](#) [ES](#)**About Internet Society** 13 November 2019

# Ethos Capital to Acquire Public Interest Registry from the Internet Society

*Public Interest Registry Will Continue Management and Mission of .ORG Under New Ownership*

**Reston, VA (November 13, 2019)** – The Internet Society and Public Interest Registry (PIR) today announced that they have reached an agreement with Ethos Capital, under which Ethos Capital will acquire PIR and all of its assets from the Internet Society. The transaction is expected to close during the first quarter of next year.

“This is an important and exciting development for both the Internet Society and Public Interest Registry,” said Andrew Sullivan, President and Chief Executive Officer of the Internet Society, the organization that established Public Interest Registry. “This transaction will provide the Internet Society with an endowment of sustainable funding and the resources to advance our mission on a broader scale as we continue our work to make the Internet more open, accessible and secure – for everyone. It also aligns Public Interest Registry with Ethos Capital, a strong strategic partner that understands the intricacies of the domain industry and has the expertise, experience and shared values to further advance the goals of .ORG into the future.”

“Since the inception of Public Interest Registry, our mission has been to enable the .ORG Community to use the Internet more effectively and change the world for the better,” stated Jon Nevett, CEO of Public Interest Registry. “That will not change. We have enjoyed a long and successful relationship with the Internet Society, and are thrilled that we will be able to continue – and expand – our important work with Ethos Capital while sustaining our commitment to the .ORG Community going forward.”

Following the close of the transaction, PIR will continue to meet the highest standards of public transparency, accountability, and social performance in line with its longstanding purpose-driven mission, and will consider seeking B Corporation certification. All of PIR’s domain operations and educational initiatives will continue, and there will be no disruption of service or support to the .ORG Community or other generic top-level domains operated by the organization.

establishing a Stewardship Council that will serve to uphold PIR's core founding values and provide support through a variety of community programs."

Mr. Brooks added: "Importantly, throughout the transition and beyond, we are committed to ensuring complete continuity of PIR's operations and enhancing the relationships PIR has established over the years. We look forward to continuing PIR's longstanding partnerships and vendor affiliations to ensure domain operations run smoothly and without interruption."

Vint Cerf, former Chairman of the Board of ICANN and founding President of the Internet Society, said: "When the Internet Society won the bid to operate the .ORG registry, it enabled a productive and sustainable future for the organization. Public Interest Registry exercised its stewardship to the benefit of the registrants and the Internet Society's mission. I am looking forward to supporting Ethos Capital and PIR in any way I can as they continue to expand the utility of the .ORG top-level domain in creative and socially responsible ways."

PIR was established by the Internet Society in 2002 to manage and operate the .ORG domain. Since then, .ORG has risen to become the largest purpose-driven domain used by millions of organizations and others to achieve their online goals.

Goldman Sachs & Co LLC is serving as financial advisor to both the Internet Society and PIR. Morgan, Lewis & Bockius LLP and Proskauer Rose LLP are serving as legal advisors to the Internet Society and PIR, respectively. Macquarie Capital is serving as financial advisor and Morrison & Foerster LLP is serving as legal advisor to Ethos Capital.

## **About Public Interest Registry**

Public Interest Registry (PIR) is a nonprofit corporation that operates the .ORG top-level domain—one of the world's largest generic top-level domains with more than 10 million domain names registered worldwide. As an advocate for collaboration, safety, and security on the Internet, PIR's mission is to serve as an exemplary registry and to provide a trusted digital identity. PIR strives to educate the global community to use the Internet more safely and effectively while taking a leadership position among Internet stakeholders on policy and other issues relating to the domain naming system. PIR was founded by the Internet Society (<https://www.internetsociety.org>) in 2002 and is based in Reston, Virginia, USA. Visit Public Interest Registry at <https://pir.org>.

## **About .ORG**

.ORG is the original purpose-driven "generic" top-level domain (gTLD) with more than 10 million domain names registered worldwide. .ORG is open to everyone, providing a global platform for organizations, associations, clubs, businesses and individuals to bring their ideas to life. For more than

## About the Internet Society

Founded by Internet pioneers, the Internet Society (ISOC) is a non-profit organization dedicated to ensuring the open development, evolution and use of the Internet. Working through a global community of chapters and members, the Internet Society collaborates with a broad range of groups to promote technologies that keep the Internet safe and secure, and to advocate for policies and infrastructure that enable universal access. The Internet Society also provides a corporate home for the administrative entity that supports the Internet Engineering Task Force (IETF). For additional information, visit <https://www.internetsociety.org/>.

## About Ethos Capital

Ethos Capital is a specialized investment firm that helps transform and grow established companies in today's rapidly evolving digital economy. Ethos Capital's Founder and CEO, Erik Brooks, has deep expertise and relationships across the business, technical, and social communities that protect and promote the Internet's core founding values. As a mission-driven firm, Ethos Capital is committed to setting the gold standard of ethics and social responsibility for registry operations and supporting a globally connected and resilient Internet. For more information, please visit <https://ethoscapital.com/>.

## Contacts

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[Visit Internet Society, Press Releases, PIR](#)

[< Back](#)



# Related resources

About Internet Society

About Internet Society

About Internet Society

20 June 2022

The Internet Society  
New Appointing  
Interest Registry  
Directors

John Morris  
as Principal  
Advocacy

Internet Society Announces New  
Members of Board of Trustees

Learn about four new members who have  
been seated on our board of trustees.

Morris will be joined  
by four other leading  
experts to drive  
defend the Internet...

Washington, D.C.  
Internet Society today  
announced the  
appointment of  
Kathryn Kleima

Our  
Community

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Our Ecosystem  
Our Resources  
Growing the  
Internet

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Strengthening  
the Internet



Special interest groups (SIGs)	Internet Society	Internet technologies	Internet Sustainable Peering Infrastructure	Encryption
	About Public Interest Registry (PIR) and the Internet Society	Resource library	Sustainable Technical Communities	Network and Distributed System Security (NDSS) Symposium
	About the Internet Society Foundation	Global Internet Report		Protecting the Internet against Fragmentation
Organization members		Newsroom		Securing Global Routing
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**Other Offices**

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**EXHIBIT JJN-11**

## PRIVATE EQUITY

# Ethos Capital Defends Deal to Take Private the Group That Registers Nonprofits' Websites

By Lina Saigol and Selin Bucak Feb. 11, 2020 10:38 am ET



Participants at an Icann meeting.  
Getty Images

The planned \$1.1 billion sale of the Public Interest Registry to Ethos Capital has attracted a deluge of criticism from international bodies over fear the deal, currently under investigation by California, could harm the independence and accessibility of the internet. The private-equity firm hasn't managed to quiet the chorus of

concern just yet, but its chief addressed the issues in an interview with *Barron's* and a sister publication, *Private Equity News*.

**The back story.** PIR, which manages the rights of the .org domain, is used by some of the world's most high-profile not-for-profit groups, including Greenpeace, Human Rights Watch, and Amnesty International.

Ethos Capital, a newly created buyout firm headed by Erik Brooks, announced the [acquisition of the registrar from the Internet Society](#) in November. Within days, the deal became the subject of debate among several international organizations that depend on PIR for the registration of their websites.

At the [heart of their concerns](#) was that transferring the nonprofit to private-equity ownership could potentially lead to censorship and a damaging increase in prices. Last year, the Internet Corporation for Assigned Names and Numbers, or Icann—a nonprofit in charge of the domain-name system—removed a price cap that banned PIR from charging more than \$8.25 per domain.

The organization also gave permission to PIR to create “protections for the rights of third parties,” raising concerns that some companies and governments will be allowed to demand censorship in the name of protection.

**What's new.** In the interview, Brooks sought to allay concerns, saying he won't increase the price of the .org domain by more than 10% a year on average.

Brooks also said Ethos will set up a stewardship council, comprising members from the not-for-profit world, some of which he hopes to announce in the coming weeks.

PIR generated \$92 million in net revenue in 2018, but suffered a loss of \$3.2 million because it spent nearly \$49 million on funding Internet Society programs and education, according to its annual report. The Internet Society is PIR's parent organization.

Brooks says he is now looking to invest in a number of areas to build up the business, including expanding the customer base both in the U.S. and globally, increasing marketing spending, and introducing new products and services.

Brooks believes the first wave of opposition against the deal came from people who buy and sell domain names, who he says encouraged the not-for-profit groups to speak out.

"This whole narrative was established early on and very vocally initiated by a community of individuals called domainers," Brooks said. "They are professional investors who buy thousands of domain names at a time and sit on them."

The domainers, he argued, are focused only on the prices of domains, he said. "It was a very convenient narrative to push it out into the world that a for-profit company would increase prices."

**Looking ahead.** The Internet Society will invest the sale proceeds into an endowment and use the earnings to fund its work. It has said that the funding it will receive from the endowment will be broadly equivalent to the annual earnings it currently receives from PIR.

Despite such assurances, questions around the sale still remain.

Last week, the attorney general of California, who supervises charitable organizations in the state, where Ican is based, requested a delay to the transaction to have time to investigate it.

The internet Society, Ethos Capital and PIR have agreed to a delay until Feb. 29. Brooks said he is confident that both Ican and the attorney general will greenlight the deal.

**Write to** Lina Saigol at [Lina.Saigol@dowjones.com](mailto:Lina.Saigol@dowjones.com) and Selin Bucak at [Selin.Bucak@dowjones.com](mailto:Selin.Bucak@dowjones.com)

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**EXHIBIT JJN-12**



Cooperative Agreement Between NSI and U.S.  
Government

Effective: 1 January 1993

**Network Information Services Manager(s) for NSFNET and the NREN:  
INTERNIC Registration Services  
COOPERATIVE AGREEMENT NO. NCR-9218742**

**Parties:**

National Science Foundation  
1800 G Street, N.W.  
Washington, D.C. 20550

and

Network Solutions, Incorporated  
505 Huntmar Park Drive  
Herndon, VA 20170

**COOPERATIVE AGREEMENT NO. NCR-9218742**

**Parties:**

National Science Foundation

and

Network Solutions, Incorporated

**Title:**

Network Information Services Manager(s) for NSFNET and the NREN: INTERNIC Registration Services

**Type of Award:**

Cost-Plus-Fixed-Fee Cooperative Agreement

**Estimated Total Amount:**

\$4,219,339

**Effective Date:**

January 1, 1993

**Expiration Date:**

September 30, 1998

**Authority:**

This agreement is awarded under the authority of the National Science Foundation Act (R@ U.S.C. 186 et seq.) and the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301 et

seq.)

This agreement is entered into between the United States of America, Hereinafter called the Government, represented by the National Science Foundation, hereinafter called the Foundation or NSF, and Network Solutions, Incorporated, hereinafter called the Awardee.

**NSF Program Official:**

Donald R. Mitchell  
Telephone : 202-357-9717  
e-mail: dmitcheff@nsf.gov

**NSF Administrative Official:**

Altie H. Metcalf  
Telephone: 202-357-9843  
e-mail: ametcalf@nsf.gov

IN WITNESS WHEREOF, the parties have executed Cooperative Agreement No. NCR-9218742, Network Information Services Manager(s) for NSFNET and the NREN: INTERNIC Registration Services.

UNITED STATES OF AMERICA

Aaron R. Asrael  
Grants and Contracts  
(Date)

NATIONAL SCIENCE FOUNDATION  
Washington, D.C. 20550

ACCEPTANCE

Roger L. Evans  
Chief Financial Officer  
(Date)

Network Solutions, Incorporated  
Herndon, VA 22070

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**INDEX TO COOPERATIVE AGREEMENT NCR-9218742**

**I. SPECIAL CONDITIONS**

ARTICLE

1. [Background and Purpose of Agreement](#)
2. [Special Requirements](#)
3. [Statement of Work](#)
4. [Turnaround and Performance Measures](#)
5. [Estimated Requirements and Review](#)
6. [Responsibilities](#)
7. [Period of Performance](#)
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9. [Annual Report, Program Plan, and Budget](#)
10. [Other Reporting Requirements](#)
11. [Directed Activities](#)
12. [Key Personnel](#)
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14. [Publicity, Public Information and Publications](#)
15. [Project Income from Registration Fees](#)

**II. GENERAL CONDITIONS**

Grant General Conditions - GC-1 (10/91)  
Cooperative Agreement General Conditions - CA-1 (12/91)

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**ARTICLE 1. BACKGROUND AND PURPOSE OF AGREEMENT**

During the past two decades computer networks have facilitated collaboration among members of many research and education communities and provided them with remote access to information and computing resources. These networks have continued to grow both in the number of users connected and in the capabilities provided to the individual users. It is anticipated that such networks will become essential to research and education during this decade. In particular, the collection of interconnected networks known as the Internet has become important for many research communities. It is also of increasing importance for education.

Today more than 5,000 networks comprise the Internet. These networks link together hundreds of thousands of computers and millions of users throughout the world. The domestic, non-military portion of the Internet includes NSFNET. It also includes other federally sponsored networks such as NASA Science Internet (NSI) and Energy Sciences Network (Esnet). NSFNET, NSI, and Esnet, as well as some other networks of the Internet, are related to the National Research and Education Network (NREN) which was defined in the President's Fiscal 1992 budget and which has been authorized by the passage in December, 1991, of the High Performance Computing and Communications Act, Public Law 102-194.

The NREN is projected to evolve from a part of the Internet containing portions of NSFNET, NSI, and Esnet. This evolution will reflect the legal and technical requirements of the various sponsoring agencies. For example, NASA and DOE are mission agencies whose networks' traffic must relate to the agencies' missions. NSF, on the other hand, is chartered to support science and engineering research and education; hence NSFNET can carry all traffic contemplated for the NREN and may in fact support additional traffic as well.

Because of the breadth of the charter of the NSFNET, it is projected that it will continue to serve an expanding base of research and education users. The provision of enhanced network information services for NSFNET will be an important part of the expansion in user base.

In cooperation with the Internet community, the National Science Foundation developed and released, in the spring of 1992, Project Solicitation NSF92-24 for one or more Network Information Services Managers (NIS Manager(s)) to provide and/or coordinate (i) Registration Services, (ii) Directory and Database Services, and (iii) Information Services for the NSFNET. As a result of this solicitation, three separate organizations were selected to receive cooperative agreements in the areas of (i) Registration Services, (ii) Directory and Database Services, and (iii) Information Services. Together, these three awards constitute the NIS Manager(s) Project.

It is essential that the three project participants selected work closely together to provide a seamless interface for users in need of services. For this reason, the three awardees, at the request of the Foundation, have developed a detailed concept and plan to provide this seamless interface called the "INTERNIC," have revised their proposals to reflect the implementation of the "INTERNIC" concept, and have agreed to the structuring of their three (separate) awards as one collaborative project. This Cooperative Agreement for Registration Services is one of the three (3) collaborative awards resulting from the NIC Manager(s) Project solicitation.

It is anticipated that all registration services required during the period of this Agreement will be obtained and furnished under the terms of this Agreement and that the definition and providing of these services will help facilitate the evolution of the NSFNET and the development of the NREN. References to NSFNET in this Agreement should in general be understood to include the NREN as well.

## **ARTICLE 2. SPECIAL REQUIREMENTS**

### **A. Collaborative Proposals and Effort(s)**

1. An important aspect of the Awardee's work is coordination with the Network Information Services Managers for (i) Database and Directory Services (AT&T under Cooperative Agreement NCR-9218179) and (ii) Information Services (General Atomics under Cooperative Agreement NCR-9218749) to provide a "seamless interface" for internet users in accordance with the "INTERNIC" concept explicated in the Awardee's revised proposal dated October 19, 1992. Hereafter in this agreement, Awardee's two collaborating partners, General Atomics and AT&T, shall be referred to as

Collaborators and Awardee shall coordinate its performance hereunder with the efforts of its Collaborators in accordance with the "INTERNIC" concept explicated in the Awardee's revised proposal dated October 19, 1992. The NSF Program Official reserves the authority to resolve technical, managerial, or scheduling disputes.

2. This requirement for close collaboration and coordination among the three aspects of the Network Information Services Management Project shall be stated in each of the three awards. Such collateral agreements and fund transfers consistent with the currently approved Program Plan (see Article 9) as may be necessary to effect the coordination, collaboration and seamless interface to users called for by the "INTERNIC" concept or improve the overall integration of the NIS Manager(s) Project may be entered into by, between and among the Awardee and its Collaborators without further Foundation approvals. Absent a specific inclusion in the approved Program Plan, Awardee fund transfers made pursuant to this Article may not exceed \$50,000 in any Program Year.

#### B. Directed Activities

At the request of the NSF Program Director, as set forth in article 13 (below), the Awardee shall attend such meetings, seminars, conference and planning and other events and shall provide such related supplies and services as necessary to promulgate information regarding registration activity to the worldwide internet community and to facilitate the most effective, efficient and ubiquitous registration services possible.

### ARTICLE 3. STATEMENT OF WORK

A. The Awardee shall provide to non-military internet users and networks all necessary registration services (which were) previously provided by the Defense Information Systems Agency Network Information Center (the DISA NIC).

B. The work will be performed in general accordance with NSF Project Solicitation NSF 92-24 for Network Information Services Manager(s) for the NSFNET and the NREN, the Awardee's proposal No. NCR-9218742, dated September 23, 1992, amended by Awardee's supplemental proposal addressing collaborative INTERNIC activity, dated October 19, 1992, hereinafter referred to cumulatively as Awardee's Proposal, and in conformance with the technical and/or performance requirements contained therein and set forth below.

C. The Awardee shall provide registration services in accordance with the provisions of RFC 1174. As stated in RFC 1174:

[T]he Internet system has employed a central Internet Assigned Numbers Authority (IANA) for the allocation and assignment of various numeric identifiers needed for the operation of the Internet. The IANA function is currently performed by the University of Southern California's Information Sciences Institute. The IANA has the discretionary authority to delegate portions of this responsibility and, with respect to numeric network and autonomous system identifiers, has lodged this responsibility with an Internet Registry (IR).

D. Moreover, in cooperation with the IANA, the IR may create delegate registries to carry out registration services for specified domains.

E. The Awardee shall work with the DISA NIC to design and implement a transition plan, as outlined in Awardee's Proposal, that will minimize inconvenience to the networking community during and after the transition.

F. The Non-military internet registration services to be provided under this agreement will initially include, but not be limited to, the following:

1. Domain name registration
2. Domain name server registration

3. Network number assignment
4. Autonomous system number assignment

G. Possible future changes in the registration services provided under this Agreement may include, but shall not be limited to, the use of alternate registration/numbering systems or schemes and the imposition of a user based fee structure. However, in no case shall any user based fee structure be imposed or changed without the express direction/approval of the NSF Program Official.

#### **ARTICLE 4. TURNAROUND AND PERFORMANCE MEASURES**

A. The following describes the required turnaround and availability of Registration data:

1. 3 working days/Class C
2. 5 working days/Class B
3. 22 working days/Class A

B. Turnaround is the time from receipt of a completed template, and any information pertaining to network topology and usage of previously assigned address space as may be specifically requested in individual cases, to the assignment of a number. Availability is the provision of the registration data to the INTERNIC Database and Directory Services Awardee.

C. The quality of Awardee's registration services will be measured in accordance with the formulae contained in Section J of Awardee's revised proposal of September 23, 1992 and in light of the turnaround times specified above.

#### **ARTICLE 5. ESTIMATED REQUIREMENTS AND REVIEW**

A. Estimated Requirements

The registration services currently required for the performance of this Cooperative Agreement are described above. The registration services described above are only an estimate of the immediate and long-term requirements of the scientific research and education community and are furnished for planning purposes only. Since the future needs of the scientific research and education community are unknown at this time, the Foundation reserves the right to increase, decrease or modify the quantity, quality, content or nature of the registration services to be provided hereunder. Should the Foundation exercise the right to increase, decrease or modify the quantity, quality, content or nature of the registration services provided hereunder, appropriate change to estimated costs, fees, and funding schedules shall be negotiated and incorporated into the Agreement.

B. Performance Review

By December 31, 1994, the Foundation will review the project to determine whether to continue funding and to provide general direction as to the continuation and contemplated level of future support to be provided for the remainder of the agreement.

#### **ARTICLE 6. RESPONSIBILITIES**

A. Awardee

The Awardee has primary responsibility for ensuring the quality, timeliness and effective management of the registration services provided under this agreement. To the extent that NSF does not reserve specific responsibility for accomplishing the purposes of this Agreement, by either special condition or general condition of the Agreement, all such responsibilities remain with the Awardee.

B. National Science Foundation

1. General

NSF has responsibility for registration services support, support planning, oversight, monitoring, and evaluation. NSF will make approvals required under the General Conditions and, where necessary and appropriate, NSF will contact and negotiate with Federal agencies and other national and International members of the Internet community to further the efforts of this project.

## 2. Technical

### a. Program Officer Authority

Performance of work under this Cooperative Agreement shall be subject to the general oversight and monitoring of the NSF Program Officer. This involvement may include, but is not limited to:

- (1) Review of the Quarterly and Annual Reports, Program Plans and Budget.
- (2) Participation in resolution of technical, managerial and scheduling concerns; review and, where required by the Agreement, approval of technical reports and information to be delivered by Awardee.

### b. Limitations

NSF technical involvement will be consistent with the general statement of work as stated in this Agreement. The Program Officer does not have the authority to and may not:

- (1) request additional work outside the Statement of Work;
- (2) issue instructions which constitute a change as defined in Article 8 of GC-1(10/91);
- (3) require an increase in the Agreement's estimated cost or extension to the Agreement's period of performance, or;
- (4) change any of the expressed terms, conditions or specifications of the Agreement.

### c. Awardee Notifications

If, in the opinion of the Awardee, any instructions or requests issued by the Program Officer are within one of the categories as defined in (1) through (4) in the above paragraph, the Awardee shall not proceed but shall notify the NSF Grants and Contracts Officer and shall request, if appropriate, amendment of the Agreement in accordance with Article 37, "Changes -- Limitations of Funds," of the Attached Cooperative Agreement General Conditions.

## 3. Approvals

Unless stated otherwise, all NSF approvals, authorizations, notifications and instructions required pursuant to the terms of this agreement must be set forth in writing by the NSF Grants and Contracts Officer.

## **ARTICLE 7. PERIOD OF PERFORMANCE**

This Agreement, effective January 1, 1993, shall include a three month phase-in period, a five (5) year period of operational support (commencing April 1, 1993), and a six month (no additional cost) flexibility period and shall continue through September 30, 1998.

## **ARTICLE 8. FUNDING**

### A. Agreement Amount

The current total estimated amount of this Cooperative Agreement, exclusive of such amounts as may be provided in connection with Directed Activities provided pursuant to Article 11 (below) is \$5,219,339 of which [ Proprietary Figures Omitted ]

#### B. Allotted Amount(s)

1. There is currently allotted and available for expenditure for provision of registration services under this agreement, exclusive of amounts allotted for Directed Activities(as shown in paragraph 3, below), \$1,162,245, of which [ Proprietary Figures Omitted ]
2. Amounts anticipated to be needed for reimbursement of costs incurred in connection with Directed Activities as provided pursuant to Article 11 (below) are not included in the allotted amount(s) shown in paragraph 8.C, below. Amounts for directed activities may be allotted from time to time throughout the period of this agreement.
3. There is currently allotted and available for expenditure in connection with reimbursement for directed activities under this agreement \$0.

#### C. Obligation

For purposes of payment of the Foundation's portion of all allowable costs (including those incurred in connection with the performance of Directed Activities in accordance with Article 11 below) pursuant to the terms outlined in this Agreement, the total amount currently allotted by the Government to this Cooperative Agreement is \$1,162,245. This allotment covers performance through March 31, 1994.

#### D. Limitation of Funds

1. The parties estimate that performance of this Cooperative Agreement will not cost the Government more than the estimated amount specified in Article 8.A, Agreement Amount, above. The Awardee shall use its best efforts to perform the work specified in Article 3 and all obligations under this award within the allotted funds.
2. Paragraph C of this Article specifies the cumulative amount presently available for payment by the Government and allotted to this award. The parties contemplate that the Government will allot additional funds incrementally to the award up to the full estimate specified in Article 8.A, Agreement Amount, above.
3. The Awardee shall notify the NSF Grants and Contracts Officer in writing whenever it has reason to believe that the costs it expects to incur under this Agreement in the next 60 days, when added to all costs previously incurred, will exceed 85% of the total amount so far allotted to the Agreement by the Government.
4. When and to the extent that the amount allotted by the Government is increased, any costs the Awardee incurs before the increase that are in excess of the amount previously allotted by the Government, shall be allowable to the same extent as if incurred afterward.

#### E. Compensation and Expenditures

1. As compensation for its performance under this agreement, Awardee shall be compensated for its direct and indirect costs (see Article 8.E.3) and shall be paid a fixed fee as provided in this agreement.
2. The Awardee shall also be reimbursed for such travel and related costs as may be specifically required and approved by the NSF Program Director pursuant to Article 11 (below). Expenditures under this agreement must be in accordance with a current Budget or Program Plan which has been approved by the NSF Grants Officer and no reallocation of funds in excess of \$10,000 between budget line items is permitted without prior written (or e-mail) approval of the NSF Program Official.

3. The amount currently allotted includes an indirect cost allowance at the following maximum provisional rates, subject to downward adjustment only:

Internet Services [ Proprietary Figure Omitted ]  
 Material Burden [ Proprietary Figure Omitted ]  
 G&A [ Proprietary Figure Omitted]

#### F. Future Allotments

The actual level of continued NSF support for future years will be negotiated annually with the Awardee and will depend upon annual review of progress, the proposed Program Plan and the availability of funds. The actual funding of such allotments may be provided unilaterally by NSF on an incremental basis.

### ARTICLE 9. ANNUAL REPORT, PROGRAM PLAN AND BUDGET

By December 31 each year, the Awardee shall submit both electronically and in 10 hard copies an Annual Report, Program Plan and Budget to the Foundation for approval. These Program Plans and Budgets shall be submitted in a format and level of detail approved by the Foundation but shall, as a minimum, contain project goals and objectives specified with sufficient technical criteria, milestones, and timetables to measure the progress of the effort toward the attainment of objectives during the time period for which it is being submitted. This Program Plan will be the basis for the performance goals and funding for succeeding twelve month operational period beginning April 1. Each submission should contain narrative information indicating (for the past year's activities) by functional area and overall; any goals accomplished, exceeded, or missed and explaining any significant deviations from the previous year's plan; any educational achievements; patents, copyrights, or other innovations resulting from the activities; industrial and other funding, income and contributions. Each annual submission should also contain information on actual line charges and expenditures (both annual and cumulative) by functional area and overall, in the same level of detail for which it projects the succeeding year's costs, and a summary budget in accordance with NSF Form 1030. The Awardee will receive formal approval of the Program Plan from the NSF Grants Officer. The Foundation accepts (i) the Awardee's proposal as the Program Plan covering the period April 1, 1993, through May 31, 1994; and (ii) the budgets dated October 19, 1992, as the approved budgets for the period January 1, 1993, through May 31, 1994.

### ARTICLE 10. OTHER REPORTING REQUIREMENTS

#### A. Timely Notification of Significant Problems

The Awardee shall inform the NSF Program Official (either by e-mail or in writing) in a timely manner of any significant problems or events that could affect the overall schedule or progress in the program.

#### B. Verbal Reports, Collaboration Briefings and Liaison

1. The Awardee shall meet on an informal basis, as necessary or requested, with the NSF Program Director to review progress to date and to exchange views, ideas, and information concerning the program. During the initial three (3) month phase in period, and thereafter until notified by the NSF Program Director, a weekly status review meeting shall be held to discuss the progress of the transition/phase in, including any problems or delays encountered and changes occasioned by same. (Such weekly status review meetings may be held by telephone and the substance thereof confirmed via e-mail when agreed.

2. The Awardee and Collaborators shall jointly meet, as requested, with the NSF Program Director to detail the progress and discuss the status of the collaboration effort and any difficulties being encountered in providing to the Internet community the seamless interface service envisioned by their collaborative proposal and called for in Article 2 in (above). It is currently contemplated that, at least during the first twelve

(12) months of the award, such meetings shall be held quarterly at either NSF, the Awardee's or Collaborator's facilities.

3. When requested by the NSF Program Director, Awardee shall arrange to have its subawardees in attendance at meetings which deal with their areas of activity. In addition, at the request of the NSF Program Director, the Awardee shall arrange on-site meetings for the Program Officer, other Federal staff and/or representatives of the world-wide Internet community and the Awardee's professional personnel, and/or those of its subawardees.

#### C. Monthly Letter Progress Reports

Monthly letter progress reports may be submitted electronically to the NSF Program Official and NSF Administrative Official at the address shown on the cover page. These (monthly letter progress) reports shall be submitted in such detail and format as required by the Foundation's Program Director and shall contain statistical and narrative information on the performance of the Awardee during the preceding month.

#### D. Quarterly Status Report

1. Awardee shall prepare and furnish electronically and in four hard (4) copies quarterly letter status reports; the first quarterly status report will be for the period from January 1, 1993, through March 31, 1993. These reports shall show the status of all major events and summaries and major work performed during the quarter, including technical status, accomplishments, problems, collaboration activities, changes in future plans, and any pending requests for NSF approval and should be fully reconciled with the information, goals and projections contained in the Annual Report and Program Plan. The report shall also include a summary of award expenditures and line charges both cumulative and for the current quarter.

2. The report shall be prepared on a quarterly basis and shall be submitted within (30) days after the reporting period ends. No quarterly report need be submitted for the quarter in which the Annual Reports are submitted, but, Awardee must insure that any germane information for the quarter not contained in the Annual Report (i.e., list of pending requests for NSF approval) and submitted by separate letter.

#### E. Final Report

The Awardee shall submit electronically and in ten hard (10) copies a final report to NSF at the conclusion of the Cooperative Agreement. The final report shall contain a description of all work performed and problems encountered (and if requested a copy and documentation of any and all software and data generated) in such form and sufficient detail as to permit replication of the work by a reasonably knowledgeable party or organization.

#### F. Submission of Reports

All reports and Program Plans are to be forwarded to the Foundation electronically. Hard copies of reports are indicated to be forwarded in the specified number of copies to the following destinations:

No. of Copies	Addressee
1	National Science Foundation e-mail: awilson@nsf.gov ATTN: Alfred W. Wilson Division of Grants and Agreements, Room 495 Arlington, VA 22230 [Amend 01]
Remainder	National Science Foundation e-mail: dmitchel@nsf.gov ATTN: Donald Mitchell Division of Networking and Communications Research and Infrastructure, Room 1175 Arlington, VA 22230 [Amend 01]

## ARTICLE 11. DIRECTED ACTIVITIES

From time to time the NSF Program Director may require the Awardee to attend such meetings, seminars, conferences and planning and other events and/or to provide related supplies and services as necessary to disseminate information regarding registration services activity to the worldwide Internet community and/or to facilitate the most effective, efficient and ubiquitous registration services possible on an expedited basis. In such a case, the following procedures will be followed;

- A. The NSF Program Director shall request, by e-mail, the Awardee's attendance or special services required and an estimate by the Awardee of any reimbursable costs involved;
- B. Awardee shall submit to the NSF Program director, by e-mail, its estimate of any such reimbursable costs involved; and
- C. the NSF Program Director shall forward to the Awardee a letter directive requesting that the travel be performed and/or the special services be provided and specifying the maximum amount that Awardee will be reimbursed for its efforts pursuant to the letter directive.
- D. Pursuant to such a letter directive, Awardee may incur costs against the "Directed Activities" amounts included in the approved budget provided (i) that the costs so incurred do not exceed the maximum amount specified in the letter directive and (ii) provided also that the awardee may not incur costs under a letter directive if such costs, when combined with costs incurred under other letter directives will exceed the amount allotted for directed activities as set forth in Article 8.B.2 (above).

## ARTICLE 12. KEY PERSONNEL

- A. The following individuals are considered key personnel and essential to the work:

Alan S. Williamson  
John Zabluski

- B. Any changes in the individual (s) or significant changes in their proposed level of effort as set forth in the approved Program Plan for any period requires the prior written approval of the NSF Grants and Contracts Officer.

## ARTICLE 13. ORDER OF PRECEDENCE

Any inconsistency in this Cooperative Agreement shall be resolved by giving precedence in the following order (a) the Special Provisions; and (b) Grant General Conditions (5/94) and Cooperative Agreement General Conditions (5/94). [Amend 01]

## ARTICLE 14 PUBLICITY, PUBLIC INFORMATION, AND PUBLICATIONS

A. All news releases, public information brochures, publications and other similar items (not limited to printed media, and including video, etc., prepared by Awardee, subawardees, and/or their employees or contractors which describe activities or results under this Registration Services Agreement shall:

1. acknowledge the sponsorship of NSF:
2. be sent to NSF in reasonable quantities for project and related NSF distribution before being distributed or shown to the public; and
3. in the case of news releases or public information, be coordinated with and have the approval of the NSF Program Official before release.

B. An acknowledgment of NSF support must appear in any publication of any material, whether copyrighted or not, based upon or developed under this project, in substantially the following terms:

The material is based on work sponsored by the National Science Foundation under Cooperative Agreement No. NCR-9218742. The Government has certain rights in this material.

C. All writings such as reports, books, journal articles, software, data bases, sound recordings, video tapes and video discs, except scientific articles or papers published in scientific, technical or professional journals, must also contain the following disclaimer:

Any opinions, findings and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the National Science Foundation.

#### **ARTICLE 15. PROJECT INCOME FROM REGISTRATION FEES**

A. If, and to the extent that Awardee is authorized and/or directed to charge and collect user fees for the Registration Services provided hereunder, any user fees so collected shall be placed in an interest bearing account, and shall be used to defray the Awardee's and the Foundation's Project expenses in the following descending order of priority:

1. Project expenses incurred by Awardee as a result of the imposition of such fees.
2. Project expenses of the Awardee charged to the Foundation under this award. (Program Plans and future year funding requests should reflect any such Income.
3. Project expenses of Awardee's Collaborators charged to the Foundation under their respective Awards. (Program Plans and future year funding requests should reflect any such inform and project fund transfers.
4. The provisions of this Article shall apply only to any Project Income which is generated from the imposition of user based fees on registration services. Article 19, Project Income, of the General Conditions shall apply to project related revenue from any other source [Amend 01].

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Comments concerning the layout, construction and functionality of this site should be sent to [webmaster@icann.org](mailto:webmaster@icann.org).

Page Updated 10-Nov-2002

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**EXHIBIT JJN-13**



## Amendment 4 to Cooperative Agreement Between NSI and U.S. Government

13 September 1995

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NATIONAL SCIENCE FOUNDATION  
4201 WILSON BOULEVARD  
ARLINGTON, VIRGINIA 22230

September 13, 1995

Mr. Dave M. Graves  
Contracts Administrator  
Network Solutions, Inc.  
505 Huntmar Park Drive  
Herndon, VA 22070

Cooperative Agreement No. NCR-9218742  
Amendment No. 04  
Proposal No. NCR-9544193

Dear Mr. Graves:

The purpose of this amendment is to modify the agreement to allow for the collection of user fees for registration services and establish the provisions for the use, disbursement and accountability of Program Income generated by such fees.

The Foundation and the Awardee hereby agree that the imposition of user fees for registration services will be carried out in accordance with the following general guidelines:

1. NSI will provide Registration and information Services as outlined in your approved Year 3 Program Plan.
2. Effective 12:00 A.M. EDT, September 14, 1995, Awardee is authorized to impose an annual fee of \$50/year per 2nd level domain name in .gov, .edu, .com, .net, and .org to pay for the services provided. NSF will pay the annual fee for domain name holders in .edu and .gov on a temporary basis. (The specifics of the imposition include an initial charge of \$100 for two years for new registrants and \$50/year payable on the anniversary date of the original registration

for every year thereafter. Existing domain name holders will be charged the \$50/year on their anniversary date.)

3. The funds collected by reason of the fee imposition will be treated as "Program Income" under the terms of the agreement. Of those funds:

a. 70% will be available to Awardee as consideration for the services provided.

b. the remaining 30% will be placed into an interest-bearing account which will be used for the preservation and enhancement of the "Intellectual Infrastructure" of the Internet in general conformance with approved Program Plans. Awardee will develop and implement mechanisms to insure the involvement of the Internet communities in determining and overseeing disbursements from this account. Awardee will also establish and maintain publically available records of all deposits to and disbursements from the account.

4. Any changes in the fee structure or amount will require approval (as set forth in Article 3.G of the agreement).

5. Awardee will continue to submit a Program Plan for approval by NSF in advance of each Program Year, to submit monthly, quarterly, and annual reports and attend/host quarterly InterNIC reviews as requested by the NSF Program Official.

The specific details of the implementation of user fees will be as set forth in Awardees letter of September 13, 1995 (including all attachments) which is incorporated herein by reference.

The Agreement, as amended, is hereby further amended as follows:

1. In Article 2.A.1, effective with this amendment, the reference to "General Atomics under Cooperative Agreement NCR-9218179" is hereby deleted, (reflecting the recent termination of that agreement).

2. To Article 4, the following section D is added:

"D. Beginning in November 1995, the Awardee shall make available on rs.internic.net performance measures for registration services and turnaround times, as well as Awardee's performance against those measures and turnaround times for public review and comment."

3. To Article 5, the following section C is added:

"C. The report generated by the performance review required by paragraph B. above will be available at ds.internic.net for public review."

4. In Article 8:

a. In section C. delete the date "September 30, 1995" and substitute in lieu thereof the date "September 13, 1995", and;

b. Add the following section G:

Article 8. Funding contained in the original cooperative agreement, and as amended by Amendments No. 1, 2 and 3 and above shall apply for the period January 1, 1993 through September 13, 1995).

Effective September 14, 1995, the following shall apply:

Compensation:

In consideration of all work performed under this agreement after September 13, 1995, Awardee shall impose a user fee of \$50/year per second level domain name in .gov, .edu, .com, .net, and .org to pay for the services provided as detailed in Awardees proposal of September 13, 1995. (The specifics of the imposition include an initial charge of \$100 for two years for new registrants and \$50/year payable on the anniversary date of the original registration for every year thereafter. Existing domain name holders will be charged the \$50/year on their anniversary date.) Implementation of the user fee imposition shall be in general accordance with Awardees proposal of September 13, 1995.

NSF shall pay the fees for the second level domain name registrations in the .edu domain for the period of this agreement, and shall on an interim basis support the fees for second level domain name registrations in the .gov domain. Notwithstanding the foregoing, Awardee will defer invoicing of fees for registrations in the .edu and .gov domains until

a further amendment is added explicating the provisions for the invoicing and payment of these fees.

The funds collected by reason of the user fee imposition will be considered "Program Income" under the terms of the agreement. Of these funds:

- a. 70 % will be available to NSI as consideration for the services provided.
- b. the remaining 30% will be placed into an interest-bearing account which will be used for the preservation and enhancement of the "Intellectual Infrastructure" of the Internet. Awardee will develop and implement mechanisms to insure the involvement of the Internet communities in determining and overseeing disbursements from this account. Awardee will also establish and maintain publically available records of all deposits to and disbursements from the account.

5. Effective October 1, 1995, Article 9, Annual Report, Program Plan and Budget, (effective for the period January 1, 1993 through September 30, 1995) is hereby superseded and replaced by the following Article 9. Annual Report, Program Plan and Budget:

#### **ARTICLE 9. Annual Report, Program Plan and Budget**

By January 31 each year, Awardee shall submit both electronically and in 10 hard copies an Annual Report, Program Plan and Budget to the Foundation for approval. These documents shall be submitted in a format and level of detail approved by the Foundation but shall, as a minimum, contain project goals and objectives specified with sufficient technical criteria, milestones, and objectives to measure the progress of the effort toward attainment of objectives during the time period for which it is being submitted. The Program Plan will be the basis for performance goals, areas of emphasis and any adjustments in the user fee charged for registration

services (or the distribution of revenues from those fees in the succeeding 12 month period). Each submission should contain narrative information indicating (for the past years' activities) by functional area and overall: any goals accomplished, exceeded or missed and explaining any significant deviations from the previous year's plan; any educational achievements; patents, copyrights or other innovations resulting from the activities. Each annual submission shall also contain information on projected revenues and expenditures for the upcoming year and actual projected revenues and expenditures for the reporting period.

The Awardee will receive a formal approval of the Program Plan from the Foundation.

6. Effective September 14, 1995, Article 15. Project Income from Registration Fees is superseded and replaced in its entirety by the following:

**Article 15. Revenues from Registration Fees**

All income generated by the imposition of user fees charged for registration services shall be considered "Project Income" within the agreement. Distribution and use of these funds shall be made in accordance with the provisions of Article 8. (as amended above) and Awardee's proposal of September 13, 1995.

Please indicate your acceptance of this amendment by having it signed by an authorized official of your organization and returning one copy to me as soon as possible.

Sincerely,

Karen L. Sandberg  
Grants and Agreements Officer

Accepted

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

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Comments concerning the layout, construction and functionality of this site should be sent to [webmaster@icann.org](mailto:webmaster@icann.org).

Page Updated 10-Nov-2002

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**EXHIBIT JJN-14**

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## NSF Fact Sheet

**Media contact:** David Hart (703) 292-7737 [dhart@nsf.gov](mailto:dhart@nsf.gov)

### A Brief History of NSF and the Internet

*August 2003*

**Early Years: 1960s-1994.** The Internet that many of us take for granted today arose from a series of government-funded computer networking efforts. In 1969, the precursor to the Internet began with the U.S. Defense Department's ARPAnet. ARPA-funded researchers developed many of the protocols still used for most Internet communication. Several other agencies also developed networks so their researchers could communicate and share data. In 1981, for example, the National Science Foundation (NSF) provided a grant to establish the Computer Science Network (CSNET) to provide networking services to all university computer scientists.

In 1985, NSF considered how it could provide greater access to the high-end computing resources at its recently established supercomputer centers. Because NSF intended the supercomputers to be shared by scientists and engineers around the country, any viable solution had to link many research universities to the centers.

NSFNET went online in 1986 and connected the supercomputer centers at 56,000 bits per second—the speed of a typical computer modem today. In a short time, the network became congested and, by 1988, its links were upgraded to 1.5 megabits per second. A variety of regional research and education networks, supported in part by NSF, were connected to the NSFNET backbone, thus extending the Internet's reach throughout the United States.

Creation of NSFNET was an intellectual leap. It was the first large-scale implementation of Internet technologies in a complex environment of many independently operated networks. NSFNET forced the Internet community to iron out technical issues arising from the rapidly increasing number of computers and address many practical details of operations, management and conformance.

Throughout its existence, NSFNET carried, at no cost to institutions, any U.S. research and education traffic that could reach it. At the same time,

the number of Internet-connected computers grew from 2,000 in 1985 to more than 2 million in 1993. To handle the increasing data traffic, the NSFNET backbone became the first national 45-megabits-per-second Internet network in 1991.

The history of NSFNET and NSF's supercomputing centers also overlapped with the rise of personal computers and the launch of the World Wide Web in 1991 by Tim Berners-Lee and colleagues at CERN, the European Organisation for Nuclear Research, in Geneva, Switzerland. The NSF centers developed many tools for organizing, locating and navigating through information, including one of the first widely used Web server applications. But perhaps the most spectacular success was Mosaic, the first freely available Web browser to allow Web pages to include both graphics and text, which was developed in 1993 by students and staff working at the NSF-supported National Center for Supercomputing Applications (NCSA) at the University of Illinois, Urbana-Champaign. In less than 18 months, NCSA Mosaic became the Web "browser of choice" for more than a million users and set off an exponential growth in the number of Web servers as well as Web surfers. Mosaic was the progenitor of modern browsers such as Microsoft Internet Explorer and Netscape Navigator.

**Privatization: 1993-1998.** Commercial firms noted the popularity and effectiveness of the growing Internet and built their own networks. The proliferation of private suppliers led to an NSF solicitation in 1993 that outlined a new Internet architecture that largely remains in place today.

From that solicitation, NSF awarded contracts in 1995 for three network access points, to provide connection points between commercial networks, and one routing arbiter, to ensure an orderly exchange of traffic across the Internet. In addition, NSF signed a cooperative agreement to establish the next-generation very-high-performance Backbone Network Service. A more prominent milestone was the decommissioning of the NSFNET backbone in April 1995.

In the years following NSFNET, NSF helped navigate the road to a self-governing and commercially viable Internet during a period of remarkable growth. The most visible, and most contentious, component of the Internet transition was the registration of domain names. Domain name registration associates a human-readable character string (such as `nsf.gov`) with Internet Protocol (IP) addresses, which computers use to locate one another.

The Department of Defense funded early registration efforts because most registrants were military users and awardees. By the early 1990s, academic institutions comprised the majority of new registrations, so the Federal Networking Council (a group of government agencies involved in networking) asked NSF to assume responsibility for non-military Internet registration. When NSF awarded a five-year agreement for this service to Network Solutions, Inc. (NSI), in 1993, there were 7,500 domain names.

In September 1995, as the demand for Internet registration became largely commercial (97 percent) and grew by orders of magnitude, the NSF authorized NSI to charge a fee for domain name registration. Previously, NSF had subsidized the cost of registering all domain names. At that time,

there were 120,000 registered domain names. In September 1998, when NSF's agreement with NSI expired, the number of registered domain names had passed 2 million.

The year 1998 marked the end of NSF's direct role in the Internet. That year, the network access points and routing arbiter functions were transferred to the commercial sector. And after much debate, the Department of Commerce's National Telecommunications and Information Administration formalized an agreement with the non-profit Internet Corporation for Assigned Numbers and Names (ICANN) for oversight of domain name registration. Today, anyone can register a domain name through a number of ICANN-accredited registrars.

**NSF after NSFNET.** The decommissioning of NSFNET and privatization of the Internet did not mark the end of NSF's involvement in networking. NSF continues to support many research projects to develop new networking tools, educational uses of the Internet and network-based applications.

Through its programs, NSF helps research and education institutions—including those serving underrepresented minorities, rural areas, and Native American reservations—make and enhance their connections to the Internet. NSF has also been instrumental in providing international connections services that have bridged the U.S. network infrastructure with countries and regions including Europe, Mongolia, Africa, Latin America, Russia and the Pacific Rim. In addition, NSF has continued to extend the reach of the highest-performance U.S. research and education networks by supporting connectivity and collaborations with their counterparts in Canada, Europe and Asia.

### **NSF Internet Experts**

Thomas Greene, senior program director in the CISE Advanced Networking Infrastructure and Research division, oversees a number of NSF's post-NSFNET Internet efforts, including national and international connections programs. [tgreene@nsf.gov](mailto:tgreene@nsf.gov), 703-292-8948.

Larry Landweber, CISE senior advisor on networking, proposed the CSNET concept in 1979 and organized the workshops that led to its creation in 1981. He was an advisor to NSF during the development of NSFNET and helped establish the first Internet gateways between the United States and countries in Europe, Asia and Latin America. [llandweb@nsf.gov](mailto:llandweb@nsf.gov), 703-292-8900.

George Strawn, currently NSF's Chief Information Officer, was the NSFNET program director from 1991 to 1993. From 1993 to 1995, he was involved with defining and deploying the privatized Internet architecture, and from 1995 to 1998 as networking division director, he led NSF's efforts in the Next Generation Internet Initiative. [gstrawn@nsf.gov](mailto:gstrawn@nsf.gov), 703-292-8102.



**National Science Foundation**  
**Office of Legislative and Public Affairs**  
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Tel: 703-292-8070  
FIRS: 800-877-8339 | TDD: 703-292-5090



**EXHIBIT JJN-15**

*The paper set forth below, concerning ways to improve technical management of the Internet Domain Name System, is a proposed rule of the Department of Commerce. This same document will be published in the Federal Register in the near future. While the Department will accept comments on the paper starting today, the Federal Register publication will establish the official deadline for the acceptance of public comment on this proposed rule. Comments may be mailed to U.S. Department of Commerce, NTIA/OIA, 14th and Constitution Avenue, N.W., Washington, D.C. 20230 or sent via electronic mail to [dns@ntia.doc.gov](mailto:dns@ntia.doc.gov). Though it is not intended or expected, should any discrepancy occur between the document set forth below and that published in the Federal Register, the Federal Register publication controls. All comments received will be considered exclusively in the context of issuing a final rule. The paper is being made available through the Internet solely as a means to facilitate the public's access to this document and to provide an additional means of notifying the public of the solicitation of public comment on the proposed rule.*

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**A PROPOSAL TO IMPROVE TECHNICAL MANAGEMENT OF  
INTERNET NAMES AND ADDRESSES  
DISCUSSION DRAFT 1/30/98**

Domain names are the familiar and easy-to-remember names for Internet computers (e.g. "www.ecommerce.gov"). They map to unique Internet Protocol (IP) numbers (e.g. 98.37.241.30) that serve as routing addresses on the Internet. The domain name system (DNS) translates Internet names into the IP numbers needed for transmission of information across the network.

### ***History***

Today's Internet is an outgrowth of U.S. government investments in packet-switching technology and communications networks carried out under agreements with the Defense Advanced Research Projects Agency (DARPA), the National Science Foundation (NSF) and other U.S. research agencies. The government encouraged bottom-up development of networking technologies through work at NSF, which established the NSFNET as a network for research and education. The NSFNET fostered a wide range of applications, and in 1992 the U.S. Congress gave the National Science Foundation statutory authority to commercialize the NSFNET, which formed the basis for today's Internet.

As a legacy, major components of the domain name system are still performed by or subject to agreements with agencies of the U.S. government.

### **1) Assignment of numerical addresses to Internet users.**

Every Internet computer has a unique IP number. The Internet Assigned Numbers Authority (IANA), headed by Dr. Jon Postel of the Information Sciences Institute (ISI) at the University of Southern California, coordinates this system by allocating blocks of numerical addresses to regional IP registries (ARIN in North America, RIPE in Europe, and APNIC in the Asia/Pacific region), under contract with DARPA. In turn, larger Internet service providers

apply to the regional IP registries for blocks of IP addresses. The recipients of those address blocks then reassign addresses to smaller Internet service providers and to end users.

## **2) Management of the system of registering names for Internet users.**

The domain name space is constructed as a hierarchy. It is divided into top-level domains (TLDs), with each TLD then divided into second-level domains (SLDs), and so on. More than 200 national, or country-code, TLDs (ccTLDs) are administered by their corresponding governments or by private entities with the appropriate national government's acquiescence. A small set of generic top-level domains (gTLDs) do not carry any national identifier, but denote the intended function of that portion of the domain space. For example, .com was established for commercial users, .org for not-for-profit organizations, and .net for network service providers. The registration and propagation of these key gTLDs are performed by Network Solutions, Inc. (NSI), a Virginia-based company, under a five-year cooperative agreement with NSF. This agreement includes an optional ramp-down period that expires on September 30, 1998.

## **3) Operation of the root server system.**

The root server system contains authoritative databases listing the TLDs so that an Internet message can be routed to its destination. Currently, NSI operates the "A" root server, which maintains the authoritative root database and replicates changes to the other root servers on a daily basis. Different organizations, including NSI, operate the other 12 root servers. In total, the U.S. government plays a direct role in the operation of half of the world's root servers. Universal connectivity on the Internet cannot be guaranteed without a set of authoritative and consistent roots.

## **4) Protocol Assignment.**

The Internet protocol suite, as defined by the Internet Engineering Task Force (IETF), contains many technical parameters, including protocol numbers, port numbers, autonomous system numbers, management information base object identifiers and others. The common use of these protocols by the Internet community requires that the particular values used in these fields be assigned uniquely. Currently, IANA, under contract with DARPA, makes these assignments and maintains a registry of the assigned values.

### ***The Need for Change***

From its origins as a U.S.-based research vehicle, the Internet is rapidly becoming an international medium for commerce, education and communication. The traditional means of organizing its technical functions need to evolve as well. The pressures for change are coming from many different quarters:

- There is widespread dissatisfaction about the absence of competition in domain name registration.
- Mechanisms for resolving conflict between trademark holders and domain name holders are expensive and cumbersome.

-Without changes, a proliferation of lawsuits could lead to chaos as tribunals around the world apply the antitrust law and intellectual property law of their jurisdictions to the Internet.

-Many commercial interests, staking their future on the successful growth of the Internet, are calling for a more formal and robust management structure.

-An increasing percentage of Internet users reside outside of the U.S., and those stakeholders want a larger voice in Internet coordination.

-As Internet names increasingly have commercial value, the decision to add new top-level domains cannot continue to be made on an ad hoc basis by entities or individuals that are not formally accountable to the Internet community.

-As the Internet becomes commercial, it becomes inappropriate for U.S. research agencies (NSF and DARPA) to participate in and fund these functions.

### ***The Future Role of the U.S. Government in the DNS***

On July 1, 1997, as part of the Clinton Administration's *Framework for Global Electronic Commerce*, the President directed the Secretary of Commerce to privatize, increase competition in, and promote international participation in the domain name system.

Accordingly, on July 2, 1997, the Department of Commerce issued a Request for Comments (RFC) on DNS administration, on behalf of an inter-agency working group previously formed to explore the appropriate future role of the U.S. government in the DNS. The RFC solicited public input on issues relating to the overall framework of the DNS system, the creation of new top-level domains, policies for registrars, and trademark issues. During the comment period, over 430 comments were received, amounting to some 1500 pages.<sup>(1)</sup>

This discussion draft, shaped by the public input described above, provides notice and seeks public comment on a proposal to improve the technical management of Internet names and addresses. It does not propose a monolithic structure for Internet governance. We doubt that the Internet should be governed by one plan or one body or even by a series of plans and bodies. Rather, we seek to create mechanisms to solve a few, primarily technical (albeit critical) questions about administration of Internet names and numbers.

### **PRINCIPLES FOR A NEW SYSTEM**

Our consultations have revealed substantial differences among Internet stakeholders on how the domain name system should evolve. Since the Internet is changing so rapidly, no one entity or individual can claim to know what is best for the Internet. We certainly do not believe that our views are uniquely prescient. Nevertheless, shared principles have emerged from our discussions with Internet stakeholders.

#### **1. Stability.**

The U.S. government should end its role in the Internet number and name address systems in a responsible manner. This means, above all else, ensuring the stability of the

Internet. The Internet functions well today, but its current technical management is probably not viable over the long term. We should not wait for it to break down before acting. Yet, we should not move so quickly, or depart so radically from the existing structures, that we disrupt the functioning of the Internet. The introduction of a new system should not disrupt current operations, or create competing root systems.

## 2. Competition.

The Internet succeeds in great measure because it is a decentralized system that encourages innovation and maximizes individual freedom. Where possible, market mechanisms that support competition and consumer choice should drive the technical management of the Internet because they will promote innovation, preserve diversity, and enhance user choice and satisfaction.

## 3. Private, Bottom-Up Coordination.

Certain technical management functions require coordination. In these cases, responsible, private-sector action is preferable to government control. A private coordinating process is likely to be more flexible than government and to move rapidly enough to meet the changing needs of the Internet and of Internet users. The private process should, as far as possible, reflect the bottom-up governance that has characterized development of the Internet to date.

## 4. Representation.

Technical management of the Internet should reflect the diversity of its users and their needs. Mechanisms should be established to ensure international input in decision making.

In keeping with these principles, we divide the name and number functions into two groups, those that can be moved to a competitive system and those that should be coordinated. We then suggest the creation of a representative, not-for-profit corporation to manage the coordinated functions according to widely accepted objective criteria. We then suggest the steps necessary to move to competitive markets in those areas that can be market driven. Finally, we suggest a transition plan to ensure that these changes occur in an orderly fashion that preserves the stability of the Internet.

## **THE PROPOSAL**

### ***The Coordinated Functions***

Management of number addresses is best done on a coordinated basis. As technology evolves, changes may be needed in the number allocation system. These changes should also be undertaken in a coordinated fashion.

Similarly, coordination of the root server network is necessary if the whole system is to work smoothly. While day-to-day operational tasks, such as the actual operation and maintenance of

the Internet root servers, can be contracted out, overall policy guidance and control of the TLDs and the Internet root server system should be vested in a single organization that is representative of Internet users.

Finally, coordinated maintenance and dissemination of the protocol parameters for Internet addressing will best preserve the stability and interconnectivity of the Internet.

We propose the creation of a private, not-for-profit corporation (the new corporation) to manage the coordinated functions in a stable and open institutional framework. The new corporation should operate as a private entity for the benefit of the Internet as a whole. The new corporation would have the following authority:

1. to set policy for and direct the allocation of number blocks to regional number registries for the assignment of Internet addresses;
2. to oversee the operation of an authoritative root server system;
3. to oversee policy for determining, based on objective criteria clearly established in the new organization's charter, the circumstances under which new top-level domains are added to the root system; and
4. to coordinate the development of other technical protocol parameters as needed to maintain universal connectivity on the Internet.

The U.S. government would gradually transfer existing IANA functions, the root system and the appropriate databases to this new not-for-profit corporation. This transition would commence as soon as possible, with operational responsibility moved to the new entity by September 30, 1998. The U.S. government would participate in policy oversight to assure stability until the new corporation is established and stable, phasing out as soon as possible and in no event later than September 30, 2000. The U.S. Department of Commerce will coordinate the U.S. government policy role. In proposing these dates, we are trying to balance concerns about a premature U.S. government exit that turns the domain name system over to a new and untested entity against the concern that the U.S. government will never relinquish its current management role.

The new corporation will be funded by domain name registries and regional IP registries. Initially, current IANA staff will move to this new organization to provide continuity and expertise throughout the period of time it takes to establish the new corporation. The new corporation should hire a chief executive officer with a background in the corporate sector to bring a more rigorous management to the organization than was possible or necessary when the Internet was primarily a research medium. As these functions are now performed in the United States, the new corporation will be headquartered in the United States, and incorporated under U.S. law as a not-for-profit corporation. It will, however, have and report to a board of directors from around the world.

It is probably impossible to establish and maintain a perfectly representative board for this new organization. The Internet community is already extraordinarily diverse and likely to become more so over time. Nonetheless, the organization and its board must derive legitimacy from the participation of key stakeholders. Since the organization will be concerned mainly

with numbers, names and protocols, its board should represent membership organizations in each of these areas, as well as the direct interests of Internet users.

The board of directors for the new corporation should be balanced to equitably represent the interests of IP number registries, domain name registries, domain name registrars, the technical community, and Internet users (commercial, not-for-profit, and individuals). Officials of governments or intergovernmental organizations should not serve on the board of the new corporation. Seats on the initial board might be allocated as follows:

1. -three directors from a membership association of regional number registries, representing three different regions of the world. Today this would mean one each from ARIN, APNIC and RIPE. As additional regional number registries are added, board members could be designated on a rotating basis or elected by a membership organization made up of regional registries. ARIN, RIPE and APNIC are open membership organizations that represent entities with large blocks of numbers. They have the greatest stake in and knowledge of the number address system. They are also representative internationally.
2. -two members designated by the Internet Architecture Board (IAB), an international membership board that represents the technical community of the Internet.
3. -two members designated by a membership association (to be created) representing domain name registries and registrars.
4. -seven members designated by a membership association (to be created) representing Internet users. At least one of those board seats could be designated for an individual or entity engaged in non-commercial, not-for-profit use of the Internet, and one for individual end users. The remaining seats could be filled by commercial users, including trademark holders.
5. -the CEO of the new corporation would serve on the board of directors.

The new corporation's processes should be fair, open and pro-competitive, protecting against capture by a narrow group of stakeholders. Its decision-making processes should be sound and transparent; the bases for its decisions should be recorded and made publicly available. Super-majority or even consensus requirements may be useful to protect against capture by a self-interested faction. The new corporation's charter should provide a mechanism whereby its governing body will evolve to reflect changes in the constituency of Internet stakeholders. The new corporation should establish an open process for the presentation of petitions to expand board representation.

In performing the functions listed above, the new corporation will act much like a standard-setting body. To the extent that the new corporation operates in an open and pro-competitive manner, its actions will withstand antitrust scrutiny. Its standards should be reasonably based on, and no broader than necessary to promote its legitimate coordinating objectives. Under U.S. law, a standard-setting body can face antitrust liability if it is dominated by an economically interested entity, or if standards are set in secret by a few leading competitors. But appropriate processes and structure will minimize the possibility that the body's actions will be, or will appear to a court to be, anticompetitive.

### ***The Competitive Functions***

The system for registering second-level domain names and the management of the TLD registries should become competitive and market-driven.

In this connection, we distinguish between registries and registrars. A "registry," as we use the term, is responsible for maintaining a TLD's zone files, which contain the name of each SLD in that TLD and each SLD's corresponding IP number. Under the current structure of the Internet, a given TLD can have no more than one registry. A "registrar" acts as an interface between domain-name holders and the registry, providing registration and value-added services. It submits to the registry zone file information and other data (including contact information) for each of its customers in a single TLD. Currently, NSI acts as both the exclusive registry and as the exclusive registrar for .com, .net, .org, and .edu.

Both registry and registrar functions could be operated on a competitive basis. Just as NSI acts as the registry for .com, .net, and .org, other companies could manage registries with different TLDs such as .vend or .store. Registrars could provide the service of obtaining domain names for customers in any gTLD. Companies that design Web sites for customers might, for example, provide registration as an adjunct to other services. Other companies may perform this function as a stand-alone business.

There appears to be strong consensus that, at least at this time, domain name registration - the registrar function - should be competitive. There is disagreement, however, over the wisdom of promoting competition at the registry level.

Some have made a strong case for establishing a market-driven registry system. Competition among registries would allow registrants to choose among TLDs rather than face a single option. Competing TLDs would seek to heighten their efficiency, lower their prices, and provide additional value-added services. Investments in registries could be recouped through branding and marketing. The efficiency, convenience, and service levels associated with the assignment of names could ultimately differ from one TLD registry to another. Without these types of market pressures, they argue, registries will have very little incentive to innovate.

Others feel strongly, however, that if multiple registries are to exist, they should be undertaken on a not-for-profit basis. They argue that lack of portability among registries (that is, the fact that users cannot change registries without adjusting at least part of their domain name string) could create lock-in problems and harm consumers. For example, a registry could induce users to register in a top-level domain by charging very low prices initially and then raise prices dramatically, knowing that name holders will be reluctant to risk established business by moving to a different top-level domain.

We concede that switching costs and lock-in could produce the scenario described above. On the other hand, we believe that market mechanisms may well discourage this type of behavior. On balance, we believe that consumers will benefit from competition among market oriented registries, and we thus support limited experimentation with competing registries during the transition to private sector administration of the domain name system.

### ***The Creation of New gTLDs***

Internet stakeholders disagree about who should decide when a new top-level domain can be added and how that decision should be made. Some believe that anyone should be allowed to create a top-level domain registry. They argue that the market will decide which will succeed and which will not. Others believe that such a system would be too chaotic and would dramatically increase customer confusion. They argue that it would be far more complex technically, because the root server system would have to point to a large number of top-level domains that were changing with great frequency. They also point out that it would be much more difficult for trademark holders to protect their trademarks if they had to police a large number of top-level domains.

All these arguments have merit, but they all depend on facts that only further experience will reveal. At least in the short run, a prudent concern for the stability of the system requires that expansion of gTLDs proceed at a deliberate and controlled pace to allow for evaluation of the impact of the new gTLDs and well-reasoned evolution of the domain space. The number of new top-level domains should be large enough to create competition among registries and to enable the new corporation to evaluate the functioning, in the new environment, of the root server system and the software systems that enable shared registration. At the same time, it should not be so large as to destabilize the Internet.

We believe that during the transition to private management of the DNS, the addition of up to five new registries would be consistent with these goals. At the outset, we propose that each new registry be limited to a single top-level domain. During this period, the new corporation should evaluate the effects that the addition of new gTLDs have on the operation of the Internet, on users, and on trademark holders. After this transition, the new corporation will be in a better position to decide whether or when the introduction of additional gTLDs is desirable.

Individual companies and consortia alike may seek to operate specific generic top-level domains. Competition will take place on two levels. First, there will be competition among different generic top-level domains. Second, registrars will compete to register clients into these generic top-level domains. By contrast, existing national registries will continue to administer country-code top-level domains if these national governments seek to assert those rights. Changes in the registration process for these domains are up to the registries administering them and their respective national governments.

Some have called for the creation of a more descriptive system of top-level domains based on industrial classifications or some other easy to understand schema. They suggest that having multiple top-level domains is already confusing and that the addition of new generic TLDs will make it more difficult for users to find the companies they are seeking.

Market driven systems result in innovation and greater consumer choice and satisfaction in the long run. We expect that in the future, directory services of various sorts will make it easy for users to find the sites they seek regardless of the number of top-level domains. Attempts to impose too much central order risk stifling a medium like the Internet that is decentralized by nature and thrives on freedom and innovation.

### ***The Trademark Dilemma***

It is important to keep in mind that trademark/domain name disputes arise very rarely on the Internet today. NSI, for example, has registered millions of domain names, only a tiny fraction of which have been challenged by a trademark owner. But where a trademark is unlawfully used as a domain name, consumers may be misled about the source of the product or service offered on the Internet, and trademark owners may not be able to protect their rights without very expensive litigation.

For cyberspace to function as an effective commercial market, businesses must have confidence that their trademarks can be protected. On the other hand, management of the Internet must respond to the needs of the Internet community as a whole, and not trademark owners exclusively. The balance we strike is to provide trademark holders with the same rights they have in the physical world, to ensure transparency, to guarantee a dispute resolution mechanism with resort to a court system, and to add new top-level domains carefully during the transition to private sector coordination of the domain name system.

There are certain steps that could be taken in the application process that would not be difficult for an applicant, but that would make the trademark owner's job easier. For instance, gTLD registrants could supply basic information -- including the applicant's name and sufficient contact information to be able to locate the applicant or its representative. To deter the pirating of domain names, the registry could also require applicants to certify that it knows of no entity with superior rights in the domain name it seeks to register.

The job of policing trademarks could be considerably easier if domain name databases were readily searchable through a common interface to determine what names are registered, who holds those domain names, and how to contact a domain name holder. Many trademark holders find the current registration search tool, Whois, too limited in its functioning to be effective for this purpose. A more robust and flexible search tool, which features multiple field or string searching and retrieves similar names, could be employed or developed to meet the needs of trademark holders. The databases also could be kept up to date by a requirement that domain name registrants maintain up-to-date contact information.

Mechanisms that allow for on-line dispute resolution could provide an inexpensive and efficient alternative to litigation for resolving disputes between trademark owners and domain name registrants. A swift dispute resolution process could provide for the temporary suspension of a domain name registration if an adversely affected trademark holder objects within a short time, e.g. 30 days, of the initial registration. We seek comment on whether registries should be required to resolve disputes within a specified period of time after an opposition is filed, and if so, how long that period should be.

Trademark holders have expressed concern that domain name registrants in faraway places may be able to infringe their rights with no convenient jurisdiction available in which the trademark owner could file suit to protect those rights. At the time of registration, registrants could agree that, in the event of a trademark dispute involving the name registered, jurisdiction would lie where the registry is domiciled, where the registry database is maintained, or where the "A" root server is maintained. We seek comment on this proposal, as well as suggestions for how such jurisdictional provisions could be implemented.

Trademark holders have also called for the creation of some mechanism for "clearing" trademarks, especially famous marks, across a range of gTLDs. Such mechanisms could reduce trademark conflict associated with the addition of new gTLDs. Again, we seek comment on this proposal, and suggested mechanisms for trademark clearance processes.

We stop short of proposals that could significantly limit the flexibility of the Internet, such as waiting periods or not allowing any new top-level domains.

We also do not propose to establish a monolithic trademark dispute resolution process at this time, because it is unclear what system would work best. Even trademark holders we have consulted are divided on this question. Therefore, we propose that each name registry must establish minimum dispute resolution and other procedures related to trademark considerations. Those minimum procedures are spelled out in [Appendix 2](#). Beyond those minimums, registries would be permitted to establish additional trademark protection and trademark dispute resolution mechanisms.

We also propose that shortly after their introduction into the root, a study be undertaken on the effects of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property right holders. This study should be conducted under the auspices of a body that is internationally recognized in the area of dispute resolution procedures, with input from trademark and domain name holders and registries. The findings of this study should be submitted to the board of the new corporation and considered when it makes decisions on the creation and introduction of new gTLDs. Information on the strengths and weaknesses of different dispute resolution procedures should also give the new corporation guidance for deciding whether the established minimum criteria for dispute resolution should be amended or maintained. Such a study could also provide valuable input with respect to trademark harmonization generally.

U.S. trademark law imposes no general duty on a registrar to investigate the propriety of any given registration.<sup>(2)</sup> Under existing law, a trademark holder can properly file a lawsuit against a domain name holder that is infringing or diluting the trademark holder's mark. But the law provides no basis for holding that a registrar's mere registration of a domain name, at the behest of an applicant with which it has an arm's-length relationship, should expose it to liability.<sup>(3)</sup> Infringers, rather than registrars, registries, and technical management bodies, should be liable for trademark infringement. Until case law is fully settled, however, registries can expect to incur legal expenses in connection with trademark disputes as a cost of doing business. These costs should not be borne by the new not-for-profit corporation, and therefore registries should be required to indemnify the new corporation for costs incurred in connection with trademark disputes. The evolution of litigation will be one of the factors to be studied by the group tasked to review Internet trademark issues as the new structure evolves.

### ***The Intellectual Infrastructure Fund***

In 1995, NSF authorized NSI to assess new domain name registrants a \$50 fee per year for the first two years, 30 percent of which was to be deposited in a fund for the preservation and enhancement of the intellectual infrastructure of the Internet (the "Intellectual Infrastructure Fund")

In excess of \$46 Million has been collected to date. In 1997, Congress authorized the crediting of \$23 Million of the funds collected to the Research and Related Activities Appropriation of the National Science Foundation to support the development of the Next Generation Internet. The establishment of the Intellectual Infrastructure Fund currently is the subject of litigation in the U.S. District Court for the District of Columbia.

As the U.S. government is seeking to end its role in the domain name system, we believe the provision in the cooperative agreement regarding allocation of a portion of the registration fee to the Internet Intellectual Infrastructure Fund should terminate on April 1, 1998, the beginning of the ramp-down period of the cooperative agreement.

## **THE TRANSITION**

A number of steps must be taken to create the system envisioned in this paper.

1. The new not-for-profit organization must be established and its board chosen.
2. The membership associations representing 1) registries and registrars, and 2) Internet users, must be formed.
3. An agreement must be reached between the U.S. government and the current IANA on the transfer of IANA functions to the new organization.
4. NSI and the U.S. government must reach agreement on the terms and conditions of NSI's evolution into one competitor among many in the registrar and registry marketplaces. A level playing field for competition must be established.
5. The new corporation must establish processes for determining whether an organization meets the transition period criteria for prospective registries and registrars.
6. A process must be laid out for making the management of the root server system more robust and secure, and, for transitioning that management from U.S. government auspices to those of the new corporation.

### ***The NSI Agreement***

The U.S. government will ramp down the NSI cooperative agreement and phase it out by the end of September 1998. The ramp down agreement with NSI should reflect the following terms and conditions designed to promote competition in the domain name space.

1. NSI will effectively separate and maintain a clear division between its current registry business and its current registrar business. NSI will continue to operate .com, .net and .org but on a fully shared-registry basis; it will shift operation of .edu to a not-for-profit entity. The registry will treat all registrars on a nondiscriminatory basis and will price registry services according to an agreed upon formula for a period of time.
2. As part of the transition to a fully shared-registry system, NSI will develop (or license) and implement the technical capability to share the registration of its top-level domains with any registrar so that any registrar can register domain names there in as soon as possible, by a date certain to be agreed upon.

3. NSI will give the U.S. government a copy and documentation of all the data, software, and appropriate licenses to other intellectual property generated under the cooperative agreement, for use by the new corporation for the benefit of the Internet.
4. NSI will turn over control of the "A" root server and the management of the root server system when instructed to do so by the U.S. government.
5. NSI will agree to meet the requirements for registries and registrars set out in [Appendix 1](#).

### ***Competitive Registries, Registrars, and the Addition of New gTLDs***

Over the past few years, several groups have expressed a desire to enter the registry or registrar business. Ideally, the U.S. government would stay its hand, deferring the creation of a specific plan to introduce competition into the domain name system until such time as the new corporation has been organized and given an opportunity to study the questions that such proposals raise. Should the transition plan outlined below, or some other proposal, fail to achieve substantial consensus, that course may well need to be taken.

Realistically, however, the new corporation cannot be established overnight. Before operating procedures can be established, a board of directors and a CEO must be selected. Under a best case scenario, it is unlikely that the new corporation can be fully operational before September 30, 1998. It is our view, based on widespread public input, that competition should be introduced into the DNS system more quickly.

We therefore set out below a proposal to introduce competition into the domain name system during the transition from the existing U.S. government authority to a fully functioning coordinating body. This proposal is designed only for the transition period. Once the new corporation is formed, it will assume authority over the terms and conditions for the admission of new top-level domains.

#### ***Registries and new gTLDs***

This proposal calls for the creation of up to five new registries, each of which would be initially permitted to operate one new gTLD. As discussed above, that number is large enough to provide valuable information about the effects of adding new gTLDs and introducing competition at the registry level, but not so large as to threaten the stability of the Internet during this transition period. In order to designate the new registries and gTLDs, IANA must establish equitable, objective criteria and processes for selecting among a large number of individuals and entities that want to provide registry services. Unsuccessful applicants will be disappointed.

We have examined a number of options for recognizing the development work already underway in the private sector. For example, some argue for the provision of a "pioneer preference" or other grandfathering mechanism to limit the pool of would-be registrants to those who, in response to previous IANA requests, have already invested in developing registry businesses. While this has significant appeal and we do not rule it out, it is not an easy matter to determine who should be in that pool. IANA would be exposed to considerable liability for such determinations, and required to defend against charges that it acted in an

arbitrary or inequitable manner. We welcome suggestions as to whether the pool of applicants should be limited, and if so, on what basis.

We propose, that during the transition, the first five entities (whether from a limited or unlimited pool) to meet the technical, managerial, and site requirements described in Appendix 1 will be allowed to establish a domain name registry. The IANA will engage neutral accounting and technical consultancy firms to evaluate a proposed registry under these criteria and certify an applicant as qualified. These registries may either select, in order of their qualification, from a list of available gTLDs or propose another gTLD to IANA. (We welcome suggestions on the gTLDs that should be immediately available and would propose a list based on that input, as well as any market data currently available that indicates consumer interest in particular gTLDs.)

The registry will be permitted to provide and charge for value-added services, over and above the basic services provided to registrars. At least at this time, the registry must, however, operate on a shared registry basis, treating all registrars on a nondiscriminatory basis, with respect to pricing, access and rules. Each TLD's registry should be equally accessible to any qualified registrar, so that registrants may choose their registrars competitively on the basis of price and service. The registry will also have to agree to modify its technical capabilities based on protocol changes that occur in Internet technology so that interoperability can be preserved. At some point in the future, the new organization may consider the desirability of allowing the introduction of non-shared registries.

### ***Registrars***

Any entity will be permitted to provide registrar services as long as it meets the basic technical, managerial, and site requirements as described in [Appendix 1](#) of this paper. Registrars will be allowed to register clients into any top-level domain for which the client satisfies the eligibility rules, if any.

### ***The Root Server System***

IANA and the U.S. government, in cooperation with NSI, the IAB, and other relevant organizations will undertake a review of the root server system to recommend means to increase the security and professional management of the system. The recommendations of the study should be implemented as part of the transition process to the new corporation.

### ***The .us Domain***

At present, the IANA administers .us as a locality based hierarchy in which second-level domain space is allocated to states and US territories.<sup>(4)</sup> This name space is further subdivided into localities. General registration under localities is performed on an exclusive basis by private firms that have requested delegation from IANA. The .us name space has typically been used by branches of state and local governments, although some commercial names have been assigned. Where registration for a locality has not been delegated, the IANA itself serves as the registrar.

Some in the Internet community have suggested that the pressure for unique identifiers in the .com gTLD could be relieved if commercial use of the .us space was encouraged. Commercial users and trademark holders, however, find the current locality-based system too cumbersome and complicated for commercial use. Expanded use of the .us TLD could alleviate some of the pressure for new generic TLDs and reduce conflicts between American companies and others vying for the same domain name.

Clearly, there is much opportunity for enhancing the .us domain space, and the .us domain could be expanded in many ways without displacing the current geopolitical structure. Over the next few months, the U.S. government will work with the private sector and state and local governments to determine how best to make the .us domain more attractive to commercial users. It may also be appropriate to move the gTLDs traditionally reserved for U.S. government use (i.e. .gov and .mil), into a reformulated .us ccTLD.

The U.S. government will further explore and seek public input on these issues through a separate Request for Comment on the evolution of the .us name space. However, we welcome any preliminary comments at this time.

### ***The Process***

The U.S. government recognizes that its unique role in the Internet domain name system should end as soon as is practical. We also recognize an obligation to end this involvement in a responsible manner that preserves the stability of the Internet. We cannot cede authority to any particular commercial interest or any specific coalition of interest groups. We also have a responsibility to oppose any efforts to fragment the Internet, as this would destroy one of the key factors - interoperability - that has made the Internet so successful.

Our goal is to seek as strong a consensus as possible so that a new, open, and accountable system can emerge that is legitimate in the eyes of all Internet stakeholders. It is in this spirit that we present this paper for discussion.

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## **Appendix 1**

### ***Recommended Registry and Registrar Requirements***

In order to ensure the stability of the Internet's domain name system, protect consumers, and preserve the intellectual property rights of trademark owners, all registries of generic top-level domain names must meet the set of technical, managerial, and site requirements outlined below. Only prospective registries that meet these criteria will be allowed by IANA to register their gTLD in the "A" server. If, after it begins operations, a registry no longer meets these requirements, IANA may transfer management of the domain names under that registry's gTLD to another organization.

Independent testing, reviewing, and inspection called for in the requirements for registries should be done by appropriate certifying organizations or testing laboratories rather than IANA itself, although IANA will define the requirements and the procedures for tests and audits.

These requirements apply only to generic TLDs. They will apply to both existing gTLDs (e.g., .com, .edu., .net, .org) and new gTLDs. Although they are not required to, we expect many ccTLD registries and registrars may wish to assure their customers that they meet these requirements or similar ones.

Registries will be separate from registrars and have only registrars as their customers. If a registry wishes to act both as registry and registrar for the same TLD, it must do so through separate subsidiaries. Appropriate accounting and confidentiality safeguards shall be used to ensure that the registry subsidiary's business is not utilized in any manner to benefit the registrar subsidiary to the detriment of any other registrar.

Each top-level domain (TLD) database will be maintained by only one registry and, at least initially, each new registry can host only one TLD.

### **Registry requirements:**

1. An independently-tested, functioning DATABASE AND COMMUNICATIONS SYSTEM that:

- a. Allows multiple competing registrars to have secure access (with encryption and authentication) to the database on an equal (first-come, first-served) basis.
- b. Is both robust (24 hours per day, 365 days per year) and scalable (i.e., capable of handling high volumes of entries and inquiries).
- c. Has multiple high-throughput (i.e., at least T1) connections to the Internet via at least two separate Internet Service Providers.
- d. Includes a daily data backup and archiving system.
- e. Incorporates a record management system that maintains copies of all transactions, correspondence, and communications with registrars for at least the length of a registration contract.
- f. Features a searchable, on-line database meeting the requirements of Appendix 2.
- g. Provides free access to the software and customer interface that a registrar would need to register new second-level domain names.
- h. An adequate number (perhaps two or three) of globally-positioned zone-file servers connected to the Internet for each TLD.

2. Independently-reviewed MANAGEMENT POLICIES, PROCEDURES, AND PERSONNEL including:

- a. Alternate (i.e., non-litigation) dispute resolution providing a timely and inexpensive forum for trademark-related complaints. (These procedures should be consistent with applicable national laws and compatible with any available judicial or administrative remedies.)

b. A plan to ensure that the registry's obligations to its customers will be fulfilled in the event that the registry goes out of business. This plan must indicate how the registry would ensure that domain name holders will continue to have use of their domain name and that operation of the Internet will not be adversely affected.

c. Procedures for assuring and maintaining the expertise and experience of technical staff.

d. Commonly-accepted procedures for information systems security to prevent malicious hackers and others from disrupting operations of the registry.

3. Independently inspected PHYSICAL SITES that feature:

a. A backup power system including a multi-day power source.

b. A high level of security due to twenty-four-hour guards and appropriate physical safeguards against intruders.

c. A remotely-located, fully redundant and staffed twin facility with "hot switchover" capability in the event of a main facility failure caused by either a natural disaster (e.g., earthquake or tornado) or an accidental (fire, burst pipe) or deliberate (arson, bomb) man-made event. (This might be provided at, or jointly supported with, another registry, which would encourage compatibility of hardware and commonality of interfaces.)

### **Registrar requirements**

Registries will set standards for registrars with which they wish to do business. The following are the minimal qualifications that IANA should mandate that each registry impose and test or inspect before allowing a registrar to access its database(s). Any additional requirements imposed by registries on registrars must be approved by IANA and should not affect the stability of the Internet or substantially reduce competition in the registrar business. Registries may refuse to accept registrations from registrars that fail to meet these requirements and may remove domain names from the registries if at a later time the registrar which registered them no longer meets the requirements for registrars.

1. A functioning DATABASE AND COMMUNICATIONS SYSTEM that supports:

a. Secure access (with encryption and authentication) to the registry.

b. Robust and scalable operations capable of handling moderate volumes.

c. Multiple connections to the Internet via at least two Internet Service Providers.

d. A daily data backup and archival system.

e. A record management system that maintains copies of all transactions, correspondence, and communications with all registries for at least the length of a registration contract.

## 2. MANAGEMENT POLICIES, PROCEDURES, AND PERSONNEL including:

- a. A plan to ensure that the registrar's obligations to its customers and to the registries will be fulfilled in the event that the registrar goes out of business. This plan must indicate how the registrar would ensure that domain name holders will continue to have use of their domain name and that operation of the Internet will not be adversely affected.
- b. Commonly-accepted procedures for information systems security to prevent malicious hackers and others from disrupting operations.

## 3. Independently inspected PHYSICAL SITES that features:

- a. A backup power system.
- b. A high level of security due to twenty-four-hour guards and appropriate physical safeguards against intruders.
- c. Remotely-stored backup files to permit recreation of customer records.

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## Appendix 2

### *Minimum Dispute Resolution and Other Procedures related to Trademarks*

#### 1. Minimum Application Requirements:

- a. Sufficient owner and contact information (e.g., names, mail address for service of process, e-mail address, telephone and fax numbers, etc.) to enable an interested party to contact either the owner/applicant or its designated representative; and a
- b. Certification statement by the applicant that:
  - it is entitled to register the domain name for which it is applying and knows of no entity with superior rights in the domain name; and
  - it intends to use the domain name.

#### 2. Searchable Database Requirements:

Utilizing a simple, easy-to-use, standardized search interface that features multiple field or string searching and the retrieval of similar names, the following information must be included in all registry databases, and available to anyone with access to the Internet:

- up-to-date ownership and contact information;
- up-to-date and historical chain of title information for the domain name;

- a mail address for service of process;
- the date of the domain name registration; and
- the date an objection to registration of the domain name was filed.

### 3. Updated Ownership, Contact and Use Information

a. At any time there is a change in ownership, the domain name owner must submit the following information:

- up-to-date contact and ownership information and
- a description of how the owner is using the domain name, or, if the domain name is not in use, a statement to that effect.

### 4. Alternative Dispute Resolution of Domain Name Conflicts:

1. There must be a readily available and convenient dispute resolution process that requires no involvement by registrars.
2. Registries/Registrars will abide by the decisions resulting from an agreed upon dispute resolution process or by the decision of a court of competent jurisdiction.
3. If an objection to registration is raised within 30 days after registration of the domain name, a brief period of suspension during the pendency of the dispute will be provided by the registries.

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## ENDNOTES

**1. The RFC and comments received are available on the Internet at the following address: <<http://www.ntia.doc.gov>>.**

**2. See generally *MDT Corp. v. New York Stock Exchange*, 858 F. Supp. 1028 (C.D. Calif. 1994).**

**3. See *Lockheed Martin Corp. v. Network Solutions, Inc.*, 1997 WL 721899 (C.D. Calif. 11/17/97); *Panavision International v. Toeppen*, 1996 U.S. Dist. LEXIS 20744, 41**

**U.S.P.Q.2d 1310 (C.D. Calif. 1996).**

**4. Management principles for the .us domain space are set forth in Internet RFC 1480, (<http://www.isi.edu/in-notes/rfc1480.txt>)**

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**EXHIBIT JJN-16**

differences of juvenile fish as they pass downstream through Lake Pateros and Wells Dam. For modification 1, PUD GC requests an increase in the take of juvenile, endangered, UCR steelhead associated with a study designed to inventory fish species in Wells reservoir on the Columbia River. ESA-listed fish are proposed to be observed by SCUBA divers or collected in beach seines, anesthetized, examined, allowed to recover, and released. Modification 1 is requested to be valid for the duration of the permit. Permit 1116 expires on December 31, 2002.

Dated: June 4, 1998.

**Patricia A. Montanio,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 98-15439 Filed 6-9-98; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

[Docket Number: 980212036-8146-02]

#### Management of Internet Names and Addresses

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Statement of policy.

**SUMMARY:** On July 1, 1997, as part of the Clinton Administration's *Framework for Global Electronic Commerce*,<sup>1</sup> the President directed the Secretary of Commerce to privatize the domain name system (DNS) in a manner that increases competition and facilitates international participation in its management.

Accordingly, on July 2, 1997, the Department of Commerce issued a Request for Comments (RFC) on DNS administration. The RFC solicited public input on issues relating to the overall framework of the DNS administration, the creation of new top-level domains, policies for domain name registrars, and trademark issues. During the comment period, more than 430 comments were received, amounting to some 1500 pages.<sup>2</sup>

On January 30, 1998, the National Telecommunications and Information Administration (NTIA), an agency of the Department of Commerce, issued for comment, *A Proposal to Improve the Technical Management of Internet Names and Addresses*. The proposed

rulemaking, or "Green Paper," was published in the **Federal Register** on February 20, 1998, providing opportunity for public comment. NTIA received more than 650 comments, as of March 23, 1998, when the comment period closed.<sup>3</sup>

The Green Paper proposed certain actions designed to privatize the management of Internet names and addresses in a manner that allows for the development of robust competition and facilitates global participation in Internet management. The Green Paper proposed for discussion a variety of issues relating to DNS management including private sector creation of a new not-for-profit corporation (the "new corporation") managed by a globally and functionally representative Board of Directors.

**EFFECTIVE DATE:** This general statement of policy is not subject to the delay in effective date required of substantive rules under 5 U.S.C. § 553(d). It does not contain mandatory provisions and does not itself have the force and effect of law.<sup>4</sup> Therefore, the effective date of this policy statement is June 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Karen Rose, Office of International Affairs (OIA), Rm 4701, National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, 14<sup>th</sup> and Constitution Ave., NW, Washington, DC., 20230. Telephone: (202) 482-0365. E-mail: [dnspolicy@ntia.doc.gov](mailto:dnspolicy@ntia.doc.gov)

**Authority:** 15 U.S.C. 1512; 15 U.S.C. 1525; 47 U.S.C. 902(b)(2)(H); 47 U.S.C. 902(b)(2)(I); 47 U.S.C. 902(b)(2)(M); 47 U.S.C. 904(c)(1).

#### SUPPLEMENTARY INFORMATION:

##### Background

Domain names are the familiar and easy-to-remember names for Internet computers (e.g., "www.ecommerce.gov"). They map to unique Internet Protocol (IP) numbers (e.g., 98.37.241.30) that serve as routing addresses on the Internet. The domain name system (DNS) translates Internet names into the IP numbers needed for transmission of information across the network.

<sup>3</sup>The RFC, the Green Paper, and comments received in response to both documents are available on the Internet at the following address: <http://www.ntia.doc.gov>. Additional comments were submitted after March 23, 1998. These comments have been considered and treated as part of the official record and have been separately posted at the same site, although the comments were not received by the deadline established in the February 20, 1998 **Federal Register** Notice.

<sup>4</sup>See Administrative Law Requirements at p. 19.

#### U.S. Role in DNS Development

More than 25 years ago, the U.S. Government began funding research necessary to develop packet-switching technology and communications networks, starting with the "ARPANET" network established by the Department of Defense's Advanced Research Projects Agency (DARPA) in the 1960s. ARPANET was later linked to other networks established by other government agencies, universities and research facilities. During the 1970s, DARPA also funded the development of a "network of networks;" this became known as the Internet, and the protocols that allowed the networks to intercommunicate became known as Internet protocols (IP).

As part of the ARPANET development work contracted to the University of California at Los Angeles (UCLA), Dr. Jon Postel, then a graduate student at the university, undertook the maintenance of a list of host names and addresses and also a list of documents prepared by ARPANET researchers, called Requests for Comments (RFCs). The lists and the RFCs were made available to the network community through the auspices of SRI International, under contract to DARPA and later the Defense Communication Agency (DCA) (now the Defense Information Systems Agency (DISA)) for performing the functions of the Network Information Center (the NIC).

After Dr. Postel moved from UCLA to the Information Sciences Institute (ISI) at the University of Southern California (USC), he continued to maintain the list of assigned Internet numbers and names under contracts with DARPA. SRI International continued to publish the lists. As the lists grew, DARPA permitted Dr. Postel to delegate additional administrative aspects of the list maintenance to SRI, under continuing technical oversight. Dr. Postel, under the DARPA contracts, also published a list of technical parameters that had been assigned for use by protocol developers. Eventually these functions collectively became known as the Internet Assigned Numbers Authority (IANA).

Until the early 1980s, the Internet was managed by DARPA, and used primarily for research purposes. Nonetheless, the task of maintaining the name list became onerous, and the Domain Name System (DNS) was developed to improve the process. Dr. Postel and SRI participated in DARPA's development and establishment of the technology and practices used by the DNS. By 1990, ARPANET was completely phased out.

<sup>1</sup> Available at <http://www.ecommerce.gov>.

<sup>2</sup> July 2, 1997 RFC and public comments are located at: <http://www.ntia.doc.gov/ntiahome/domainname/index.html>.

The National Science Foundation (NSF) has statutory authority for supporting and strengthening basic scientific research, engineering, and educational activities in the United States, including the maintenance of computer networks to connect research and educational institutions. Beginning in 1987, IBM, MCI and Merit developed NSFNET, a national high-speed network based on Internet protocols, under an award from NSF. NSFNET, the largest of the governmental networks, provided a "backbone" to connect other networks serving more than 4,000 research and educational institutions throughout the country. The National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy also contributed backbone facilities.

In 1991-92, NSF assumed responsibility for coordinating and funding the management of the non-military portion of the Internet infrastructure. NSF solicited competitive proposals to provide a variety of infrastructure services, including domain name registration services. On December 31, 1992, NSF entered into a cooperative agreement with Network Solutions, Inc. (NSI) for some of these services, including the domain name registration services. Since that time, NSI has managed key registration, coordination, and maintenance functions of the Internet domain name system. NSI registers domain names in the generic top level domains (gTLDs) on a first come, first served basis and also maintains a directory linking domain names with the IP numbers of domain name servers. NSI also currently maintains the authoritative database of Internet registrations.

In 1992, the U.S. Congress gave NSF statutory authority to allow commercial activity on the NSFNET.<sup>5</sup> This facilitated connections between NSFNET and newly forming commercial network service providers, paving the way for today's Internet. Thus, the U.S. Government has played a pivotal role in creating the Internet as we know it today. The U.S. Government consistently encouraged bottom-up development of networking technologies, and throughout the course of its development, computer scientists from around the world have enriched the Internet and facilitated exploitation of its true potential. For example, scientists at CERN, in Switzerland, developed software, protocols and conventions that formed the basis of

today's vibrant World Wide Web. This type of pioneering Internet research and development continues in cooperative organizations and consortia throughout the world.

#### *DNS Management Today*

In recent years, commercial use of the Internet has expanded rapidly. As a legacy, however, major components of the domain name system are still performed by, or subject to, agreements with agencies of the U.S. Government.

(1) Assignment of numerical addresses to Internet users.

Every Internet computer has a unique IP number. IANA, headed by Dr. Jon Postel, coordinates this system by allocating blocks of numerical addresses to regional IP registries (ARIN in North America, RIPE in Europe, and APNIC in the Asia/Pacific region), under contract with DARPA. In turn, larger Internet service providers apply to the regional IP registries for blocks of IP addresses. The recipients of those address blocks then reassign addresses to smaller Internet service providers and to end users.

(2) Management of the system of registering names for Internet users.

The domain name space is constructed as a hierarchy. It is divided into top-level domains (TLDs), with each TLD then divided into second-level domains (SLDs), and so on. More than 200 national, or country-code, TLDs (ccTLDs) are administered by their corresponding governments or by private entities with the appropriate national government's acquiescence. A small set of gTLDs do not carry any national identifier, but denote the intended function of that portion of the domain space. For example, .com was established for commercial users, .org for not-for-profit organizations, and .net for network service providers. The registration and propagation of these key gTLDs are performed by NSI, under a five-year cooperative agreement with NSF. This agreement expires on September 30, 1998.

(3) Operation of the root server system.

The root server system is a set of thirteen file servers, which together contain authoritative databases listing all TLDs. Currently, NSI operates the "A" root server, which maintains the authoritative root database and replicates changes to the other root servers on a daily basis.

Different organizations, including NSI, operate the other 12 root servers.<sup>6</sup>

The U.S. Government plays a role in the operation of about half of the Internet's root servers. Universal name consistency on the Internet cannot be guaranteed without a set of authoritative and consistent roots. Without such consistency messages could not be routed with any certainty to the intended addresses.

(4) Protocol Assignment.

The Internet protocol suite, as defined by the Internet Engineering Task Force (IETF), contains many technical parameters, including protocol numbers, port numbers, autonomous system numbers, management information base object identifiers and others. The common use of these protocols by the Internet community requires that the particular values used in these fields be assigned uniquely. Currently, IANA, under contract with DARPA, makes these assignments and maintains a registry of the assigned values.

#### *The Need for Change*

From its origins as a U.S.-based research vehicle, the Internet is rapidly becoming an international medium for commerce, education and communication. The traditional means of organizing its technical functions need to evolve as well. The pressures for change are coming from many different quarters:

- There is widespread dissatisfaction about the absence of competition in domain name registration.
- Conflicts between trademark holders and domain name holders are becoming more common. Mechanisms for resolving these conflicts are expensive and cumbersome.
- Many commercial interests, staking their future on the successful growth of the Internet, are calling for a more formal and robust management structure.
- An increasing percentage of Internet users reside outside of the U.S., and those stakeholders want to participate in Internet coordination.
- As Internet names increasingly have commercial value, the decision to add new top-level domains cannot be made on an *ad hoc* basis by entities or individuals that are not formally accountable to the Internet community.
- As the Internet becomes commercial, it becomes less appropriate for U.S. research agencies to direct and fund these functions.

The Internet technical community has been actively debating DNS

<sup>5</sup> See Scientific and Advanced-Technology Act of 1992; Pub. L. 102-476 section 4(9), 106 Stat. 2297, 2300 (codified at 42 U.S.C. 1862 (a)).

<sup>6</sup> An unofficial diagram of the general geographic location and institutional affiliations of the 13 Internet root servers, prepared by Anthony

Rutkowski, is available at <<http://www.wia.org/pub/rooterv.html>>.

management policy for several years. Experimental registry systems offering name registration services in an alternative set of exclusive domains developed as early as January 1996. Although visible to only a fraction of Internet users, alternative systems such as the name.space, AlterNIC, and eDNS affiliated registries<sup>7</sup> contributed to the community's dialogue on the evolution of DNS administration.

In May of 1996, Dr. Postel proposed the creation of multiple, exclusive, competing top-level domain name registries. This proposal called for the introduction of up to 50 new competing domain name registries, each with the exclusive right to register names in up to three new top-level domains, for a total of 150 new TLDs. While some supported the proposal, the plan drew much criticism from the Internet technical community.<sup>8</sup> The paper was revised and reissued.<sup>9</sup> The Internet Society's (ISOC) board of trustees endorsed, in principle, the slightly revised but substantively similar version of the draft in June of 1996.

After considerable debate and redrafting failed to produce a consensus on DNS change, IANA and the Internet Society (ISOC) organized the International Ad Hoc Committee<sup>10</sup> (IAHC or the Ad Hoc Committee) in September 1996, to resolve DNS management issues. The World Intellectual Property Organization (WIPO) and the International Telecommunications Union (ITU) participated in the IAHC. The Federal Networking Council (FNC) participated in the early deliberations of the Ad Hoc Committee.

The IAHC issued a draft plan in December 1996 that introduced unique and thoughtful concepts for the evolution of DNS administration.<sup>11</sup> The final report proposed a memorandum of understanding (MoU) that would have established, initially, seven new gTLDs

<sup>7</sup> For further information about these systems see: name.space: <<http://namespace.pgmedia.net>>; AlterNIC: <<http://www.alternic.net>>; eDNS: <<http://www.edns.net>>. Reference to these organizations does not constitute an endorsement of their commercial activities.

<sup>8</sup> Lengthy discussions by the Internet technical community on DNS issues generally and on the Postel DNS proposal took place on the *newdom*, *com-priv*, *ietf* and *domain-policy* Internet mailing lists.

<sup>9</sup> See *draft-Postel-iana-itld-admin-01.txt*; available at <<http://www.newdom.com/archive>>.

<sup>10</sup> For further information about the IAHC see: <<http://www.iahc.org>> and related links. Reference to this organization does not constitute an endorsement of the commercial activities of its related organizations.

<sup>11</sup> December 1996 draft: *draft-iahc-gtldspec-00.txt*; available at <<http://info.internet.isi.edu:80/in-drafts/files>>.

to be operated on a nonexclusive basis by a consortium of new private domain name registrars called the Council of Registrars (CORE).<sup>12</sup> Policy oversight would have been undertaken in a separate council called the Policy Oversight Committee (POC) with seats allocated to specified stakeholder groups. Further, the plan formally introduced mechanisms for resolving trademark/domain name disputes. Under the MoU, registrants for second-level domains would have been required to submit to mediation and arbitration, facilitated by WIPO, in the event of conflict with trademark holders.

Although the IAHC proposal gained support in many quarters of the Internet community, the IAHC process was criticized for its aggressive technology development and implementation schedule, for being dominated by the Internet engineering community, and for lacking participation by and input from business interests and others in the Internet community.<sup>13</sup> Others criticized the plan for failing to solve the competitive problems that were such a source of dissatisfaction among Internet users and for imposing unnecessary burdens on trademark holders. Although the POC responded by revising the original plan, demonstrating a commendable degree of flexibility, the proposal was not able to overcome initial criticism of both the plan and the process by which the plan was developed.<sup>14</sup> Important segments of the Internet community remained outside the IAHC process, criticizing it as insufficiently representative.<sup>15</sup>

As a result of the pressure to change DNS management, and in order to facilitate its withdrawal from DNS management, the U.S. Government, through the Department of Commerce and NTIA, sought public comment on the direction of U.S. policy with respect to DNS, issuing the Green Paper on January 30, 1998.<sup>16</sup> The approach outlined in the Green Paper adopted elements of other proposals, such as the

<sup>12</sup> The IAHC final report is available at <<http://www.iahc.org/draft-iahc-recommend-00.html>>.

<sup>13</sup> See generally public comments received in response to July 2, 1997 RFC located at <<http://www.ntia.doc.gov/ntiahome/domainname/email>>.

<sup>14</sup> For a discussion, see Congressional testimony of Assistant Secretary of Commerce Larry Irving, Before the House Committee on Science, Subcommittee on Basic Research, September 25, 1997 available at <<http://www.ntia.doc.gov/ntiahome/domainname/email>>.

<sup>15</sup> See generally public comments received in response to July 2, 1997 RFC located at <<http://www.ntia.doc.gov/ntiahome/domainname/email>>.

<sup>16</sup> The document was published in the **Federal Register** on February 20, 1998, (63 FR 8826 (Feb. 20, 1998)).

early Postel drafts and the IAHC gTLD-MoU.

*Comments and Response:* The following are summaries of and responses to the major comments that were received in response to NTIA's issuance of *A Proposal to Improve the Technical Management of Internet Names and Addresses*. As used herein, quantitative terms such as "some," "many," and "the majority of," reflect, roughly speaking, the proportion of comments addressing a particular issue but are not intended to summarize all comments received or the complete substance of all such comments.

#### 1. Principles for a New System

The Green Paper set out four principles to guide the evolution of the domain name system: stability, competition, private bottom-up coordination, and representation.

*Comments:* In general, commenters supported these principles, in some cases highlighting the importance of one or more of the principles. For example, a number of commenters emphasized the importance of establishing a body that fully reflects the broad diversity of the Internet community. Others stressed the need to preserve the bottom-up tradition of Internet governance. A limited number of commenters proposed additional principles for the new system, including principles related to the protection of human rights, free speech, open communication, and the preservation of the Internet as a public trust. Finally, some commenters who agreed that Internet stability is an important principle, nonetheless objected to the U.S. Government's assertion of any participatory role in ensuring such stability.

*Response:* The U.S. Government policy applies only to management of Internet names and addresses and does not set out a system of Internet "governance." Existing human rights and free speech protections will not be disturbed and, therefore, need not be specifically included in the core principles for DNS management. In addition, this policy is not intended to displace other legal regimes (international law, competition law, tax law and principles of international taxation, intellectual property law, etc.) that may already apply. The continued applicability of these systems as well as the principle of representation should ensure that DNS management proceeds in the interest of the Internet community as a whole. Finally, the U.S. Government believes that it would be irresponsible to withdraw from its existing management role without

taking steps to ensure the stability of the Internet during its transition to private sector management. On balance, the comments did not present any consensus for amending the principles outlined in the Green Paper.

## 2. The Coordinated Functions

The Green Paper identified four DNS functions to be performed on a coordinated, centralized basis in order to ensure that the Internet runs smoothly:

1. To set policy for and direct the allocation of IP number blocks;
2. To oversee the operation of the Internet root server system;
3. To oversee policy for determining the circumstances under which new top level domains would be added to the root system; and
4. To coordinate the development of other technical protocol parameters as needed to maintain universal connectivity on the Internet.

*Comments:* Most commenters agreed that these functions should be coordinated centrally, although a few argued that a system of authoritative roots is not technically necessary to ensure DNS stability. A number of commenters, however, noted that the fourth function, as delineated in the Green Paper, overstated the functions currently performed by IANA, attributing to it central management over an expanded set of functions, some of which are now carried out by the IETF.

*Response:* In order to preserve universal connectivity and the smooth operation of the Internet, the U.S. Government continues to believe, along with most commenters, that these four functions should be coordinated. In the absence of an authoritative root system, the potential for name collisions among competing sources for the same domain name could undermine the smooth functioning and stability of the Internet.

The Green Paper was not, however, intended to expand the responsibilities associated with Internet protocols beyond those currently performed by IANA. Specifically, management of DNS by the new corporation does not encompass the development of Internet technical parameters for other purposes by other organizations such as IETF. The fourth function should be restated accordingly:

- To coordinate the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.

## 3. Separation of Name and Number Authority

*Comments:* A number of commenters suggested that management of the domain name system should be separated from management of the IP number system. These commenters expressed the view that the numbering system is relatively technical and straightforward. They feared that tight linkage of domain name and IP number policy development would embroil the IP numbering system in the kind of controversy that has surrounded domain name issuance in recent months. These commenters also expressed concern that the development of alternative name and number systems could be inhibited by this controversy or delayed by those with vested interests in the existing system.

*Response:* The concerns expressed by the commenters are legitimate, but domain names and IP numbers must ultimately be coordinated to preserve universal connectivity on the Internet. Also, there are significant costs associated with establishing and operating two separate management entities.

However, there are organizational structures that could minimize the risks identified by commenters. For example, separate name and number councils could be formed within a single organization. Policy could be determined within the appropriate council that would submit its recommendations to the new corporation's Board of Directors for ratification.

## 4. Creation of the New Corporation and Management of the DNS

The Green Paper called for the creation of a new private, not-for-profit corporation<sup>17</sup> responsible for coordinating specific DNS functions for the benefit of the Internet as a whole. Under the Green Paper proposal, the U.S. Government<sup>18</sup> would gradually transfer these functions to the new corporation beginning as soon as possible, with the goal of having the new corporation carry out operational responsibility by October 1998. Under the Green Paper proposal, the U.S. Government would continue to

<sup>17</sup> As used herein, the term "new corporation" is intended to refer to an entity formally organized under well recognized and established business law standards.

<sup>18</sup> As noted in the Summary, the President directed the Secretary of Commerce to privatize DNS in a manner that increases competition and facilitates international participation in its management. Accordingly, the Department of Commerce will lead the coordination of the U.S. government's role in this transition.

participate in policy oversight until such time as the new corporation was established and stable, phasing out as soon as possible, but in no event later than September 30, 2000. The Green Paper suggested that the new corporation be incorporated in the United States in order to promote stability and facilitate the continued reliance on technical expertise residing in the United States, including IANA staff at USC/ISI.

*Comments:* Almost all commenters supported the creation of a new, private not-for-profit corporation to manage DNS. Many suggested that IANA should evolve into the new corporation. A small number of commenters asserted that the U.S. Government should continue to manage Internet names and addresses. Another small number of commenters suggested that DNS should be managed by international governmental institutions such as the United Nations or the International Telecommunications Union. Many commenters urged the U.S. Government to commit to a more aggressive timeline for the new corporation's assumption of management responsibility. Some commenters also suggested that the proposal to headquarter the new corporation in the United States represented an inappropriate attempt to impose U.S. law on the Internet as a whole.

*Response:* The U.S. Government is committed to a transition that will allow the private sector to take leadership for DNS management. Most commenters shared this goal. While international organizations may provide specific expertise or act as advisors to the new corporation, the U.S. continues to believe, as do most commenters, that neither national governments acting as sovereigns nor intergovernmental organizations acting as representatives of governments should participate in management of Internet names and addresses. Of course, national governments now have, and will continue to have, authority to manage or establish policy for their own ccTLDs.

The U.S. Government would prefer that this transition be complete before the year 2000. To the extent that the new corporation is established and operationally stable, September 30, 2000 is intended to be, and remains, an "outside" date.

IANA has functioned as a government contractor, albeit with considerable latitude, for some time now. Moreover, IANA is not formally organized or constituted. It describes a function more than an entity, and as such does not currently provide a legal foundation for the new corporation. This is not to say,

however, that IANA could not be reconstituted by a broad-based, representative group of Internet stakeholders or that individuals associated with IANA should not themselves play important foundation roles in the formation of the new corporation. We believe, and many commenters also suggested, that the private sector organizers will want Dr. Postel and other IANA staff to be involved in the creation of the new corporation.

Because of the significant U.S.-based DNS expertise and in order to preserve stability, it makes sense to headquarter the new corporation in the United States. Further, the mere fact that the new corporation would be incorporated in the United States would not remove it from the jurisdiction of other nations. Finally, we note that the new corporation must be headquartered somewhere, and similar objections would inevitably arise if it were incorporated in another location.

#### 5. Structure of the New Corporation

The Green Paper proposed a 15-member Board, consisting of three representatives of regional number registries, two members designated by the Internet Architecture Board (IAB), two members representing domain name registries and domain name registrars, seven members representing Internet users, and the Chief Executive Officer of the new corporation.

*Comments:* Commenters expressed a variety of positions on the composition of the Board of Directors for the new corporation. In general, however, most commenters supported the establishment of a Board of Directors that would be representative of the functional and geographic diversity of the Internet. For the most part, commenters agreed that the groups listed in the Green Paper included individuals and entities likely to be materially affected by changes in DNS. Most of those who criticized the proposed allocation of Board seats called for increased representation of their particular interest group on the Board of Directors. Specifically, a number of commenters suggested that the allocation set forth in the Green Paper did not adequately reflect the special interests of (1) trademark holders, (2) Internet service providers, or (3) the not-for-profit community. Others commented that the Green Paper did not adequately ensure that the Board would be globally representative.

*Response:* The Green Paper attempted to describe a manageably sized Board of Directors that reflected the diversity of the Internet. It is probably impossible to

allocate Board seats in a way that satisfies all parties concerned. On balance, we believe the concerns raised about the representation of specific groups are best addressed by a thoughtful allocation of the "user" seats as determined by the organizers of the new corporation and its Board of Directors, as discussed below.

The Green Paper identified several international membership associations and organizations to designate Board members such as APNIC, ARIN, RIPE, and the Internet Architecture Board. We continue to believe that as use of the Internet expands outside the United States, it is increasingly likely that a properly open and transparent DNS management entity will have board members from around the world. Although we do not set any mandatory minimums for global representation, this policy statement is designed to identify global representativeness as an important priority.

#### 6. Registrars and Registries

The Green Paper proposed moving the system for registering second level domains and the management of generic top-level domains into a competitive environment by creating two market-driven businesses, registration of second level domain names and the management of gTLD registries.

##### a. Competitive Registrars

*Comments:* Commenters strongly supported establishment of a competitive registrar system whereby registrars would obtain domain names for customers in any gTLD. Few disagreed with this position. The Green Paper proposed a set of requirements to be imposed by the new corporation on all would-be registrars. Commenters for the most part did not take exception to the proposed criteria, but a number of commenters suggested that it was inappropriate for the United States government to establish them.

*Response:* In response to the comments received, the U.S. Government believes that the new corporation, rather than the U.S. Government, should establish minimum criteria for registrars that are pro-competitive and provide some measure of stability for Internet users without being so onerous as to prevent entry by would-be domain name registrars from around the world. Accordingly, the proposed criteria are not part of this policy statement.

##### b. Competitive Registries

*Comments:* Many commenters voiced strong opposition to the idea of competitive and/or for-profit domain

name registries, citing one of several concerns. Some suggested that top level domain names are not, by nature, ever truly generic. As such, they will tend to function as "natural monopolies" and should be regulated as a public trust and operated for the benefit of the Internet community as a whole. Others suggested that even if competition initially exists among various domain name registries, lack of portability in the naming systems would create lock-in and switching costs, making competition unsustainable in the long run. Finally, other commenters suggested that no new registry could compete meaningfully with NSI unless all domain name registries were not-for-profit and/or noncompeting.

Some commenters asserted that an experiment involving the creation of additional for-profit registries would be too risky, and irreversible once undertaken. A related concern raised by commenters addressed the rights that for-profit operators might assert with respect to the information contained in registries they operate. These commenters argued that registries would have inadequate incentives to abide by DNS policies and procedures unless the new corporation could terminate a particular entity's license to operate a registry. For-profit operators, under this line of reasoning, would be more likely to disrupt the Internet by resisting license terminations.

Commenters who supported competitive registries conceded that, in the absence of domain name portability, domain name registries could impose switching costs on users who change domain name registries. They cautioned, however, that it would be premature to conclude that switching costs provide a sufficient basis for precluding the proposed move to competitive domain name registries and cited a number of factors that could protect against registry opportunism. These commenters concluded that the potential benefits to customers from enhanced competition outweighed the risk of such opportunism. The responses to the Green Paper also included public comments on the proposed criteria for registries.

*Response:* Both sides of this argument have considerable merit. It is possible that additional discussion and information will shed light on this issue, and therefore, as discussed below, the U.S. Government has concluded that the issue should be left for further consideration and final action by the new corporation. The U.S. Government is of the view, however, that competitive systems generally result in greater innovation, consumer choice,

and satisfaction in the long run. Moreover, the pressure of competition is likely to be the most effective means of discouraging registries from acting monopolistically. Further, in response to the comments received, the U.S. government believes that new corporation should establish and implement appropriate criteria for gTLD registries. Accordingly, the proposed criteria are not part of this policy statement.

#### 7. The Creation of New gTLDs

The Green Paper suggested that during the period of transition to the new corporation, the U.S. Government, in cooperation with IANA, would undertake a process to add up to five new gTLDs to the authoritative root. Noting that formation of the new corporation would involve some delay, the Green Paper contemplated new gTLDs in the short term to enhance competition and provide information to the technical community and to policy makers, while offering entities that wished to enter into the registry business an opportunity to begin offering service to customers. The Green Paper, however, noted that ideally the addition of new TLDs would be left to the new corporation.

*Comments:* The comments evidenced very strong support for limiting government involvement during the transition period on the matter of adding new gTLDs. Specifically, most commenters—both U.S. and non-U.S.—suggested that it would be more appropriate for the new, globally representative, corporation to decide these issues once it is up and running. Few believed that speed should outweigh process considerations in this matter. Others warned, however, that relegating this contentious decision to a new and untested entity early in its development could fracture the organization. Others argued that the market for a large or unlimited number of new gTLDs should be opened immediately. They asserted that there are no technical impediments to the addition of a host of gTLDs, and the market will decide which TLDs succeed and which do not. Further, they pointed out that there are no artificial or arbitrary limits in other media on the number of places in which trademark holders must defend against dilution.

*Response:* The challenge of deciding policy for the addition of new domains will be formidable. We agree with the many commenters who said that the new corporation would be the most appropriate body to make these decisions based on global input. Accordingly, as supported by the

preponderance of comments, the U.S. Government will not implement new gTLDs at this time.

At least in the short run, a prudent concern for the stability of the system suggests that expansion of gTLDs proceed at a deliberate and controlled pace to allow for evaluation of the impact of the new gTLDs and well-reasoned evolution of the domain space. New top level domains could be created to enhance competition and to enable the new corporation to evaluate the functioning, in the new environment, of the root server system and the software systems that enable shared registration.

#### 8. The Trademark Dilemma

When a trademark is used as a domain name without the trademark owner's consent, consumers may be misled about the source of the product or service offered on the Internet, and trademark owners may not be able to protect their rights without very expensive litigation. For cyberspace to function as an effective commercial market, businesses must have confidence that their trademarks can be protected. On the other hand, management of the Internet must respond to the needs of the Internet community as a whole, and not trademark owners exclusively. The Green Paper proposed a number of steps to balance the needs of domain name holders with the legitimate concerns of trademark owners in the interest of the Internet community as a whole. The proposals were designed to provide trademark holders with the same rights they have in the physical world, to ensure transparency, and to guarantee a dispute resolution mechanism with resort to a court system.

The Green Paper also noted that trademark holders have expressed concern that domain name registrants in faraway places may be able to infringe their rights with no convenient jurisdiction available in which the trademark owner could enforce a judgment protecting those rights. The Green Paper solicited comments on an arrangement whereby, at the time of registration, registrants would agree to submit a contested domain name to the jurisdiction of the courts where the registry is domiciled, where the registry database is maintained, or where the "A" root server is maintained.

*Comments:* Commenters largely agreed that domain name registries should maintain up-to-date, readily searchable domain name databases that contain the information necessary to locate a domain name holder. In general commenters did not take specific issue with the database specifications

proposed in Appendix 2 of the Green Paper, although some commenters proposed additional requirements. A few commenters noted, however, that privacy issues should be considered in this context.

A number of commenters objected to NSI's current business practice of allowing registrants to use domain names before they have actually paid any registration fees. These commenters pointed out that this practice has encouraged cybersquatters and increased the number of conflicts between domain name holders and trademark holders. They suggested that domain name applicants should be required to pay before a desired domain name becomes available for use.

Most commenters also favored creation of an on-line dispute resolution mechanism to provide inexpensive and efficient alternatives to litigation for resolving disputes between trademark owners and domain name registrants. The Green Paper contemplated that each registry would establish specified minimum dispute resolution procedures, but remain free to establish additional trademark protection and dispute resolution mechanisms. Most commenters did not agree with this approach, favoring instead a uniform approach to resolving trademark/domain name disputes.

Some commenters noted that temporary suspension of a domain name in the event of an objection by a trademark holder within a specified period of time after registration would significantly extend trademark holders' rights beyond what is accorded in the real world. They argued that such a provision would create a *de facto* waiting period for name use, as holders would need to suspend the use of their name until after the objection window had passed to forestall an interruption in service. Further, they argue that such a system could be used anti-competitively to stall a competitor's entry into the marketplace.

The suggestion that domain name registrants be required to agree at the time of registration to submit disputed domain names to the jurisdiction of specified courts was supported by U.S. trademark holders but drew strong protest from trademark holders and domain name registrants outside the United States. A number of commenters characterized this as an inappropriate attempt to establish U.S. trademark law as the law of the Internet. Others suggested that existing jurisdictional arrangements are satisfactory. They argue that establishing a mechanism whereby the judgment of a court can be enforced absent personal jurisdiction

over the infringer would upset the balance between the interests of trademark holders and those of other members of the Internet community.

*Response:* The U.S. Government will seek international support to call upon the World Intellectual Property Organization (WIPO) to initiate a balanced and transparent process, which includes the participation of trademark holders and members of the Internet community who are not trademark holders, to (1) develop recommendations for a uniform approach to resolving trademark/domain name disputes involving cybersquatting (as opposed to conflicts between trademark holders with legitimate competing rights), (2) recommend a process for protecting famous trademarks in the generic top level domains, and (3) evaluate the effects, based on studies conducted by independent organizations, such as the National Research Council of the National Academy of Sciences, of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property holders. These findings and recommendations could be submitted to the board of the new corporation for its consideration in conjunction with its development of registry and registrar policy and the creation and introduction of new gTLDs.

In trademark/domain name conflicts, there are issues of jurisdiction over the domain name in controversy and jurisdiction over the legal persons (the trademark holder and the domain name holder). This document does not attempt to resolve questions of personal jurisdiction in trademark/domain name conflicts. The legal issues are numerous, involving contract, conflict of laws, trademark, and other questions. In addition, determining how these various legal principles will be applied to the borderless Internet with an unlimited possibility of factual scenarios will require a great deal of thought and deliberation. Obtaining agreement by the parties that jurisdiction over the domain name will be exercised by an alternative dispute resolution body is likely to be at least somewhat less controversial than agreement that the parties will subject themselves to the personal jurisdiction of a particular national court. Thus, the references to jurisdiction in this policy statement are limited to jurisdiction over the domain name in dispute, and not to the domain name holder.

In order to strike a balance between those commenters who thought that registrars and registries should not themselves be engaged in disputes between trademark owners and domain

name holders and those commenters who thought that trademark owners should have access to a reliable and up-to-date database, we believe that a database should be maintained that permits trademark owners to obtain the contact information necessary to protect their trademarks.

Further, it should be clear that whatever dispute resolution mechanism is put in place by the new corporation, that mechanism should be directed toward disputes about cybersquatting and cybersquatting and not to settling the disputes between two parties with legitimate competing interests in a particular mark. Where legitimate competing rights are concerned, disputes are rightly settled in an appropriate court.

Under the revised plan, we recommend that domain name holders agree to submit infringing domain names to the jurisdiction of a court where the "A" root server is maintained, where the registry is domiciled, where the registrar database is maintained, or where the registrar is domiciled. We believe that allowing trademark infringement suits to be brought wherever registrars and registries are located will help ensure that all trademark holders "both U.S. and non-U.S." have the opportunity to bring suits in a convenient jurisdiction and enforce the judgments of those courts.

Under the revised plan, we also recommend that, whatever options are chosen by the new corporation, each registrar should insist that payment be made for the domain name before it becomes available to the applicant. The failure to make a domain name applicant pay for its use of a domain name has encouraged cybersquatters and is a practice that should end as soon as possible.

#### 9. Competition Concerns

*Comments:* Several commenters suggested that the U.S. Government should provide full antitrust immunity or indemnification for the new corporation. Others noted that potential antitrust liability would provide an important safeguard against institutional inflexibility and abuses of power.

*Response:* Applicable antitrust law will provide accountability to and protection for the international Internet community. Legal challenges and lawsuits can be expected within the normal course of business for any enterprise and the new corporation should anticipate this reality.

The Green Paper envisioned the new corporation as operating on principles similar to those of a standard-setting

body. Under this model, due process requirements and other appropriate processes that ensure transparency, equity and fair play in the development of policies or practices would need to be included in the new corporation's originating documents. For example, the new corporation's activities would need to be open to all persons who are directly affected by the entity, with no undue financial barriers to participation or unreasonable restrictions on participation based on technical or other such requirements. Entities and individuals would need to be able to participate by expressing a position and its basis, having that position considered, and appealing if adversely affected. Further, the decision making process would need to reflect a balance of interests and should not be dominated by any single interest category. If the new corporation behaves this way, it should be less vulnerable to antitrust challenges.

#### 10. The NSI Agreement

*Comments:* Many commenters expressed concern about continued administration of key gTLDs by NSI. They argued that this would give NSI an unfair advantage in the marketplace and allow NSI to leverage economies of scale across their gTLD operations. Some commenters also believe the Green Paper approach would have entrenched and institutionalized NSI's dominant market position over the key domain name going forward. Further, many commenters expressed doubt that a level playing field between NSI and the new registry market entrants could emerge if NSI retained control over .com, .net, and .org.

*Response:* The cooperative agreement between NSI and the U.S. Government is currently in its ramp down period. The U.S. Government and NSI will shortly commence discussions about the terms and conditions governing the ramp-down of the cooperative agreement. Through these discussions, the U.S. Government expects NSI to agree to take specific actions, including commitments as to pricing and equal access, designed to permit the development of competition in domain name registration and to approximate what would be expected in the presence of marketplace competition. The U.S. Government expects NSI to agree to act in a manner consistent with this policy statement, including recognizing the role of the new corporation to establish and implement DNS policy and to establish terms (including licensing terms) applicable to new and existing gTLD registries under which registries, registrars and gTLDs are permitted to

operate. Further, the U.S. Government expects NSI to agree to make available on an ongoing basis appropriate databases, software, documentation thereof, technical expertise, and other intellectual property for DNS management and shared registration of domain names.

#### 11. A Global Perspective

*Comments:* A number of commenters expressed concern that the Green Paper did not go far enough in globalizing the administration of the domain name system. Some believed that international organizations should have a role in administering the DNS. Others complained that incorporating the new corporation in the United States would entrench control over the Internet with the U.S. Government. Still others believed that the awarding by the U.S. Government of up to five new gTLDs would enforce the existing dominance of U.S. entities over the gTLD system.

*Response:* The U.S. Government believes that the Internet is a global medium and that its technical management should fully reflect the global diversity of Internet users. We recognize the need for and fully support mechanisms that would ensure international input into the management of the domain name system. In withdrawing the U.S. Government from DNS management and promoting the establishment of a new, non-governmental entity to manage Internet names and addresses, a key U.S. Government objective has been to ensure that the increasingly global Internet user community has a voice in decisions affecting the Internet's technical management.

We believe this process has reflected our commitment. Many of the comments on the Green Paper were filed by foreign entities, including governments. Our dialogue has been open to all Internet users—foreign and domestic, government and private—during this process, and we will continue to consult with the international community as we begin to implement the transition plan outlined in this paper.

#### 12. The Intellectual Infrastructure Fund

In 1995, NSF authorized NSI to assess domain name registrants a \$50 fee per year for the first two years, 30 percent of which was to be deposited in the Intellectual Infrastructure Fund (IIF), a fund to be used for the preservation and enhancement of the intellectual infrastructure of the Internet.

*Comments:* Very few comments referenced the IIF. In general, the comments received on the issue

supported either refunding the IIF portion of the domain name registration fee to domain registrants from whom it had been collected or applying the funds toward Internet infrastructure development projects generally, including funding the establishment of the new corporation.

*Response:* As proposed in the Green Paper, allocation of a portion of domain name registration fees to this fund terminated as of March 31, 1998. NSI has reduced its registration fees accordingly. The IIF remains the subject of litigation. The U.S. Government takes the position that its collection has recently been ratified by the U.S. Congress,<sup>19</sup> and has moved to dismiss the claim that it was unlawfully collected. This matter has not been finally resolved, however.

#### 13. The .us Domain

At present, the IANA administers .us as a locality-based hierarchy in which second-level domain space is allocated to states and U.S. territories.<sup>20</sup> This name space is further subdivided into localities. General registration under localities is performed on an exclusive basis by private firms that have requested delegation from IANA. The .us name space has typically been used by branches of state and local governments, although some commercial names have been assigned. Where registration for a locality has not been delegated, the IANA itself serves as the registrar.

*Comments:* Many commenters suggested that the pressure for unique identifiers in the .com gTLD could be relieved if commercial use of the .us space was encouraged. Commercial users and trademark holders, however, find the current locality-based system too cumbersome and complicated for commercial use. They called for expanded use of the .us TLD to alleviate some of the pressure for new generic TLDs and reduce conflicts between American companies and others vying for the same domain name. Most commenters support an evolution of the .us domain designed to make this name space more attractive to commercial users.

*Response:* Clearly, there is much opportunity for enhancing the .us domain space, and .us could be expanded in many ways without displacing the current structure. Over the next few months, the U.S. Government will work with the private

sector and state and local governments to determine how best to make the .us domain more attractive to commercial users. Accordingly, the Department of Commerce will seek public input on this important issue.

#### Administrative Law Requirements

On February 20, 1998, NTIA published for public comment a proposed rule regarding the domain name registration system. That proposed rule sought comment on substantive regulatory provisions, including but not limited to a variety of specific requirements for the membership of the new corporation, the creation during a transition period of a specified number of new generic top level domains and minimum dispute resolution and other procedures related to trademarks. As discussed elsewhere in this document, in response to public comment these aspects of the original proposal have been eliminated. In light of the public comment and the changes to the proposal made as a result, as well as the continued rapid technological development of the Internet, the Department of Commerce has determined that it should issue a general statement of policy, rather than define or impose a substantive regulatory regime for the domain name system. As such, this policy statement is not a substantive rule, does not contain mandatory provisions and does not itself have the force and effect of law.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the proposed rule on this matter, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published along with the proposed rule. No comments were received regarding this certification. As such, and because this final rule is a general statement of policy, no final regulatory flexibility analysis has been prepared.

This general statement of policy does not contain any reporting or record keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. ch. 35 (PRA). However, at the time the U.S. Government might seek to enter into agreements as described in this policy statement, a determination will be made as to whether any reporting or record keeping requirements subject to the PRA are being implemented. If so, the NTIA will, at that time, seek approval under the PRA for such requirement(s) from the Office of Management and Budget.

<sup>19</sup> 1998 Supplemental Appropriations and Rescissions Act; Pub. L. 105-174; 112 Stat. 58.

<sup>20</sup> Management principles for the .us domain space are set forth in Internet RFC 1480, (<http://www.isi.edu/in-notes/rfc1480.txt>).

This statement has been determined to be not significant for purposes of Office of Management and Budget review under Executive Order 12866, entitled Regulatory Planning and Review.

### Revised Policy Statement

This document provides the U.S. Government's policy regarding the privatization of the domain name system in a manner that allows for the development of robust competition and that facilitates global participation in the management of Internet names and addresses.

The policy that follows does not propose a monolithic structure for Internet governance. We doubt that the Internet should be governed by one plan or one body or even by a series of plans and bodies. Rather, we seek a stable process to address the narrow issues of management and administration of Internet names and numbers on an ongoing basis.

As set out below, the U.S. Government is prepared to recognize, by entering into agreement with, and to seek international support for, a new, not-for-profit corporation formed by private sector Internet stakeholders to administer policy for the Internet name and address system. Under such agreement(s) or understanding(s), the new corporation would undertake various responsibilities for the administration of the domain name system now performed by or on behalf of the U.S. Government or by third parties under arrangements or agreements with the U.S. Government. The U.S. Government would also ensure that the new corporation has appropriate access to needed databases and software developed under those agreements.

### The Coordinated Functions

Management of number addresses is best done on a coordinated basis. Internet numbers are a unique, and at least currently, a limited resource. As technology evolves, changes may be needed in the number allocation system. These changes should also be coordinated.

Similarly, coordination of the root server network is necessary if the whole system is to work smoothly. While day-to-day operational tasks, such as the actual operation and maintenance of the Internet root servers, can be dispersed, overall policy guidance and control of the TLDs and the Internet root server system should be vested in a single organization that is representative of Internet users around the globe.

Further, changes made in the administration or the number of gTLDs contained in the authoritative root system will have considerable impact on Internet users throughout the world. In order to promote continuity and reasonable predictability in functions related to the root zone, the development of policies for the addition, allocation, and management of gTLDs and the establishment of domain name registries and domain name registrars to host gTLDs should be coordinated.

Finally, coordinated maintenance and dissemination of the protocol parameters for Internet addressing will best preserve the stability and interconnectivity of the Internet. We are not, however, proposing to expand the functional responsibilities of the new corporation beyond those exercised by IANA currently.

In order to facilitate the needed coordination, Internet stakeholders are invited to work together to form a new, private, not-for-profit corporation to manage DNS functions. The following discussion reflects current U.S. Government views of the characteristics of an appropriate management entity. What follows is designed to describe the characteristics of an appropriate entity generally.

### Principles for a New System

In making a decision to enter into an agreement to establish a process to transfer current U.S. Government management of DNS to such a new entity, the U.S. will be guided by, and consider the proposed entity's commitment to, the following principles:

1. *Stability.* The U.S. Government should end its role in the Internet number and name address system in a manner that ensures the stability of the Internet. The introduction of a new management system should not disrupt current operations or create competing root systems. During the transition and thereafter, the stability of the Internet should be the first priority of any DNS management system. Security and reliability of the DNS are important aspects of stability, and as a new DNS management system is introduced, a comprehensive security strategy should be developed.

2. *Competition.* The Internet succeeds in great measure because it is a decentralized system that encourages innovation and maximizes individual freedom. Where possible, market mechanisms that support competition and consumer choice should drive the management of the Internet because they will lower costs, promote

innovation, encourage diversity, and enhance user choice and satisfaction.

3. *Private, Bottom-Up Coordination.* Certain management functions require coordination. In these cases, responsible, private-sector action is preferable to government control. A private coordinating process is likely to be more flexible than government and to move rapidly enough to meet the changing needs of the Internet and of Internet users. The private process should, as far as possible, reflect the bottom-up governance that has characterized development of the Internet to date.

4. *Representation.* The new corporation should operate as a private entity for the benefit of the Internet community as a whole. The development of sound, fair, and widely accepted policies for the management of DNS will depend on input from the broad and growing community of Internet users. Management structures should reflect the functional and geographic diversity of the Internet and its users. Mechanisms should be established to ensure international participation in decision making.

*Purpose.* The new corporation ultimately should have the authority to manage and perform a specific set of functions related to coordination of the domain name system, including the authority necessary to:

- (1) Set policy for and direct allocation of IP number blocks to regional Internet number registries;
- (2) Oversee operation of the authoritative Internet root server system;
- (3) Oversee policy for determining the circumstances under which new TLDs are added to the root system; and
- (4) Coordinate the assignment of other Internet technical parameters as needed to maintain universal connectivity on the Internet.

*Funding.* Once established, the new corporation could be funded by domain name registries, regional IP registries, or other entities identified by the Board.

*Staff.* We anticipate that the new corporation would want to make arrangements with current IANA staff to provide continuity and expertise over the course of transition. The new corporation should secure necessary expertise to bring rigorous management to the organization.

*Incorporation.* We anticipate that the new corporation's organizers will include representatives of regional Internet number registries, Internet engineers and computer scientists, domain name registries, domain name registrars, commercial and noncommercial users, Internet service providers, international trademark

holders and Internet experts highly respected throughout the international Internet community. These incorporators should include substantial representation from around the world.

As these functions are now performed in the United States, by U.S. residents, and to ensure stability, the new corporation should be headquartered in the United States, and incorporated in the U.S. as a not-for-profit corporation. It should, however, have a board of directors from around the world. Moreover, incorporation in the United States is not intended to supplant or displace the laws of other countries where applicable.

**Structure.** The Internet community is already global and diverse and likely to become more so over time. The organization and its board should derive legitimacy from the participation of key stakeholders. Since the organization will be concerned mainly with numbers, names and protocols, its board should represent membership organizations in each of these areas, as well as the direct interests of Internet users.

The Board of Directors for the new corporation should be balanced to equitably represent the interests of IP number registries, domain name registries, domain name registrars, the technical community, Internet service providers (ISPs), and Internet users (commercial, not-for-profit, and individuals) from around the world. Since these constituencies are international, we would expect the board of directors to be broadly representative of the global Internet community.

As outlined in appropriate organizational documents, (Charter, Bylaws, etc.) the new corporation should:

(1) Appoint, on an interim basis, an initial Board of Directors (an Interim Board) consisting of individuals representing the functional and geographic diversity of the Internet community. The Interim Board would likely need access to legal counsel with expertise in corporate law, competition law, intellectual property law, and emerging Internet law. The Interim Board could serve for a fixed period, until the Board of Directors is elected and installed, and we anticipate that members of the Interim Board would not themselves serve on the Board of Directors of the new corporation for a fixed period thereafter.

(2) Direct the Interim Board to establish a system for electing a Board of Directors for the new corporation that insures that the new corporation's Board of Directors reflects the geographical and functional diversity of the Internet,

and is sufficiently flexible to permit evolution to reflect changes in the constituency of Internet stakeholders. Nominations to the Board of Directors should preserve, as much as possible, the tradition of bottom-up governance of the Internet, and Board Members should be elected from membership or other associations open to all or through other mechanisms that ensure broad representation and participation in the election process.

(3) Direct the Interim Board to develop policies for the addition of TLDs, and establish the qualifications for domain name registries and domain name registrars within the system.

(4) Restrict official government representation on the Board of Directors without precluding governments and intergovernmental organizations from participating as Internet users or in a non-voting advisory capacity.

**Governance.** The organizing documents (Charter, Bylaws, etc.) should provide that the new corporation is governed on the basis of a sound and transparent decision-making process, which protects against capture by a self-interested faction, and which provides for robust, professional management of the new corporation. The new corporation could rely on separate, diverse, and robust name and number councils responsible for developing, reviewing, and recommending for the board's approval policy related to matters within each council's competence. Such councils, if developed, should also abide by rules and decision-making processes that are sound, transparent, protect against capture by a self-interested party and provide an open process for the presentation of petitions for consideration. The elected Board of Directors, however, should have final authority to approve or reject policies recommended by the councils.

**Operations.** The new corporation's processes should be fair, open and pro-competitive, protecting against capture by a narrow group of stakeholders. Typically this means that decision-making processes should be sound and transparent; the basis for corporate decisions should be recorded and made publicly available. Super-majority or even consensus requirements may be useful to protect against capture by a self-interested faction. The new corporation does not need any special grant of immunity from the antitrust laws so long as its policies and practices are reasonably based on, and no broader than necessary to promote the legitimate coordinating objectives of the new corporation. Finally, the commercial importance of the Internet necessitates

that the operation of the DNS system, and the operation of the authoritative root server system should be secure, stable, and robust.

The new corporation's charter should provide a mechanism whereby its governing body will evolve to reflect changes in the constituency of Internet stakeholders. The new corporation could, for example, establish an open process for the presentation of petitions to expand board representation.

**Trademark Issues.** Trademark holders and domain name registrants and others should have access to searchable databases of registered domain names that provide information necessary to contact a domain name registrant when a conflict arises between a trademark holder and a domain name holder.<sup>21</sup> To this end, we anticipate that the policies established by the new corporation would provide that following information would be included in all registry databases and available to anyone with access to the Internet:

- Up-to-date registration and contact information;
- Up-to-date and historical chain of registration information for the domain name;
- A mail address for service of process;
- The date of domain name registration;
- The date that any objection to the registration of the domain name is filed; and
- Any other information determined by the new corporation to be reasonably necessary to resolve disputes between domain name registrants and trademark holders expeditiously.

Further, the U.S. Government recommends that the new corporation adopt policies whereby:

(1) Domain registrants pay registration fees at the time of registration or renewal and agree to submit infringing domain names to the authority of a court of law in the jurisdiction in which the registry, registry database, registrar, or the "A" root servers are located.

(2) Domain name registrants would agree, at the time of registration or renewal, that in cases involving cybersquatting or cybersquatting (as opposed to conflicts between legitimate competing rights holders), they would submit to and be bound by alternative dispute resolution systems identified by the new corporation for the purpose of resolving those conflicts. Registries and Registrars should be required to abide by decisions of the ADR system.

<sup>21</sup> These databases would also benefit domain name holders by making it less expensive for new registrants and registries to identify potential customers, enhancing competition and lowering prices.

(3) Domain name registrants would agree, at the time of registration or renewal, to abide by processes adopted by the new corporation that exclude, either pro-actively or retroactively, certain famous trademarks from being used as domain names (in one or more TLDs) except by the designated trademark holder.

(4) Nothing in the domain name registration agreement or in the operation of the new corporation should limit the rights that can be asserted by a domain name registrant or trademark owner under national laws.

### The Transition

Based on the processes described above, the U.S. Government believes that certain actions should be taken to accomplish the objectives set forth above. Some of these steps must be taken by the government itself, while others will need to be taken by the private sector. For example, a new not-for-profit organization must be established by the private sector and its Interim Board chosen. Agreement must be reached between the U.S. Government and the new corporation relating to transfer of the functions currently performed by IANA. NSI and the U.S. Government must reach agreement on the terms and conditions of NSI's evolution into one competitor among many in the registrar and registry marketplaces. A process must be laid out for making the management of the root server system more robust and secure. A relationship between the U.S. Government and the new corporation must be developed to transition DNS management to the private sector and to transfer management functions.

During the transition the U.S. Government expects to:

(1) Ramp down the cooperative agreement with NSI with the objective of introducing competition into the domain name space. Under the ramp down agreement NSI will agree to (a) take specific actions, including commitments as to pricing and equal access, designed to permit the development of competition in domain name registration and to approximate what would be expected in the presence of marketplace competition, (b) recognize the role of the new corporation to establish and implement DNS policy and to establish terms (including licensing terms) applicable to new and existing gTLDs and registries under which registries, registrars and gTLDs are permitted to operate, (c) make available on an ongoing basis appropriate databases, software, documentation thereof, technical expertise, and other intellectual

property for DNS management and shared registration of domain names;

(2) Enter into agreement with the new corporation under which it assumes responsibility for management of the domain name space;

(3) Ask WIPO to convene an international process including individuals from the private sector and government to develop a set of recommendations for trademark/domain name dispute resolutions and other issues to be presented to the Interim Board for its consideration as soon as possible;

(4) Consult with the international community, including other interested governments as it makes decisions on the transfer; and

(5) Undertake, in cooperation with IANA, NSI, the IAB, and other relevant organizations from the public and private sector, a review of the root server system to recommend means to increase the security and professional management of the system. The recommendations of the study should be implemented as part of the transition process; and the new corporation should develop a comprehensive security strategy for DNS management and operations.

Dated: June 4, 1998.

**William M. Daley,**

*Secretary of Commerce.*

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## COMMISSION OF FINE ARTS

### Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for June 18, 1998 at 10:00 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., June 2, 1998.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 98-15372 Filed 6-9-98; 8:45 am]

BILLING CODE 6330-01-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

June 5, 1998.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** June 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for special shift and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 64361, published on December 5, 1997.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

June 5, 1998.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-

**EXHIBIT JJN-17**

**JOINT PROJECT AGREEMENT BETWEEN  
THE U.S. DEPARTMENT OF COMMERCE AND  
THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

**PREAMBLE**

The U.S. Department of Commerce (Department) has an agreement (the Joint Project Agreement) with the Internet Corporation for Assigned Names and Numbers (ICANN) for the purpose of the joint development of the mechanisms, methods, and procedures necessary to effect the transition of Internet domain name and addressing system (DNS) to the private sector.

The Department continues to support private sector leadership in the innovation and investment that has characterized the development and expansion of the Internet around the globe. Furthermore, the Department continues to support the work of ICANN as the coordinator for the technical functions related to the management of the Internet DNS. Both Parties agree that preserving the security and stability of the Internet DNS is a priority, with ICANN's focus on DNS security matters being critical to this effort.

**AGREEMENT BETWEEN THE PARTIES**

In recognition of the Parties' desire to institutionalize the private sector technical coordination and management of the Internet DNS to the private sector, the Parties hereby agree as follows:

**I. To strike Section V.B. from the Joint Project Agreement in its entirety and to substitute the following:**

B. Department. The Department reaffirms its policy goal of transitioning the technical coordination of the DNS to the private sector in a manner that promotes stability and security, competition, bottom-up coordination, and representation. Consistent with this objective, the Department agrees to perform the following activities:

1. *Transparency and Accountability:* Continue to provide expertise and advice on methods and administrative procedures to encourage greater transparency, accountability, and openness in the consideration and adoption of policies related to the technical coordination of the Internet DNS;
2. *Root Server Security:* Continue to consult with the managers of root name servers operated by the U.S. Government and with other responsible U.S. Government agencies with respect to operational and security matters, both physical and network, of such root name servers and recommendations for improvements in those matters;
3. *Governmental Advisory Committee:* Participate in the Governmental Advisory Committee so as to facilitate effective consideration by ICANN of GAC advice on the public policy aspects of the technical coordination of the Internet DNS; and

4. *Monitoring:* Continue to monitor the performance of the activities conducted pursuant to this Agreement.

**II. To strike Section V.C. from the Joint Project Agreement in its entirety and to substitute the following:**

C. ICANN. ICANN reaffirms its commitment to maintaining security and stability in the coordination of the technical functions related to the management of the DNS and to perform as an organization founded on the principles of stability and security, competition, bottom-up coordination, and representation. In conformity with the ICANN Board-approved mission and core values, ICANN agrees to perform the following activities:

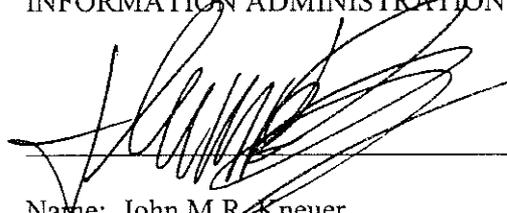
1. *Accountability:* To take action on the Responsibilities set out in the Affirmation of Responsibilities established by the ICANN Board in ICANN Board Resolution 06.71, dated September 25, 2006, (Responsibilities) and attached hereto as Annex A; and
2. *Reporting:* To publish, on or before December 31st of each year, an ICANN Annual Report that sets out ICANN's progress against the following:
  - a. ICANN Bylaws;
  - b. ICANN's Responsibilities; and
  - c. ICANN's Strategic and Operating Plans.

**III. Strike Section VII from the Joint Project Agreement in its entirety and to replace it with:**

- A. This Agreement will become effective upon signature of ICANN and the Department. This Agreement will terminate on September 30, 2009.
- B. In furtherance of the objective of this Agreement, and to support the completion of the transition of DNS management to the private sector, the Department will hold regular meetings with ICANN senior management and leadership to assess progress. In addition, the Department will conduct a midterm review of progress achieved on each activity and Responsibility that will include consultation with interested stakeholders.
- C. This Agreement may not be amended except upon the mutual written agreement of the Parties. Either Party may terminate this Agreement by providing one hundred twenty (120) days written notice to the other Party. If this Agreement is terminated, each Party shall be solely responsible for the payment of any expenses it has incurred. This Agreement is subject to the availability of funds.

**IV. Except as specifically modified by this document, the terms and conditions of the Joint Project Agreement remain unchanged.**

FOR THE NATIONAL  
TELECOMMUNICATIONS AND  
INFORMATION ADMINISTRATION:

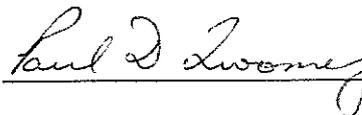


Name: John M.R. Kneuer

Title: Acting Assistant Secretary for  
Communications and Information

Date: September 29, 2006

FOR THE INTERNET CORPORATION  
FOR ASSIGNED NAMES AND  
NUMBERS:



Name: Dr. Paul Twomey

Title: President and CEO

Date: September 29, 2006

## ANNEX A

AFFIRMATION OF RESPONSIBILITIES  
for  
ICANN's Private Sector Management

Approved by the  
ICANN Board of Directors  
25 September 2006

ICANN shall continue in its commitment to the private sector management of the Internet DNS, by promoting the security and stability of the global Internet, while maintaining and promoting competition through its multi-stakeholder model.

ICANN hereby affirms and agrees to be guided by the following responsibilities:

- 1) **Security and Stability:** ICANN shall coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems.
- 2) **Transparency:** ICANN shall continue to develop, test and improve processes and procedures to encourage improved transparency, accessibility, efficiency, and timeliness in the consideration and adoption of policies related to technical coordination of the Internet DNS, and funding for ICANN operations. ICANN will innovate and aspire to be a leader in the area of transparency for organizations involved in private sector management.
- 3) **Accountability:** ICANN shall continue to develop, test, maintain, and improve on accountability mechanisms to be responsive to global Internet stakeholders in the consideration and adoption of policies related to the technical coordination of the Internet DNS, including continuing to improve openness and accessibility for enhanced participation in ICANN's bottom-up participatory policy development processes.
- 4) **Root Server Security and Relationships:** ICANN shall continue to coordinate with the operators of root name servers and other appropriate experts with respect to the operational and security matters, both physical and network, relating to the secure and stable coordination of the root zone; ensure appropriate contingency planning; maintain clear processes in root zone changes. ICANN will work to formalize relationships with root name server operators.
- 5) **TLD Management:** ICANN shall maintain and build on processes to ensure that competition, consumer interests, and Internet DNS stability and security issues

are identified and considered in TLD management decisions, including the consideration and implementation of new TLDs and the introduction of IDNs. ICANN will continue to develop its policy development processes, and will further develop processes for taking into account recommendations from ICANN's advisory committees and supporting organizations and other relevant expert advisory panels and organizations. ICANN shall continue to enforce existing policy relating to WHOIS, such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information, including registrant, technical, billing and administrative contact information. ICANN shall continue its efforts to achieve stable agreements with country-code top-level domain (ccTLD) operators.

- 6) Multi-stakeholder Model: ICANN shall maintain and improve multi-stakeholder model and the global participation of all stakeholders, including conducting reviews of its existing advisory committees and supporting organizations, and will continue to further the effectiveness of the bottom-up policy development processes. ICANN will strive to increase engagement with the Private Sector by developing additional mechanisms for involvement of those affected by the ICANN policies.
- 7) Role of Governments: ICANN shall work with the Government Advisory Committee Members to review the GAC's role within ICANN so as to facilitate effective consideration of GAC advice on the public policy aspects of the technical coordination of the Internet.
- 8) IP Addressing: ICANN shall continue to work collaboratively on a global and regional level so as to incorporate Regional Internet Registries' policy-making activities into the ICANN processes while allowing them to continue their technical work. ICANN shall continue to maintain legal agreements with the RIRs (and such other appropriate organizations) reflecting this work.
- 9) Corporate Responsibility: ICANN shall maintain excellence and efficiency in operations, including good governance, organizational measures to maintain stable, international private sector organization, and shall maintain relevant technical and business experience for members of the Board of Directors, executive management, and staff. ICANN will implement appropriate mechanisms that foster participation in ICANN by global Internet stakeholders, such as providing educational services and fostering information sharing for constituents and promoting best practices among industry segments.
- 10) Corporate Administrative Structure: ICANN shall conduct a review of, and shall make necessary changes in, corporate administrative structure to ensure stability, including devoting adequate resources to contract enforcement, taking into account organizational and corporate governance "best practices."

**EXHIBIT JJN-18**

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

1. This document constitutes an Affirmation of Commitments (Affirmation) by the United States Department of Commerce (“DOC”) and the Internet Corporation for Assigned Names and Numbers (“ICANN”), a not-for-profit corporation. In recognition of the conclusion of the Joint Project Agreement and to institutionalize and memorialize the technical coordination of the Internet’s domain name and addressing system (DNS)<sup>1</sup>, globally by a private sector led organization, the parties agree as follows:
  
2. The Internet is a transformative technology that will continue to empower people around the globe, spur innovation, facilitate trade and commerce, and enable the free and unfettered flow of information. One of the elements of the Internet’s success is a highly decentralized network that enables and encourages decision-making at a local level. Notwithstanding this decentralization, global technical coordination of the Internet’s underlying infrastructure - the DNS - is required to ensure interoperability.
  
3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.
  
4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN’s processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.
  
5. DOC recognizes the importance of global Internet users being able to use the Internet in their local languages and character sets, and endorses the rapid introduction of internationalized country code top level domain names (ccTLDs), provided related security, stability and resiliency issues are first addressed. Nothing in this document is an expression of support by DOC of any specific plan or proposal for the implementation of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR THE NATIONAL  
TELECOMMUNICATIONS AND  
INFORMATION ADMINISTRATION:



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

Date: September 30, 2009

FOR THE INTERNET CORPORATION  
FOR ASSIGNED NAMES AND  
NUMBERS:



Name: Rod Beckstrom  
Title: President and CEO

Date: September 30, 2009

**EXHIBIT JJN-19**

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## National Telecommunications and Information Administration

United States Department of Commerce

MENU

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# IANA Functions Contract

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Critical to the DNS is the continued performance of the Internet Assigned Numbers Authority (IANA) functions. The IANA functions have historically included: (1) the coordination of the assignment of technical Internet protocol parameters; (2) the administration of certain responsibilities associated with Internet DNS root zone management; (3) the allocation of Internet numbering resources; and (4) other services related to the management of the .ARPA and .INT top-level domains. The Internet Corporation for Assigned Names and Numbers (ICANN) performed the

IANA functions, on behalf of the United States Government, through a contract with NTIA.

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## 2012 Contract

- [Contract Close-out](#) (October 21, 2016)
- [Amendment Modification No. 0005](#) (February 2, 2016)
- [Amendment Modification No. 0004](#) (September 17, 2015)
- [Amendment Modification No. 0003](#) (August 4, 2015)
- [Amendment Modification No. 0002](#) (April 30, 2013)
- [Amendment Modification No. 0001](#) (October 1, 2012)
- [Commerce Department Awards Contract for Management of Key Internet Functions to ICANN](#) (July 2, 2012)
- [Award IANA Functions Contract](#) (July 2, 2012) (858 KB pdf); [ICANN proposal](#) (incorporated by reference)  
RFP SA1301-12-RP-0043 was awarded on July 2, 2012 to Internet Corporation for Assigned Numbers (ICANN).
- [Amendment 001](#) Internet Assigned Numbers Authority (IANA)  
Solicitation Number: SA1301-12-RP-0043 (May 17, 2012)  
The purpose of this amendment is to post all [questions and answers](#) submitted in response to this RFP and amend sections E, F, H, I, L, M and the [SF33 to the original RFP](#) (05/17/2012).
- [Request for Proposal](#) – Internet Assigned Numbers Authority (IANA)  
Solicitation Number: SA1301-12-RP-0043(April 16, 2012)  
On April 16, 2012, the Department of Commerce [re-issued](#) the Request for Proposal (RFP) SA1301-12-RP-0043 for a new Internet

Assigned Numbers Authority (IANA) functions contract. The continued performance of these functions is critical to preserving the stability and security of the Internet's Domain Name System.

- **Notice** – Cancelled [Internet Assigned Numbers Authority \(IANA\) Functions - Request for Proposal \(RFP\) SA1301-12-RP-IANA](#) (March 10, 2012)
- **Notice** – [Extension of the Internet Assigned Numbers Authority \(IANA\) Functions Contract](#) (March 10, 2012)
- [Amendment 003](#) Internet Assigned Numbers Authority (IANA) Solicitation Number: SA1301-12-RP-IANA (March 9, 2012)  
Request for Proposal (RFP) SA1301-12-RP-IANA is hereby cancelled. The Department of Commerce intends to reissue the RFP at a future date, date to be determined (TBD).
- [Amendment 002](#) Internet Assigned Numbers Authority (IANA) Solicitation Number: SA1301-12-RP-IANA (December 2, 2011)  
The purpose of this amendment is to post all questions and answers submitted in response to this RFP and change the "Note" found on page 82.
- [Amendment 001](#) Internet Assigned Numbers Authority (IANA) Solicitation Number: SA1301-12-RP-IANA (November 17, 2011)  
This amendment revises Section I.
- [Internet Assigned Numbers Authority \(IANA\) Solicitation](#) Number: SA1301-12-RP-IANA (November 10, 2011)
- [Pre-solicitation Notice](#) Operation of the Internet Assigned Numbers Authority (IANA) Functions (October 21, 2011)  
The U.S. Department of Commerce (DOC), Office of the Secretary (OS) intends to issue a solicitation (Request for Proposal) on behalf of

DOC, National Telecommunications and Information Administration (NTIA) for services to maintain the continuity and stability of services related to certain interdependent Internet technical management functions, known collectively as the Internet Assigned Numbers Authority (IANA).

- [Internet Assigned Numbers Authority \(IANA\) Functions Further Notice of Inquiry](#) with Public Comments (June 14, 2011)
  - [Request for Comments on the Internet Assigned Numbers Authority \(IANA\) Functions](#) (February 25, 2011)
- 

## 2006 Contract

[IANA Functions Contract](#) (August 11, 2006)

**ICANN proposal** (incorporated into contract)

Modifications to the contract with ICANN:

[Modification 1](#) (September 24, 2007)

[Modification 2](#) (May 30, 2008)

[Modification 3](#) (September 4, 2008)

[Modification 4](#) (September 1, 2009)

[Modification 5](#) (July 13, 2010)

• [DoC Testing and Implementation Requirements](#)

• [DNSSEC Policy & Practice Statement for the Root Zone ZSK Operator](#)

[Modification 6](#) (October 1, 2010)

[Modification 7](#) (November 30, 2010)

[Modification 8](#) (June 14, 2011)

[Modification 9](#) (December 7, 2011)

[Modification 10](#) (March 8, 2012)

## IANA Functions Contract Solicitation

- [Presolicitation notice to award purchase order to ICANN](#)
- [Modification of Presolicitation notice](#)
- [IANA Functions Statement of Work](#)

### 2003 Contract

#### [IANA Functions Contract](#) (March 13, 2003)

Modifications to contract with ICANN:

[Modification 1](#) (August 28, 2003)

[Modification 2](#) (September 16, 2003)

[Modification 3](#) (August 30, 2004)

[Modification 4](#) (September 29, 2005)

[Modification 5](#) (April 1, 2006)

### 2001 Contract

#### [IANA Functions Contract](#) (March 21, 2001)

Modifications to contract with ICANN:

[Modification 1](#) (April, 2002)

[Modification 2](#) (August 17, 2002).

[Modification 3](#) (October 1, 2002)

### 2000 Contract

#### [IANA Functions Contract](#) (February 9, 2000)

Modifications to contract with ICANN:

[Modification 1](#) (September 8, 2000)

[Modification 2](#) (October 1, 2000).

[Return to top](#)





## National Telecommunications and Information Administration

### Contact Us

Website owner: Office of Public Affairs, please contact [press@ntia.gov](mailto:press@ntia.gov).

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National Telecommunications and Information Administration 1401  
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**EXHIBIT JJN-20**

SUPPLY, EQUIPMENT, OR SERVICE ORDER

This Order Number must appear on all invoices and packages. Freight charge over \$100 requires Bill of Lading

JUN-20

6. ORDER NUMBER  
40SBNT067020  
7. SUB

1. PAGE 1 OF 10	2. RECEIVING OFFICE NO.	3. CONTRACT ORDER AGAINST	A. PURCHASE ORDER (See Reverse) X	DELIVERY ORDER (See Block 3)
-----------------	-------------------------	---------------------------	--------------------------------------	------------------------------

8. SUPPLIER Internet Corporation for Assigned Names and Numbers 4676 Admiralty Way, Suite 330 Marina del Rey, CA 90292-6601  TELEPHONE/CONTACT: (310) 823-9358	4. ORDER DATE February 5, 2000	5. SOURCE
	9. SHIP TO: REFERENCE ORDER NO. 40SBNT067020 (INCLUDE ON SHIPPING LABEL)  National Telecommunications and Information Agency 1401 Constitution Avenue, NW Room 4701 Washington, DC 20230	

10. 1099 TAX	11. EMPLOYER I.D. #	B. REQUISITION NUMBER 909-9-0043	C. REQUISITIONER INFO: (Last Name, Initial, Phone, Bldg, Room) Karen Rose/Becky Burr, Room 4701, (202) 482-1866
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12. LINE ITEM	13. AC CD	13a. QTY REC.	14. DESCRIPTION	15. BUDGET OBJECT	16. ACC LINE	17. QUANTITY	18. UNIT ISSUE	19. UNIT PRICE	20. AMOUNT
0001			The Contractor shall provide services to perform the operation of the Internet Assigned Numbers Authority (IANA) in accordance with the Statement of Work, Section 12 of this purchase order.						

*Teresa A. Reefer*  
Vice President, ICANN

21. FOB POINT	22. DISCOUNT TERMS	23. PROMPT PAYMENT	24. SUB-TOTAL	0.00
25. DELIVERY DATE	26. SHIP VIA	27. ESTIMATED FREIGHT	28. TOTAL	0.00

D. Reference Order No. 40SBNT067020 (Include on Invoice)	29. ACC LINE	30. BUREAU CODE	31. ACCOUNTING CLASSIFICATION N/A	32. DIST.	33. AMOUNT 0.00
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E. (DO NOT SHIP OR BILL TO THIS ADDRESS) National Institute of Standards and Technology Acquisition and Assistance Division Building 301, Room B117 100 Bureau Drive, Stop 3572 Gaithersburg, MD 20899-3572	F. ORDERED BY (Name and Title) Teresa A. Reefer, Contracting Officer
--	---

ACCEPTANCE: I certify that articles and/or services annotated above have been received, inspected, and accepted as complying with this order as of the date shown.	34. RECEIPT DATE	35. ACCEPTANCE DATE	G. FOR INQUIRIES CALL: Teresa A. Reefer (301) 975-6364, teresa.reefer@nist.gov
36. ACCEPTANCE SIGNATURE, TITLE, & PHONE NO.	37. TYPE SHIPMENT	H. CONTRACTING/ORDERING OFFICER SIGNATURE <i>Teresa A. Reefer</i>	I. DATE SIGNED 2-9-00

1. **ATTACHMENTS**

The following documentation submitted by the Internet Corporation for Assigned Names and Numbers (ICANN) is hereby incorporated by reference:

- a. ICANN quotation dated February 2, 2000 signed by Michael M. Roberts.
- b. USC/ICANN Transition Agreement by and between the University of Southern California and the Internet Corporation for Assigned Names and Numbers (Transition Agreement).

2. **SCHEDULE OF SERVICES**

The Contractor shall provide services to perform the operation of the Internet Assigned Numbers Authority (IANA) in accordance with the Statement of Work, Section 12 of this purchase order.

3. **COMPENSATION**

Contractor shall perform under this purchase order without any cost to the United States Government.

At the effective date of this purchase order, the Contractor shall not impose or collect any fees for performing the IANA functions under this purchase order. After the effective date of this purchase order, ICANN may establish and collect fees from third parties (i.e. other than the United States Government) for the functions performed under this purchase order, provided the fee levels are approved by the Contracting Officer before going into effect, which approval shall not be withheld unreasonably provided the fee levels are fair and equitable and provided the aggregate fees charged during the term of this purchase order do not exceed the cost of providing the functions.

4. **APPROVALS AND ADHERANCE TO CONFIDENTIALITY OBLIGATIONS**

- (a) As contemplated by Section 5.4 of the Transition Agreement, the United States Government hereby gives approval of the transfer of functions and responsibilities contemplated in Section 1 of the Transition Agreement.
- (b) As contemplated by Section 2.6 of the Transition Agreement, the United States Government hereby approves the acquisition by ICANN of USC's entire right, title and interest in and to the Licensed IP Rights as defined in the Transition Agreement.

- (c) The Government acknowledges that data submitted by applicants in connection with the IANA function is Confidential Information. To the extent permitted by law, the Government shall accord any data submitted by applicants in connection with the IANA function with the same degree of care as it uses to protect its own confidential information, but not less than reasonable care, to prevent the unauthorized use, disclosure or publication of confidential information. In providing data to the United States Government that is subject to such a confidentiality obligation, the Contractor shall advise the United States Government of that obligation.

5. ESTIMATED PURCHASE ORDER VALUE

At the time of purchase order award, the estimated value of this purchase order is under \$10,000.

6. PERIOD OF PERFORMANCE

The period of performance of this purchase order is from the date of award through September 30, 2000.

7. KEY PERSONNEL

- (a) The Contractor shall assign to this purchase order, the following key personnel:

1. Michael M. Roberts
2. Louis Touton
3. Joyce K. Reynolds
4. Suzanne Woolf

- (b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90-day period, the Contracting Officer shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.
- (c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of

the decision on substitutions. The purchase order will be modified to reflect any approved changes of personnel.

8. **Organizational Conflict Of Interest**

- (a) The Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in FAR Subpart 9.5, or that the Contractor has disclosed all such relevant information.
- (b) The Contractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Contractor will make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual or potential conflict.
- (c) Remedies – The Contracting Officer may terminate this purchase order for convenience, in whole or in part, if it deems such termination necessary to avoid an organizational conflict of interest. If the Contractor was aware of a potential organizational conflict of interest prior to award or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the Contracting Officer, the Government may terminate the purchase order for default, debar the Contractor from Government contracting, or pursue such other remedies as may be permitted by law or this purchase order.
- (d) The Contractor further agrees to insert provisions which shall conform substantially to the language of this clause, including paragraph (d), in any subcontract or consultant agreement hereunder.

9. **For administrative information pertaining to this purchase order contact:**

Teresa A. Reeve  
Contracting Officer  
National Institute of Standards and Technology  
Building 301, Room B117  
100 Bureau Drive, Stop 3572  
Gaithersburg, Maryland 20899-3572  
Phone No. (301) 975-6364  
Teresa.reefe@nist.gov

10. **Contracting Officer's Authority**

The Contracting Officer (CO) is the only person authorized to make or approve any changes in any of the requirements of this purchase order and notwithstanding any provisions contained elsewhere in this purchase order, the said authority remains solely in the CO. In the event that the Contractor makes any changes at the direction of any person other than the CO, the change will be considered to have been without authority and no adjustment will be made in the purchase order prices to cover any increase in costs incurred as a result thereof.

11. **The Contracting Officer's Technical Representative** pertaining to this purchase order is:

Karen Rose  
U.S. Department of Commerce  
1401 Constitution Avenue, NW  
Room 4701  
Washington, DC 20230  
(202) 482-1866

12. **DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

**12.1 STATEMENT OF WORK/SPECIFICATIONS**

The contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the following Statement of Work/Specifications.

**12.2 BACKGROUND**

The Department of Commerce (DOC) has initiated an effort to transition the technical management of Internet Names and Addresses from the United States Government to the private sector. In June, 1998, DOC issued its Statement of Policy "Management of Internet Names and Addresses," 63 Fed. Reg. 31741 (1998) (Statement of Policy) that sets forth the transition process. The Statement of Policy indicates that in order to maintain the stability and continuity of services, the United States Government will continue to participate in oversight Internet technical management functions during the transition.

Part of the transition process relates to the performance of certain Internet technical management functions collectively known as the Internet Assigned Numbers Authority (IANA). The IANA functions are currently performed by the Information Sciences Institute at the University of Southern California (USC) pursuant to a contract with the Department of Defense's Advanced Research Project Agency (DARPA).

The portion of the IANA functions related to the DARPA/USC contract is nearing completion. However, the continued performance of these technical functions is vital to the stability and smooth functioning of the Internet. The National Telecommunications and Information Administration (NTIA), an agency of DOC, has initiated this purchase order action to fulfill its need for stability and continuity of services in the performance of the IANA technical functions during the transition period described in the Statement of Policy, and other related activities.

### 12.3 CONTRACTOR REQUIREMENTS

NTIA has a requirement for a contractor to maintain the smooth operation of the Internet by performing the technical functions collectively known as the Internet Assigned Numbers Authority (IANA). The IANA technical functions are currently operated by the Information Sciences Institute at the University of Southern California pursuant to a contract with the Department of Defense's Advanced Research Projects Agency. In performance of this purchase order, the contractor shall perform the following IANA functions:

- Coordination of the assignment of technical protocol parameters. This involves the review and assignment of unique values to various parameters (e.g., operation codes, port numbers, object identifiers, protocol numbers) used in various Internet protocols. This function also includes the dissemination of the listings of assigned parameters through various means (including on-line publication) and the review of technical documents for consistency with assigned values.
- Administrative functions associated with root management. This function involves facilitation and coordination of the root zone of the domain name system. It includes receiving requests for and making routine updates of ccTLD contact and nameserver information. It also includes receiving delegation and redelegation requests, investigating the circumstances pertinent to those requests, and reporting on the requests. This function, however, does not include authorizing modifications, additions, or deletions to the root zone file or associated information that constitute delegation or redelegation of top-level domains. The purchase order award will not alter root system responsibilities defined in Amendment 11 of the Cooperative Agreement.
- Allocation of IP address blocks. This involves overall responsibility for the allocation of IPv4 and IPv6 address space. It includes delegations of IP address blocks to regional registries for routine allocation, typically through downstream providers, to Internet end-users within the regions served by those registries. It also includes reservation and direct allocation of space for special purposes, such as multicast addressing, cable blocks, addresses for private networks as described in RFC 1918, and globally specified applications.
- Other services. The contractor will perform other IANA functions as needed upon request of DOC. These functions may include the performance of periodic functions or supplemental

functions identified by the contractor as part of the three (3) month performance progress report.

#### 12.4 REPORTING REQUIREMENTS

Performance Reporting. The contractor shall prepare a final report regarding the performance of the IANA technical functions that shall include a description of the techniques, methods, software, and tools employed in the performance of the functions. The purpose of the report is to document standard operating procedures that may be readily adopted by other organizations. Further, the contractor shall submit a performance progress report every three (3) months that documents the performance of the functions. The contractor, therefore, shall:

- Prepare and submit a final report on the performance of the IANA functions that documents standard operating procedures (including a description of all techniques, methods, software, and tools.)
- Prepare and submit a performance progress report every three (3) months that contains statistical and narrative information on the performance of the functions during the previous three (3) months. The report shall include a summary of the major work performed for each of the functions during the previous three (3) months, including technical status, major events, problems encountered, and any projected significant changes related to performance of the functions.

#### 12.5 PERFORMANCE EXCLUSIONS

- The performance of administrative functions associated with root management does not include authorizing modifications, additions, or deletions to the root zone file or associated information that constitute delegation or redelegation of top-level domains. The **purchase order** award will not alter root system responsibilities defined in Amendment 11 of the Cooperative Agreement.
- This purchase order, in itself, does not authorize the contractor to make substantive changes in established policy associated with the performance of the IANA functions. Procedures for policy development will remain the subject of a Joint Project Agreement (JPA) between DOC and ICANN. The JPA contemplates that the policy-development procedures developed under the JPA may result in adoption of new or changed policies concerning Internet technical management functions. To the extent those policies require alterations in the manner in which the IANA functions are performed, those alterations may be implemented upon mutual agreement of the parties.

#### 13. CONTRACT CLAUSES

**52.213-4 Terms and Conditions--Simplified Acquisitions (Other Than Commercial Items) (June 1999)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

- (1) The clauses listed below implement provisions of law or Executive order:
  - (i) 52.222-3, Convict Labor (Aug 1996) (E.O. 11755).
  - (ii) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).
- (2) Listed below are additional clauses that apply:
  - (i) 52.225-11, Restrictions on Certain Foreign Purchases (Aug 1998).
  - (ii) 52.232-1, Payments (Apr 1984).
  - (iii) 52.232-8, Discounts for Prompt Payment (May 1997).
  - (iv) 52.232-11, Extras (Apr 1984).
  - (v) 52.232-25, Prompt Payment (Jun 1997).
  - (vi) 52.233-1, Disputes (Dec 1998).
  - (vii) 52.244-6, Subcontracts for Commercial Items and Commercial Components (Oct 1998).
  - (viii) 52.253-1, Computer Generated Forms (Jan 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

- (1) The clauses listed below implement provisions of law or Executive order:
  - (i) 52.222-20, Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States).
  - (ii) 52.222-26, Equal Opportunity (Feb 1999) (E.O. 11246) (Applies to contracts over \$10,000).
  - (iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (Apr 1998) (38 U.S.C. 4212) (Applies to contracts over \$10,000).
  - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793) (Applies to contracts over \$10,000).
  - (v) 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (Jan 1999) (38 U.S.C. 4212) (Applies to contracts over \$10,000).
  - (vi) 52.222-41, Service Contract Act of 1965, As Amended (May 1989) (41 U.S.C. 351, et seq.) (Applies to service contracts over \$2,500).
  - (vii) 52.223-5, Pollution Prevention and Right-to-Know Information (Apr 1998) (E.O. 12856) (Applies to services performed on Federal facilities).
  - (viii) 52.225-3, Buy American Act--Supplies (Jan 1994) (41 U.S.C. 10) (Applies to supplies, and to services involving the furnishing of supplies, if the contract was--
    - (A) Under \$25,000; or
    - (B) Set aside for small business concerns, regardless of dollar value).

- (1) Within a reasonable period of time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(ix) 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration (May 1999). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(x) 52.232-34, Payment by Electronic Funds Transfer--Other than Central Contractor Registration (May 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(2) Listed below are additional clauses that may apply:

(i) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (July 1995)

(Applies to contracts over \$25,000).

(ii) 52.211-17, Delivery of Excess Quantities (Sept 1989) (Applies to fixed-price supplies).

(iii) 52.247-29, F.o.b. Origin (Jun 1988) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247-34, F.o.b. Destination (Nov 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) FAR 52.252-2, Clauses Incorporated by Reference (Feb 1998). This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): **WWW.ARNET.GOV/FAR**

52.227-1 AUTHORIZATION AND CONSENT (JUL 1995)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 1998)

52.227-11 PATENT RIGHTS -- RETENTION BY THE CONTRACTOR (SHORT FORM) (JUN 1997)

52.227-14 RIGHTS IN DATA -- GENERAL Alternate I (JUN 1987)

52.227-14 RIGHTS IN DATA -- GENERAL Alternate II (JUN 1987)

52.227-14 RIGHTS IN DATA -- GENERAL Alternate III (JUN 1987)

52.227-14 RIGHTS IN DATA -- GENERAL Alternate V (JUN 1987)

52.227-16 ADDITIONAL DATA REQUIREMENTS (JUN 1987)

(d) Inspection/Acceptance. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights--

- (1) Within a reasonable period of time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

**EXHIBIT JJN-21**

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## National Telecommunications and Information Administration

United States Department of Commerce

MENU

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# NTIA Announces Intent to Transition Key Internet Domain Name Functions

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**FOR IMMEDIATE RELEASE**

March 14, 2014

**News Media Contact**

## NTIA, Office of Public Affairs

WASHINGTON – To support and enhance the multistakeholder model of Internet policymaking and governance, the U.S. Commerce Department’s National Telecommunications and Information Administration (NTIA) today announces its intent to transition key Internet domain name functions to the global multistakeholder community. As the first step, NTIA is asking the Internet Corporation for Assigned Names and Numbers (ICANN) to convene global stakeholders to develop a proposal to transition the current role played by NTIA in the coordination of the Internet’s domain name system (DNS).

NTIA’s responsibility includes the procedural role of administering changes to the authoritative root zone file – the database containing the lists of names and addresses of all top-level domains – as well as serving as the historic steward of the DNS. NTIA currently contracts with ICANN to carry out the Internet Assigned Numbers Authority (IANA) functions and has a Cooperative Agreement with Verisign under which it performs related root zone management functions. Transitioning NTIA out of its role marks the final phase of the privatization of the DNS as outlined by the U.S. Government in 1997.

“The timing is right to start the transition process,” said Assistant Secretary of Commerce for Communications and Information Lawrence E. Strickling. “We look forward to ICANN convening stakeholders across the global Internet community to craft an appropriate transition plan.”

ICANN is uniquely positioned, as both the current IANA functions contractor and the global coordinator for the DNS, as the appropriate party to convene the multistakeholder process to develop the transition

plan. NTIA has informed ICANN that it expects that in the development of the proposal, ICANN will work collaboratively with the directly affected parties, including the Internet Engineering Task Force (IETF), the Internet Architecture Board (IAB), the Internet Society (ISOC), the Regional Internet Registries (RIRs), top level domain name operators, VeriSign, and other interested global stakeholders.

NTIA has communicated to ICANN that the transition proposal must have broad community support and address the following four principles:

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services; and,
- Maintain the openness of the Internet.

Consistent with the clear policy expressed in bipartisan resolutions of the U.S. Senate and House of Representatives (S.Con.Res.50 and H.Con.Res.127), which affirmed the United States support for the multistakeholder model of Internet governance, NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.

From the inception of ICANN, the U.S. Government and Internet stakeholders envisioned that the U.S. role in the IANA functions would be temporary. The Commerce Department's June 10, 1998 [Statement of Policy](#) stated that the U.S. Government "is committed to a transition that will allow the private sector to take leadership for DNS management." ICANN as an organization has matured and taken steps in recent years to improve its accountability and transparency and its technical

competence. At the same time, international support continues to grow for the multistakeholder model of Internet governance as evidenced by the continued success of the Internet Governance Forum and the resilient stewardship of the various Internet institutions.

While stakeholders work through the ICANN-convened process to develop a transition proposal, NTIA's current role will remain unchanged. The current IANA functions contract expires September 30, 2015.

For further information see: [IANA Functions and Related Root Zone Management Transition Questions and Answers](#)

## About NTIA

NTIA is the Executive Branch agency that advises the President on telecommunications and information policy issues. NTIA's programs and policymaking focus largely on expanding broadband Internet access and adoption in America, expanding the use of spectrum by all users, and ensuring that the Internet remains an engine for continued innovation and economic growth. To find out more about NTIA, visit [www.ntia.doc.gov](http://www.ntia.doc.gov).

## Topics

-  [ICANN](#)
-  [IANA functions](#)
-  [Internet Policy](#)
-  [Domain Name System](#)

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## National Telecommunications and Information Administration

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**EXHIBIT JJN-22**

# **CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations**

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23 February 2016



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# Summary

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- 01 Since December 2014, a working group of ICANN community members has developed a set of proposed enhancements to ICANN's accountability to the global Internet community. This document is being distributed for the consideration and approval of the working group's 6 Chartering Organizations.
- 02 This effort is integral to the transition of the United States' stewardship of the IANA functions to the global Internet community, reflecting the ICANN community's conclusion that improvements to ICANN's accountability were necessary in the absence of the accountability backstop that the historical contractual relationship with the United States government provided. The accountability improvements set out in this document are not designed to change ICANN's multistakeholder model, the bottom-up nature of policy development, or significantly alter ICANN's day-to-day operations.
- 03 The main elements of the proposal are outlined below, supported by additional annexes and appendices. Together with ICANN's existing structures and groups, these accountability enhancements will ensure ICANN remains accountable to the global Internet community.
- **A revised Mission Statement** for the ICANN Bylaws that sets out what ICANN does. This Mission Statement clarifies but does not change ICANN's historic mission.
  - An enhanced **Independent Review Process** and redress process with a broader scope and the power to ensure ICANN stays within its Mission.
  - New specific **powers** for the ICANN community that can be enforced when the usual methods of discussion and dialogue have not effectively built consensus, including the powers to:
    - Reject ICANN Budgets, IANA Budgets or Strategic/Operating Plans.
    - Reject changes to ICANN's Standard Bylaws.
    - Approve changes to new Fundamental Bylaws, Articles of Incorporation and ICANN's sale or other disposition of all or substantially all of ICANN's assets.
    - Remove an individual ICANN Board Director.
    - Recall the entire ICANN Board.
    - Initiate a binding Independent Review Process (where a panel decision is enforceable in any court recognizing international arbitration results).
    - Reject ICANN Board decisions relating to reviews of the IANA functions, including the triggering of Post-Transition IANA separation.
    - The rights of inspection and investigation
  - A community Independent Review Process as an enforcement mechanism further to a Board action or inaction.
- 04 All of these community powers can only be exercised after extensive community discussions and debates through processes of **engagement and escalation**. The process of escalation provides many opportunities for the resolution of disagreements between parties before formal action is required.
- 05 The accountability elements outlined above will be supported through:
- Additions to the ICANN Bylaws to create an **Empowered Community** that is based on a simple legal vehicle designed to act on the instructions of ICANN stakeholder groups when

needed to exercise the Community Powers. The Empowered Community is granted the status of a Designator (a recognized role in law) and has the standing to enforce the Community Powers if needed.

- Core elements of ICANN's governing documents, including the Articles of Incorporation and **Fundamental Bylaws** that can only be changed with agreement between the ICANN community and the ICANN Board.

06 In addition, further proposed changes include:

- Recognition of **ICANN's respect for Human Rights** into the Bylaws.
- Incorporation of ICANN's commitments under the 2009 **Affirmation of Commitments** with the United States Department of Commerce into the Bylaws, where appropriate.
- Improved accountability and diversity standards for ICANN's **Supporting Organizations and Advisory Committees**.
- A commitment to discuss additional accountability improvements and broader accountability enhancements in 2016 that do not need to be in place or committed to prior to the IANA Stewardship Transition. These include:
  - Considering improvements to ICANN's standards for diversity at all levels.
  - Further enhancements to the accountability of ICANN's Supporting Organizations and Advisory Committees, as well as ICANN staff.
  - Improving ICANN's transparency relating to ICANN's Documentary Information Disclosure Policy (DIDP), interactions with governments, whistleblower policy and Board deliberations.
  - Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment in the Bylaws.
  - Addressing questions focused on jurisdiction of contracts and dispute settlements.
  - Considering enhancements to the role and function of the ICANN Ombudsman.

07 To develop these recommendations to improve ICANN's accountability, the working group:

- Relied on suggestions and proposals generated inside the working group and by the broader Internet multistakeholder community.
- Conducted three public comment periods to gather feedback on earlier drafts and discussed iterations of its recommendations across the world at ICANN meetings and through online webinars.
- Rigorously "stress tested" ICANN's current and proposed accountability mechanisms to assess their strength against problematic scenarios the organization could potentially face.
- Engaged two external law firms to ensure the legal reliability of the proposed accountability enhancements.
- Made the minimum enhancements to ICANN's accountability necessary to meet the baseline requirements of the community, as required for the IANA Stewardship Transition.
- Met the requirements of the group that developed the IANA Stewardship Transition proposal for the Domain Names community.
- Met the requirements of the U.S. National Telecommunications and Information Agency for the IANA Stewardship Transition.

- 08 Each of the twelve recommendations has a corresponding annex with additional details including a summary, CCWG-Accountability<sup>1</sup> Recommendations, Detailed Explanation of Recommendations, Changes from the 'Third Draft Proposal on Work Stream 1 Recommendations,' Stress Tests Related to this Recommendation, how the recommendation meets the CWG-Stewardship<sup>2</sup> Requirements, and how the recommendation addresses NTIA Criteria.
- 09 **Note:** Minority statements can be found in Appendix A: Documenting Consensus (Including Minority Views)

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<sup>1</sup> Cross Community Working Group on Enhancing ICANN Accountability

<sup>2</sup> Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions

# Background

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- 10 On 14 March 2014, the U.S. National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the [Internet Assigned Numbers Authority \(IANA\) Functions](#) to the global multistakeholder community. NTIA asked ICANN to convene an inclusive, global discussion to determine a process for transitioning the stewardship of these functions to the Internet community.
- 11 During initial discussions on how to proceed with the transition process, the ICANN multistakeholder community, recognizing the safety net that the NTIA provides as part of its stewardship role of the IANA Functions, raised concerns about the impact of the transition on ICANN's accountability.
- 12 To address these concerns, the ICANN community requested that ICANN's existing accountability mechanisms be reviewed and enhanced as a key part of the transition process. As a result, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) was convened. The CCWG-Accountability's work consists of two tracks:

13 **Work Stream 1:** Focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.

14 **Work Stream 2:** Focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

- 15 Any other consensus items that are not required to be in place within the IANA Stewardship Transition timeframe can be addressed in Work Stream 2. There are mechanisms in Work Stream 1 to adequately enforce implementation of Work Stream 2 items, even if they were to encounter resistance from ICANN Management or others.
- 16 The work documented in this Draft Proposal focuses on Work Stream 1, with some references to related activities that are part of Work Stream 2's remit.

# Requirements

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17 This section provides an overview of the requirements the CCWG-Accountability has to fulfill in developing its recommendations

## 18 **NTIA Requirements**

19 NTIA [has requested](#) that ICANN “convene a multistakeholder process to develop a plan to transition the U.S. Government stewardship role” with regard to the IANA Functions and related Root Zone management. In making its announcement, the NTIA specified that the transition Proposal must have broad community support and meet the following principles:

- Support and enhance the multistakeholder model.
- Maintain the security, stability, and resiliency of the Internet DNS.
- Meet the needs and expectations of the global customers and partners of the IANA services.
- Maintain the openness of the Internet.

20 NTIA also specified that it would not accept a Proposal that replaces its role with a government-led or an intergovernmental organization solution.

21 Additionally, NTIA also requires that the CCWG-Accountability Proposal clearly document how it worked with the multistakeholder community, which options it considered in developing its Proposal, and how it tested these.

22 Please Refer to Annex 14: NTIA Requirements for the details of how the CCWG-Accountability meets these requirements.

## 23 **CWG-Stewardship Requirements**

24 In the transmittal letter for the CWG-Stewardship transition plan to the IANA Stewardship Transition Coordination Group (ICG), the CWG-Stewardship noted the following regarding its dependencies on the CCWG-Accountability work in response to an earlier version of this document:

25 “The CWG-Stewardship is significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms proposed by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability). The co-Chairs of the CWG-Stewardship and the CCWG-Accountability have coordinated their efforts and the CWG-Stewardship is confident that the CCWG-Accountability Work Stream 1 recommendations, if implemented as expected, will meet the requirements that the CWG-Stewardship has previously communicated to the CCWG-Accountability. If any element of these level accountability mechanisms is not implemented as contemplated by the CWG-Stewardship, this will require revision.”

26 The CWG-Stewardship requirements of the CCWG-Accountability are detailed on pages 20 – 21 of the CWG-Stewardship Proposal transmitted on 25 June 2015. The Work Stream 1 Proposals from the CCWG-Accountability address all of these conditions.

27 These requirements are:

1. ICANN Budget
  2. ICANN Board and Community Empowerment Mechanisms
  3. IANA Function Review and Separation Process
  4. Customer Standing Committee
  5. Appeals Mechanism
  6. Post-Transition IANA (PTI) Governance
  7. Fundamental Bylaws
- 28 Please refer to Annex 13: CWG-Stewardship Requirements for details on how the CCWG-Accountability meets these requirements.

# The CCWG-Accountability's Findings and Recommendations

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29 This section provides an overview of the CCWG-Accountability's findings and recommendations regarding Work Stream 1:

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30 **Recommendation #1:** Establishing an Empowered Community for Enforcing Community Powers

31 **Recommendation #2:** Empowering the Community through Consensus: Engagement, Escalation, and Enforcement

32 **Recommendation #3:** Standard Bylaws, Fundamental Bylaws and Articles of Incorporation

33 **Recommendation #4:** Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers

34 **Recommendation #5:** Changing Aspects of ICANN's Mission, Commitments, and Core Values

35 **Recommendation #6:** Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries out its Mission

36 **Recommendation #7:** Strengthening ICANN's Independent Review Process

37 **Recommendation #8:** Improving ICANN's Request for Reconsideration Process

38 **Recommendation #9:** Incorporating the Affirmation of Commitments in ICANN's Bylaws

39 **Recommendation #10:** Enhancing the Accountability of Supporting Organizations and Advisory Committees

40 **Recommendation #11:** Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)

41 **Recommendation #12:** Committing to Further Accountability Work in Work Stream 2

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42 Note:
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- The language in the Summary, CCWG-Accountability Recommendations, and Changes from the “Third Draft Proposal on Work Stream 1 Recommendations” sections of the Recommendations is copied from the matching Annexes which were approved as consensus positions by the CCWG-Accountability. Only the formatting has been modified to accommodate the structure of the main report.
- The language proposed in recommendations for ICANN Bylaw revisions are conceptual at this stage. The CCWG-Accountability’s external legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws (Fundamental and Standard Bylaws).

## Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers

### 43 Summary

44 Under California law and the current Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN), the ICANN Board of Directors has the final responsibility for the activities and affairs of ICANN.

45 With removal of the U.S. National Telecommunications and Information Administration (NTIA) as a perceived enforcement body over ICANN, the CCWG-Accountability requires a method to ensure that decisions produced by community accountability mechanisms can be enforced, including in situations where the ICANN Board may object to the results.

46 The CCWG-Accountability recommends creating a new entity that will act at the direction of the multistakeholder community to exercise and enforce Community Powers. The entity will take the form of a California unincorporated association and be given the role of "Sole Designator" of ICANN Board Directors and will have the ability to directly or indirectly the Community Powers. The entity will be referred to as the "Empowered Community."

47 As permitted under California law, the Empowered Community will have the statutory power to appoint and, with that, the statutory power to remove ICANN Board Directors (whether an individual Director or the entire Board). Other powers, such as the power to approve or reject amendments to the Articles of Incorporation and Bylaws, may be provided to the Empowered Community.

48 The CCWG-Accountability accepts that its statutory power will be limited as described above, and that this is sufficient given:

- The creation of "Fundamental Bylaws" that can only be modified jointly by the ICANN Board and Empowered Community.
- All recommended Work Stream 1 accountability mechanisms are constituted as Fundamental Bylaws.
- The right of inspection is granted to "Decisional Participants" in the Empowered Community.
- The right of investigation is granted to the Decisional Participants in the Empowered Community.

49 The process for the Empowered Community to use a Community Power is outlined in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.

### 50 CCWG-Accountability Recommendations

51 The CCWG-Accountability recommends creating an entity that will act at the direction of the community to exercise and enforce Community Powers:

- This entity will take the form of a California unincorporated association and be given the role of Sole Designator of ICANN Board Directors and will have the ability to directly or indirectly enforce the Community Powers. This entity will be referred to as the Empowered Community.

- The Empowered Community will act as directed by participating Supporting Organizations (SOs) and Advisory Committees (ACs), which will be referred to as the Decisional Participants in the Empowered Community.
- The Empowered Community, and the rules by which it is governed, will be constituted in ICANN's Fundamental Bylaws, along with provisions to ensure the Empowered Community cannot be changed or eliminated without its own consent (see Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation).
- The Articles of Incorporation will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process.

52 Additionally, the CCWG-Accountability recommends including in the ICANN Bylaws:

- The right for Decisional Participants in the Empowered Community to inspection as outlined in California Corporations Code 6333, although this specific code reference would not be mentioned in the Bylaws.
- The right of investigation, which includes the adoption of the following audit process: upon three Decisional Participants in the Empowered Community coming together to identify a perceived issue with fraud or gross mismanagement of ICANN resources, ICANN will retain a third-party, independent firm to undertake a specific audit to investigate that issue. The audit report will be made public, and the ICANN Board will be required to consider the recommendations and findings of that report.
- The following limitation associated with the Governmental Advisory Committee (GAC) acting as a Decisional Participant: If the GAC chooses to participate as a Decisional Participant in the Empowered Community, it may not participate as a decision-maker in the Empowered Community's exercise of a Community Power to challenge the ICANN Board's implementation of GAC consensus advice (referred to as the "GAC carve-out").

In such cases, the GAC will still be entitled to participate in the Empowered Community in an advisory capacity in all other aspects of the escalation process, but its views will not count towards or against the thresholds needed to initiate a conference call, convene a Community Forum or exercise the Community Power.

The GAC carve-out preserves the ICANN Board's unique obligation to work with the GAC to try to find a mutually acceptable solution to the implementation of GAC advice supported by consensus – as defined in Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18) – while protecting the Empowered Community's power to challenge such Board decisions.

53 **Changes from the "Third Draft Proposal on Work Stream 1 Recommendations"**

- Scope and limitations with respect to the right to inspect accounting books and records of ICANN confirmed, emphasizing the difference between DIDP and inspection rights.
- Added inspection rights for accounting books and records and minutes based on a one Decisional Participant threshold.
- Introduced additional suggestion by the ICANN Board regarding investigation right (audits), based on three Decisional Participants in the Empowered Community threshold.

- Confirmed direction for implementation to avoid abusive claims.
- Compromise on Recommendation #11 required the creation of the “GAC carve-out.”

#### 54 **Relevant Annexes**

- Annex 01 – Details on Recommendation #1: Establishing an Empowered Community for enforcing Community Powers
- Annex 03 – Details on Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation
- Annex 04 – Details on Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers

## **Recommendation #2: Empowering the Community Through Consensus: Engagement, Escalation, and Enforcement**

#### 55 **Summary**

#### 56 **Engagement**

57 Today, the Internet Corporation for Assigned Names and Numbers (ICANN) Board of Directors voluntarily consults with the multistakeholder community on a variety of decisions, including the Annual Budget and changes to the ICANN Bylaws. To gather feedback, the ICANN Board uses mechanisms such as public consultations and information sessions to gauge community support and/or identify issues on the topic. These consultation mechanisms are referred to as an “engagement process.”

58 The CCWG-Accountability is recommending that engagement processes for specific ICANN Board actions be constituted in the Fundamental Bylaws. Although the ICANN Board engages voluntarily in these processes today, this recommendation would formally require the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:

- Approving ICANN’s Five-Year Strategic Plan.
- Approving ICANN’s Five-Year Operating Plan.
- Approving ICANN’s Annual Operating Plan & Budget.
- Approving the Internet Assigned Numbers Authority (IANA) Functions Budget.
- Approving any modifications to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN’s sale or other disposition of all or substantially all of ICANN’s assets.
- Making ICANN Board decisions relating to reviews of IANA functions, including the triggering of any Post-Transition IANA (PTI) separation process.

59 If it is determined that there is divergence between the ICANN Board and the community after the engagement process, the Empowered Community (as defined in Recommendation #1:

Establishing an Empowered Community for Enforcing Community Powers) may decide to use a Community Power after the appropriate “escalation process” has been satisfied.

60 The Empowered Community may begin an escalation process to:

- Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget, or the IANA Functions Budget.
- Reject a change to ICANN Standard Bylaws.
- Approve changes to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN’s sale or other disposition of all or substantially all of ICANN’s assets.
- Remove an individual ICANN Board Director.
- Recall the entire ICANN Board.
- Initiate a binding community Independent Review Process (IRP), where a panel decision is enforceable in any court recognizing international arbitration results, or a non-binding Request for Reconsideration, where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN’s Board or staff.

61 Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.

## 62 **Escalation**

63 The escalation process can differ, sometimes significantly, from one Community Power to another.

64 One of the most standardized versions of the escalation process is required for all Community Powers to “reject,” remove individual Nominating Committee-nominated Board Directors, or recall the entire Board.

- **This escalation process comprises the following steps:**

1. An individual starts a petition in a Supporting Organization (SO) or Advisory Committee (AC) that is a Decisional Participant in the Empowered Community (see Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers).
  - If the petition is approved by that SO or AC, it proceeds to the next step.
  - If the petition is not approved by that SO or AC, the escalation process is terminated.
2. The SO or AC that approved the petition contacts the other Decisional Participants to ask them to support the petition.
  - At least one additional SO and/or AC must support the petition (for a minimum of two or, for Board recall, three) for a Community Forum to be organized to discuss the issue.
    - If the threshold is not met, the escalation process is terminated.
    - If the threshold is met, a Community Forum is organized to discuss the petition.
3. An open Community Forum of one or two days is organized for any interested stakeholder in the community to participate.
  - The petitioning SO and/or AC will:

- Circulate a detailed rationale for proposing to use the Community Power to all Decisional Participants.
  - Designate a representative(s) to liaise with SOs/ACs to answer questions from the SOs/ACs.
  - If desired, optionally, request that ICANN organize a conference call prior to the Community Forum for the community to discuss the issue.
  - If the ICANN Board and the Empowered Community can resolve their issues before or in the Community Forum, the escalation process is terminated.
  - Otherwise, the Empowered Community must decide if it wishes to use its Community Power.
4. The Empowered Community considers use of a Community Power.
- If the threshold to use a Community Power is not met, or there is more than one objection, then the escalation process is terminated.
  - If the threshold is met for using the Community Power, and there is no more than one objection, the Empowered Community advises the ICANN Board of the decision and directs it to comply with the decision (as outlined in the Fundamental Bylaws for this Community Power).
5. The Empowered Community advises the ICANN Board.
- If the Empowered Community has decided to use its power, it will advise the ICANN Board of the decision and direct the Board to take any necessary action to comply with the decision.

65 **Enforcement**

66 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community using a Community Power (other than a decision to remove an individual Director or the entire ICANN Board pursuant to the Empowered Community's statutory power, as discussed below), the Empowered Community must decide if it wishes to begin the enforcement process.

67 The enforcement process can proceed in one of two ways:

- The Empowered Community may initiate mediation and community IRP procedures.
- The Empowered Community may initiate an escalation process to recall the entire ICANN Board.

68 The enforcement process may result in a resolution of the issue. Otherwise, if needed, the result of the enforcement process is enforceable in court.

69 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use the statutory power to remove an individual ICANN Director or recall the entire ICANN Board (or with the Empowered Community's appointment of a Director), the Empowered Community could address that refusal by bringing a claim in a court that has jurisdiction; there is no need for the Empowered Community to initiate or undertake other enforcement processes such as mediation or an IRP to enforce the power.

70 **CCWG-Accountability Recommendations**

- 71 Establish a Fundamental Bylaw that requires the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:
- Approving ICANN’s Five-Year Strategic Plan.
  - Approving ICANN’s Five-Year Operating Plan.
  - Approving ICANN’s Annual Operating Plan & Budget.
  - Approving the IANA Functions Budget.
  - Approving any modification to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN’s sale or other disposition of all or substantially all of ICANN’s assets.
  - Making any ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.
- 72 Include the engagement, escalation and enforcement processes in the Fundamental Bylaws.
- Note: The escalation processes for each Community Power are outlined in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.

73 **Table: Required Thresholds for the Various Escalation and Enforcement Processes (Based on a Minimum of Five Decisional Participants in the Empowered Community)**

Required Community Powers?	Petition Threshold to convene a Community Forum	Is there consensus support to exercise a Community Power?
74 1. Reject a proposed Operating Plan/Strategic Plan/Budget	75 Two SOs/ACs	76 Four support rejection, and no more than one objection
77 2. Approve a change to Fundamental Bylaws and Articles of Incorporation, and approve ICANN’s sale or other disposition of all or substantially all of ICANN’s assets	78 N/A	79 Three support approval, and no more than one objection
80 3. Reject changes to Standard Bylaws	81 Two SOs/ACs, including the SO that led the PDP that requires the Bylaw change (if any)	82 Three support rejection, including the SO that led the PDP that requires the Bylaw change (if any), and no more than one objection

<b>Required Community Powers?</b>	<b>Petition Threshold to convene a Community Forum</b>	<b>Is there consensus support to exercise a Community Power?</b>
83 4a. Remove an individual Board Director nominated by an SO or AC (and appointed by the Empowered Community)	84 Majority within nominating SO/AC	85 Invite and consider comments from all SOs/ACs. 3/4 majority within the nominating SO/AC to remove their director
86 4b. Remove an individual Board Director nominated by the Nominating Committee (and appointed by the Empowered Community)	87 Two SOs/ACs	88 Three support, and no more than one objection
89 5. Recall the entire Board of Directors	90 Three SOs/ACs	91 Four support, and no more than one objection <sup>3</sup>
92 6. Initiate a binding IRP or a Request for Reconsideration	93 Two SOs/ACs	94 Three support, including the SO(s) that approved the policy recommendations from the PDP which result is being challenged through the IRP (if any), and no more than one objection 95 Require mediation before IRP begins
96 7. Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process	97 Two SOs/ACs	98 Four support, and no more than one objection

99 Implementation of the Empowered Community currently anticipates that all of ICANN's SOs, the ALAC and GAC (if the GAC chooses to participate) would participate in the Empowered Community – that is, they will be listed in the Bylaws as the five Decisional Participants.

100 The thresholds presented in this document were determined based on this assessment. If fewer than five of ICANN's SOs and ACs agree to be Decisional Participants, these thresholds for consensus support may be adjusted. Thresholds may also have to be adjusted if ICANN changes to have more SOs or ACs.

101 In the event of the creation (or removal) of SOs/ACs, the corresponding percentage could be used as useful guidelines in refining the thresholds. There would, however, need to be a conscious decision, depending on the circumstances, regarding these adjustments. If such a change were to affect the list of Decisional Participants in the Empowered Community, the

<sup>3</sup> A minority of CCWG-Accountability participants prefer to require five SOs and ACs, or allow one objection to block consensus.

change would follow the Fundamental Bylaw change process, which enables such a conscious decision to be undertaken.

102 The CCWG-Accountability also recommends that in a situation where the GAC may not participate as a Decisional Participant because the Community Power is proposed to be used to challenge the Board's implementation of GAC consensus advice and the threshold is set at four in support, the power will still be validly exercised if three are in support and no more than one objects, with the following exception:

- Where the power to be exercised is recalling the entire Board for implementing GAC advice, the reduced threshold would apply only after an IRP has found that, in implementing GAC advice, the Board acted inconsistently with the ICANN Bylaws. If the Empowered Community has brought such an IRP and does not prevail, the Empowered Community may not exercise its power to recall the entire the Board solely on the basis of the matter decided by the IRP. It may, however, exercise that power based on other grounds.

### 103 **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- Extended time for certain escalation steps in response to comments. Kept overall timeline similar by combining and removing some steps (mandatory conference call).
- Made it mandatory for petitioning party to reach out to SOs/ACs to socialize relevant information before Community Forum.
- Acknowledged comments regarding the thresholds adjustment in case the number of Decisional Participants is lower (page 12, paragraph 60 of the Third Draft Proposal), by removing this option and replacing it with a lower threshold for approving changes to Fundamental Bylaws. Since the Fundamental Bylaw change process is a requirement for “approval” and not a “rejection” option, this would preserve the requirement for stronger protection of Fundamental Bylaws.
- Determined that the use of the corresponding percentage for thresholds as recommended by the Board can be suggested as a guideline in the event of the creation of new SOs/ACs, but there would need to be a conscious decision, depending on the circumstances. If such a new SO/AC were to become a Decisional Participant in the Empowered Community, this change would require a change to the Fundamental Bylaws and would therefore require approval by the Empowered Community.
- Implemented the compromise for Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18) that the threshold requirements would be modified if the GAC was a Decisional Participant.

### 104 **Relevant Annexes**

- 105 Annex 02 – Details on Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, and Enforcement
- 106 Annex 03 – Details on Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation
- 107 Annex 04 – Details on Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers

## Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation

### 108 **Summary**

109 Currently, the Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN) have a single mechanism for amendment.

- Any provision of the ICANN Bylaws can be changed by a 2/3 vote of all the Directors on the ICANN Board.
- The ICANN Board is not required to consult the multistakeholder community or the wider public before amending the Bylaws, but has voluntarily done so up to this point.

110 The CCWG-Accountability recommends classifying each ICANN Bylaw as either a “Fundamental Bylaw” or a “Standard Bylaw,” with Fundamental Bylaws being more difficult to change.

111 Specifically, the CCWG-Accountability recommends that:

- Public consultations be required on all changes to ICANN Bylaws, both Fundamental and Standard.
- The requirement for public consultations to be added to the ICANN Bylaws as a Fundamental Bylaw to ensure that ICANN must continue to engage with the community in the future.
- Any changes to Fundamental Bylaws require approval from both the ICANN Board and Empowered Community, as outlined in the respective Community Power (as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers).
- The threshold for ICANN Board approval for changing a Fundamental Bylaw is raised from 2/3 to 3/4.
- Approval for changes to the Articles of Incorporation use the same process required for approving changes to Fundamental Bylaws, including public consultations.

112 Why is the CCWG-Accountability recommending this?

- The CCWG-Accountability felt that it was critical to ensure that the ICANN Bylaws that embody the purpose of the organization (Mission, Commitments and Core Values) and are meant to ensure the accountability of the ICANN Board, cannot be changed by the ICANN Board acting alone.

### 113 **CCWG-Accountability Recommendations**

114 The CCWG-Accountability recommends:

- Classifying each ICANN Bylaw as either a Fundamental Bylaw or a Standard Bylaw.
- Making the following CCWG-Accountability and CWG-Stewardship Recommendations Fundamental Bylaws:

- The Empowered Community for enforcing Community Powers, including the role of Sole Designator of ICANN's Directors, as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
- The escalation and enforcement mechanisms as described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.
- The process for amending Fundamental Bylaws and/or Articles of Incorporation, and for approving ICANN's sale or other disposition of all or substantially all of ICANN's assets as described in Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.
- The seven Community Powers as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
- The Mission, Commitments and Core Values as described in Recommendation #5: Changing Aspects of ICANN's Mission, Commitments and Core Values.
- The framework for the Independent Review Process (IRP) as described in Recommendation #7: Strengthening ICANN's Independent Review Process.
- The IANA Function Review, Special IANA Function Review and the Separation Process, accountability mechanisms for the IANA naming functions that are required under the CWG-Stewardship Proposal.
- The PTI Governance and Customer Standing Committee (CSC) structures, also required by the CWG-Stewardship Proposal.
- The rights of investigation and inspection as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
- Requiring ICANN to conduct public consultations on any proposed changes to Standard Bylaws, Fundamental Bylaws or the Articles of Incorporation.
- Requiring approval for any changes to Fundamental Bylaws and the Articles of Incorporation from both the ICANN Board and the Empowered Community as outlined in the Community Power as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
- Raising the threshold for ICANN Board approval for changing a Fundamental Bylaw or the Articles of Incorporation from 2/3 to 3/4 of all the Directors on the ICANN Board.

115

### **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- Clarified that IANA Function Review (IFR) provisions apply only to the IANA naming functions (CWG-Stewardship requirement).
- Clarified the process for changes of Articles of Incorporation to be similar to process for changes to Fundamental Bylaws, as well as the process for approving ICANN's sale or other disposition of all or substantially all of ICANN's assets.
- Added a specific recommendation that the current Articles of Incorporation be modified to remove the notion of members and reflect the need for an affirmative vote of at least 3/4 of all the Directors on the ICANN Board, as well as approval by the Empowered Community.

116 **Relevant Annexes**

117 Annex 03 – Details on Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation

118 Annex 04 – Details on Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers

## Recommendation #4: Ensuring Community Engagement in ICANN Decision-making: Seven New Community Powers

 <p><b>REJECT BUDGET OR STRATEGIC/ OPERATING PLAN</b></p>	 <p><b>REJECT CHANGES TO ICANN STANDARD BYLAWS</b></p>	 <p><b>APPROVE CHANGES TO FUNDAMENTAL BYLAWS OR ARTICLES, OR CERTAIN ASSET SALES</b></p>	
 <p><b>REMOVE INDIVIDUAL ICANN BOARD DIRECTORS</b></p>	 <p><b>RECALL ENTIRE ICANN BOARD</b></p>	 <p><b>LAUNCH COMMUNITY INDEPENDENT REVIEW PROCESS OR REQUEST FOR RECONSIDERATION</b></p>	 <p><b>REJECT ICANN BOARD DECISIONS RELATING TO IANA FUNCTIONS REVIEWS</b></p>

119 **Summary**

120 The CCWG-Accountability has recommended seven powers for the community that should be in place to improve ICANN's accountability and ensure community engagement.

121 These "Community Powers" are:

1. Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget or IANA Functions Budget.

2. Reject a change to ICANN Standard Bylaws.
3. Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
4. Remove an individual ICANN Board Director.
5. Recall the entire ICANN Board.
6. Initiate a binding Independent Review Process (IRP) (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff).
7. Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any Post-Transition IANA (PTI) separation process for the IANA naming functions.

122 The Community Powers and associated processes were designed to ensure that no stakeholder can singlehandedly exercise any power, and that under no circumstances, would any individual segment of the community be able to block the use of a power.

## 123 **CCWG-Accountability Recommendations**

124 The CCWG-Accountability recommends:

- Defining the following Community Powers as Fundamental Bylaws:
  1. Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget or IANA Functions Budget.
  2. Reject a change to ICANN Standard Bylaws.
  3. Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  4. Remove an individual ICANN Board Director.
  5. Recall the entire ICANN Board.
  6. Initiate a binding IRP (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff).
  7. Reject ICANN Board decisions relating to reviews of IANA functions, including the triggering of any PTI separation process for the IANA naming functions.
- Adding an ICANN Bylaw that states that if the entire ICANN Board is removed, an Interim Board will be established only as long as is required for the selection/election process for the Replacement Board to take place. Supporting Organizations (SOs), Advisory Committees (ACs), and the Nominating Committee (NOMCOM) will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days. The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.

- The ICANN Bylaws will state that, except in circumstances in which urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the SO and AC leaderships before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN's strategy, policies or management, including replacement of the serving President and CEO.
- Note: Details on what the powers do is presented in greater detail in the following section and the details of how these can be used can be found in Annex 2.
- That there be an exception to rejecting Standard Bylaws in cases where the Standard Bylaw change is the result of a Policy Development Process. The exception would be as follows:
  - Fundamental Bylaws would require that the ICANN Board not combine the approval of ICANN Bylaw changes that are the result of a Policy Development Process with any other Bylaw changes.
  - Fundamental Bylaws would require the ICANN Board to clearly indicate if an ICANN Bylaw change is the result of a Policy Development Process when the Board approves it.
  - Fundamental Bylaws would require that if the change to the ICANN Bylaws is the result of a Policy Development Process, the SO that led the Policy Development Process must formally support holding a Community Forum and exercise the power to reject the Bylaw change. If the SO that led the Policy Development Process that requires the Bylaw change does not support holding a Community Forum or exercising the power to reject the Bylaw, then the Community Power to reject the Bylaw cannot be used.

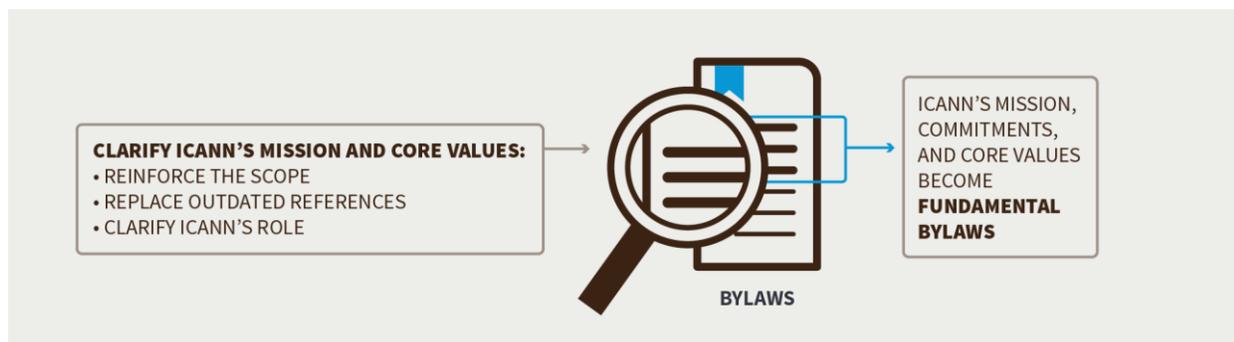
125 **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- Budget rejection for PTI significantly updated.
- Caretaker budget expanded.
- Indemnification for removal of an ICANN Board Director greatly expanded.
- Escalation steps amended to match process in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, and Enforcement.
- Scope of community IRP modified to match Recommendation #7: Strengthening ICANN's Independent Review Process.
- “The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation” is now: “The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation and/or Approve ICANN's Sale or Other Disposition of All or Substantially All of ICANN's Assets.”
- “The Power to Initiate a Binding IRP (Where a Panel Decision is Enforceable in any Court Recognizing International Arbitration Results)” now includes the possibility for the Empowered Community to file a Request for Reconsideration.

126 **Relevant Annexes**

- 127 Annex 02 – Details on Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement
- 128 Annex 03 – Details on Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation
- 129 Annex 04 – Details on Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers

## Recommendation #5: Changing Aspects of ICANN's Mission, Commitments, and Core Values



### 130 Summary

131 The CCWG-Accountability is recommending changes to the ICANN Bylaws to assure that the Bylaws reflect the CCWG-Accountability recommendations.

- Note: The language proposed in this recommendation for ICANN Bylaw revisions is conceptual in nature at this stage. External legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.

### 132 Mission Statement

133 The CCWG-Accountability recommends the following changes to ICANN's "Mission Statement," (Bylaws, Article I, Section 1):

- Clarify that ICANN's Mission is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability.
- Clarify that ICANN's Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide.
- Clarify that ICANN's powers are "enumerated." Simply, this means that anything that is not articulated in the Bylaws is outside the scope of ICANN's authority.
  - Note: This does not mean ICANN's powers can never evolve. However, it ensures that any changes will be deliberate and supported by the community.

134 **Core Values**

01 The CCWG-Accountability recommends the following changes to ICANN's "Core Values" (Bylaws, Article I, Section 2 and Article II, Section 3):

- Divide ICANN's existing Core Values provisions into "Commitments" and "Core Values."
  - Incorporate ICANN's obligation to "operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law and international law and conventions through open and transparent processes that enable competition" into the Bylaws.
  - Note: These obligations are currently contained in ICANN's Articles of Incorporation.
- Designate certain Core Values as "Commitments." ICANN's Commitments will include the values that are fundamental to ICANN's operation, and are intended to apply consistently and comprehensively.

Commitments will include ICANN's obligations to:

- Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
  - Limit its activities to those within ICANN's Mission that require, or significantly benefit from, global coordination.
  - Employ open, transparent, bottom-up, multistakeholder processes.
  - Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.
- Slightly modify the remaining Core Values to:
    - Reflect various provisions in the Affirmation of Commitments, such as efficiency, operational excellence, and fiscal responsibility.
    - Add an obligation to avoid capture.

135 Although previous CCWG-Accountability draft proposals proposed to modify existing Core Value 5 ("Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment") to drop the phrase "where feasible and appropriate," the CCWG-Accountability has reconsidered this recommendation. While acknowledging that ICANN is not an antitrust authority, on balance the CCWG-Accountability elected to retain the introductory language to ensure that ICANN continues to have the authority, for example, to refer competition-related questions regarding new registry services to competent authorities under the RSEP program and to establish bottom-up policies for allocating top-level domains (e.g., community preference).

136 **Balancing or Reconciliation Test**

137 The CCWG-Accountability recommends modification to the "balancing" language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:

*These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with*

*the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.*

138 **Fundamental Bylaws Provisions**

139 The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws. See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.

140 **CCWG-Accountability Recommendations**

141 Modify ICANN's Fundamental Bylaws to implement the following:

142 **Mission**

143 The Mission of the Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described below. Specifically, ICANN:

1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's scope is to coordinate the development and implementation of policies:
  - For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and
  - That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.
2. Facilitates coordination of the operation and evolution of the DNS root name server system.
3. Coordinates the allocation and assignment of the top-most level of Internet Protocol ("IP") and Autonomous System ("AS") numbers. In this role, ICANN provides registration services and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.
4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

144 ICANN shall act strictly in accordance with, and only as reasonably appropriate, to achieve its Mission.

145 ICANN shall not impose regulations on services that use the Internet's unique identifiers, or the content that such services carry or provide.

146 ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments ("PICs"), with contracted parties in service of its Mission.

147 Note to drafters: In crafting proposed Bylaws language to reflect this Mission Statement, the CCWG wishes the drafters to note the following:

1. The prohibition on the regulation of "content" is not intended to prevent ICANN policies from taking into account the use of domain names as identifiers in various natural languages.
2. The issues identified in Specification 1 to the Registry Agreement and Specification 4 to the Registrar Accreditation Agreement (the so-called "Picket Fence") are intended and understood to be within the scope of ICANN's Mission. A side-by-side comparison of the formulation of the Picket Fence in the respective agreements is included for reference at the end of this Annex.
3. For the avoidance of uncertainty only, the language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN's Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN's approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement, neither a contracting party nor anyone else should be able to bring a case alleging that any provisions of such agreements on their face are ultra vires. It does not, however, modify any contracting party's right to challenge the other party's interpretation of that language. It does not modify the right of any person or entity materially affected (as defined in the Bylaws) by an action or inaction in violation ICANN's Bylaws to seek redress through an IRP. Nor does it modify the scope of ICANN's Mission.
4. The CCWG-Accountability anticipates that the drafters may need to modify provisions of the Articles of Incorporation to align with the revised Bylaws.

## 148 **Section 2. Commitments & Core Values**

149 In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below.

### 150 **Commitments**

151 In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:

1. Preserve and enhance its neutral and judgment-free administration of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
2. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet.

3. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination.
4. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities that (1) seek input from the public, for whose benefit ICANN shall in all events act, (2) promote well-informed decisions based on expert advice, and (3) ensure that those entities most affected can assist in the policy development process.
5. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment.
6. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.

152 **Core Values**

153 In performing its Mission, the following Core Values should also guide the decisions and actions of ICANN:

1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies.
2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.
3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.
4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.
  - a. Operating with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.
5. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.
6. Striving to achieve a reasonable balance between the interests of different stakeholders.

154 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.

155 The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.

156 In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.

157 Note: Specific recommendations on how to implement these modifications can be found at the end of the next section.

## 158 **Changes from the 'Third Draft Proposal on Work Stream 1 Recommendations'**

159 For space considerations the list of changes is not included here. Please consult Annex 5 - Recommendation #5: Changing Aspects of ICANN's Mission, Commitments and Core Values for a detailed list of modifications.

## 160 **Relevant Annexes**

161 Annex 05 – Details on Recommendation #5: Changing Aspects of ICANN's Mission, Commitments, and Core Values

# **Recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries Out its Mission**

## 162 **Summary**

163 The subject of including a commitment to respect Human Rights in the ICANN Bylaws has been extensively discussed by the CCWG-Accountability.

164 The CCWG-Accountability sought legal advice on whether, upon the termination of the IANA Functions Contract between ICANN and the U.S. National Telecommunications and Information Administration (NTIA), ICANN's specific Human Rights obligations could be called into question. It was found that, upon termination of the contract, there would be no significant impact on ICANN's Human Rights obligations. However, the CCWG-Accountability reasoned that a commitment to respect Human Rights should be included in ICANN's Bylaws in order to comply with the NTIA criteria to maintain the openness of the Internet.

165 This proposed draft Bylaw on Human Rights would reaffirm ICANN's existing obligations within its Core Values, and would clarify ICANN's commitment to respect Human Rights.

166 Amendments to the proposed draft Bylaw text since the Second Draft Proposal aimed to prevent Mission expansion or "Mission creep," and under the proposed draft Bylaw, ICANN commits to respect internationally recognized Human Rights "within its Core Values."

167 The proposed draft Bylaw does not impose any enforcement duty on ICANN, or any obligation on ICANN to take action in furtherance of the Bylaw.

168 The proposed draft Bylaw also clarifies that no IRP challenges can be made on the grounds of this Bylaw until a Framework of Interpretation on Human Rights (FOI-HR) is developed and approved as part of Work Stream 2 activities. It further clarifies that acceptance of the FOI-HR

will require the same process as for Work Stream 1 recommendations (as agreed for all Work Stream 2 recommendations).

- 169 Additionally, the CCWG-Accountability has identified several work areas that need to be undertaken as part of Work Stream 2 in order to fully operationalize ICANN's commitment to respect Human Rights.

170 **CCWG-Accountability Recommendations**



- Include a Bylaw with the following intent in Work Stream 1 recommendations:

“Within its Core Values, ICANN will commit to respect internationally recognized Human Rights as required by applicable law. This provision does not create any additional obligation for ICANN to respond to or consider any complaint, request, or demand seeking the enforcement of Human Rights by ICANN. This Bylaw provision will not enter into force until (1) a Framework of Interpretation for Human Rights (FOI-HR) is developed by the CCWG-Accountability as a consensus recommendation in Work Stream 2 (including Chartering Organizations’ approval) and (2) the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations.”

- Note: This proposed draft Bylaw will be reviewed by both CCWG-Accountability’s lawyers and ICANN’s legal department and then submitted to the CCWG-Accountability for approval before its submission to the Board for approval.
- Include the following in Work Stream 2 activities:
  - Develop an FOI-HR for the Human Rights Bylaw.
  - Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.
  - Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights.
  - Consistent with ICANN’s existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process.

- Consider what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee (GAC).
- Consider how, if at all, this Bylaw will affect how ICANN's operations are carried out.
- Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

171 **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- The CCWG-Accountability considered comments received during the third public comment period, which were overall in favor of including Human Rights language with a few exceptions which included the ICANN Board.
- The CCWG-Accountability engaged with the ICANN Board to specifically address its concerns through discussion and debate in three plenary calls. Additionally, ICANN's legal team and CCWG-Accountability's legal advisors discussed the concerns raised by ICANN legal regarding the possibility of having a significant number of IRP challenges initiated on the grounds of Human Rights claims and the problems this could create without having a Framework of Interpretation in place to properly implement the proposed Bylaw provision.
- The CCWG-Accountability developed compromise text based on a proposal by its legal advisors, which it believed addressed these concerns. The ICANN Board maintained that this compromise text did not address its concerns, but did not provide any specific examples of its concerns regarding the alleged unintended consequences.
- The ICANN Board responded with proposed changes to the draft Bylaw text, which reflected a compromise position and included a commitment to respect Human Rights within ICANN's Core Values, which were accepted by the CCWG-Accountability.

172 **Relevant Annexes**

- 173 Annex 06 – Details on Recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries Out its Mission

## **Recommendation #7: Strengthening ICANN's Independent Review Process**

- 174 The purpose of the Independent Review Process (IRP) is to ensure that ICANN does not exceed the scope of its limited technical Mission and complies with its Articles of Incorporation and Bylaws.
- 175 A consultation process undertaken by ICANN produced numerous comments calling for overhaul and reform of ICANN's existing IRP. Commenters called for ICANN to be held to a substantive standard of behavior rather than just an evaluation of whether or not its action was taken in good faith.

176 The CCWG-Accountability therefore proposes several enhancements to the IRP to ensure that the process is:

- Transparent, efficient and accessible (both financially and from a standing perspective).
- Designed to produce consistent and coherent results that will serve as a guide for future actions.

177 The CCWG-Accountability also proposes that the IRP:

- Hear and resolve claims that ICANN, through its Board of Directors or staff, has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws – including any violation of the Bylaws resulting from action taken in response to advice/input from any Supporting Organization (SO) or Advisory Committee (AC).
- Hear and resolve claims that Post-Transition IANA (PTI), through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
- Hear and resolve claims that expert panel decisions are inconsistent with the ICANN Bylaws.
- Hear and resolve claims that DIDP decisions by ICANN are inconsistent with the ICANN Bylaws.
- Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws. In such cases, ICANN will bear the costs associated with the Standing Panel, as well as the Empowered Community's legal expenses.
- Be subject to certain exclusions relating to the results of an SO's policy development process, country code top-level domain delegations/redelegations, numbering resources, and protocols parameters.

178 **CCWG-Accountability Recommendations**

- Modifying the Fundamental Bylaws to implement the modifications associated with this recommendation on the IRP which include:
  - Hear and resolve claims that ICANN through its Board of Directors or staff has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Bylaws resulting from action taken in response to advice/input from any AC or SO).
  - Hear and resolve claims that PTI through its Board of Directors or staff has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
  - Hear and resolve claims that expert panel decisions are inconsistent with ICANN's Bylaws.
  - Hear and resolve claims that DIDP decisions by ICANN are inconsistent with ICANN's Bylaws.
  - Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws.

- A standing judicial/arbitral panel: The IRP should have a standing judicial/arbitral panel tasked with reviewing and acting on complaints brought by individuals, entities, and/or the community who have been materially affected by ICANN's action or inaction in violation of the Articles of Incorporation and/or Bylaws.
  - Composition of Panel and Expertise: Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration is necessary.
  - Diversity: English will be the primary working language with provision of translation services for claimants as needed. Reasonable efforts will be taken to achieve cultural, linguistic, gender, and legal diversity, with an aspirational cap on number of panelists from any single region (based on the number of members of the Standing Panel as a whole).
  - Size of Panel:
    - Standing Panel: Minimum of seven panelists.
    - Decisional Panel: Three panelists.
  - Independence: Panel members must be independent of ICANN, including ICANN SOs and ACs.
  - Recall: Appointments shall be made for a fixed term of five years with no removal except for specified cause (corruption, misuse of position for personal use, etc.). The recall process will be developed by way of the IRP subgroup.
- Initiation of the Independent Review Process: An aggrieved party would trigger the IRP by filing a complaint with the panel alleging that a specified action or inaction is in violation of ICANN's Articles of Incorporation and/or Bylaws, or otherwise within the scope of IRP jurisdiction. The Empowered Community could initiate an IRP with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws.
- Standing: Any person/group/entity "materially affected" by an ICANN action or inaction in violation of ICANN's Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress. The Board's failure to fully implement an Empowered Community decision will be sufficient for the Empowered Community to be materially affected.
- Community Independent Review Process: The CCWG-Accountability recommends giving the Empowered Community the right to present arguments on behalf of the Empowered Community to the IRP Panel. In such cases, ICANN will bear the costs associated with the Standing Panel, as well as the Empowered Community's legal expenses.
- Standard of Review: The IRP Panel, with respect to a particular IRP, shall decide the issue(s) presented based on its own independent interpretation of the ICANN Articles of Incorporation and Bylaws in the context of applicable governing law and prior IRP decisions.
- Accessibility and Cost: The CCWG-Accountability recommends that ICANN bear all the administrative costs of maintaining the system (including panelist salaries), while each party should bear the costs of their own legal advice, except that the legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN. The panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive. ICANN should seek to establish access – for example

access to pro bono representation for community, non-profit complainants and other complainants that would otherwise be excluded from utilizing the process.

- **Implementation:** The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. Implementation of these enhancements will necessarily require additional detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. The functional processes by which the Empowered Community will act, such as through a council of the chairs of the ACs and SOs, should also be developed. These processes may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, the CCWG-Accountability proposes to subject the IRP to periodic community review.
- **Transparency:** The community has expressed concerns regarding the ICANN document/information access policy and implementation. Free access to relevant information is an essential element of a robust IRP, and as such, the CCWG-Accountability recommends reviewing and enhancing ICANN's Documentary Information Disclosure Policy as part of the accountability enhancements in Work Stream 2.

179

### **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- The scope of the IRP will be restricted to the IANA naming functions for claims that PTI through its Board of Directors or staff has acted (or has failed to act) in violation of its contract with ICANN.
- The scope of the IRP will include actions and inactions of PTI by way of the PTI Board being bound to ensure that PTI complies with its contractual obligations with ICANN in the Bylaws. ICANN's failure to enforce material obligations will be appealable by way of the IRP as a Bylaws violation.
- The scope of the IRP will include claims that DIDP decisions by ICANN are inconsistent with ICANN's Bylaws.
- Clarified that ICANN must modify Registry Agreements with gTLD Operators to expand scope of arbitration available thereunder to cover PTI service complaints.
- **Exclusion:** The IRP will not be applicable to protocols parameters.
- **Exclusion:** An IRP cannot be launched that challenges the result(s) of an SO's policy development process (PDP) without the support of the SO that developed such PDP or, in the case of joint PDPs, without the support of all of the SOs that developed such PDP.
- **Limitation:** An IRP challenge of expert panel decisions is limited to a challenge of whether the panel decision is consistent with ICANN's Bylaws.
- The legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN.

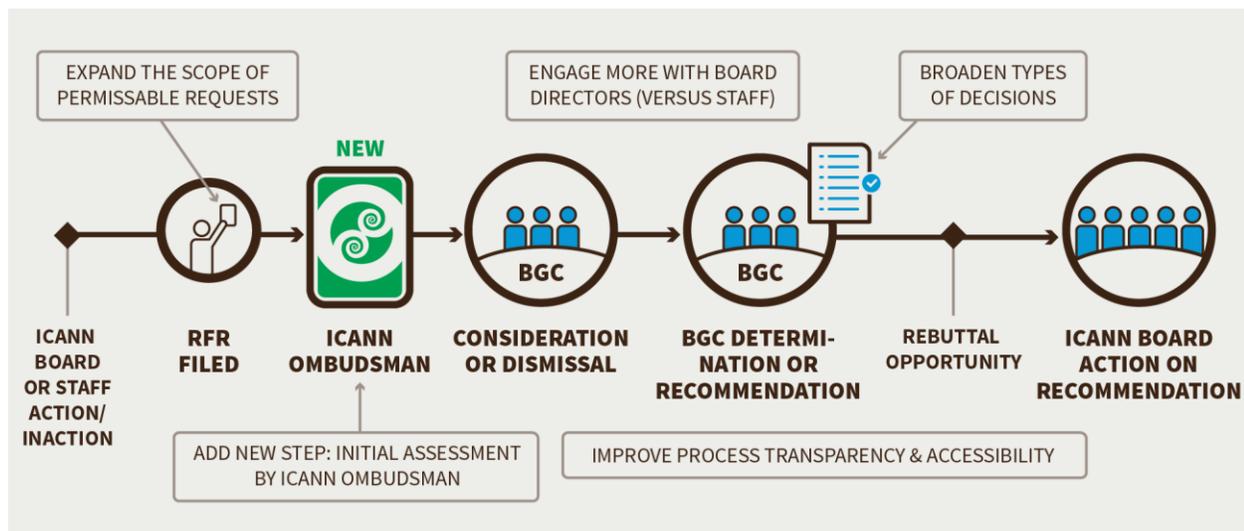
180

### **Relevant Annexes**

181

Annex 07 – Details on Recommendation #7: Strengthening ICANN's Independent Review Process

## Recommendation #8: Improving ICANN's Request for Reconsideration Process



### 182 Summary

183 Currently, any person or entity may submit a Request for Reconsideration or review of an ICANN action or inaction as provided for in [Article IV, Section 2 of ICANN's Bylaws](#).

184 The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process, including:

- Expanding the scope of permissible requests.
- Extending the time period for filing a Request for Reconsideration from 15 to 30 days.
- Narrowing the grounds for summary dismissal.
- Making the ICANN Board of Directors responsible for determinations on all requests (rather than a committee handling staff issues).
- Making ICANN's Ombudsman responsible for initial substantive evaluation of the requests.

185 The CCWG-Accountability also proposes several enhancements to transparency requirements and firm deadlines in issuing of determinations, including:

- Recordings/transcripts of Board discussion should be posted at the option of the requestor.
- An opportunity to rebut the Board Governance Committee's (BGC's) final recommendation before a final decision by the ICANN Board should be provided.
- Adding hard deadlines to the process, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.

186 ICANN's Document and Information Disclosure Policy (DIDP) will be addressed in Work Stream 2. The CCWG-Accountability recommends that the policy should be improved to accommodate the legitimate need for requestors to obtain internal ICANN documents that are relevant to their requests.

## 187 **CCWG-Accountability Recommendations**

188 Modify [Article IV, Section 2 of ICANN's Bylaws](#) to reflect the following changes:

- Expanding the scope of permissible requests.
- Extending the time period for filing a Request for Reconsideration from 15 to 30 days.
- Narrowing the grounds for summary dismissal.
- Requiring determinations on all requests to be made by the ICANN Board of Directors (rather than a committee handling staff issues).
- Requiring ICANN's Ombudsman to make the initial substantive evaluation of the requests.
- Requiring recordings/transcripts of Board discussion to be posted at the option of the requestor.
- Providing a rebuttal opportunity to the BGC's final recommendation before a final decision by the ICANN Board.
- Adding hard deadlines to the process, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.

## 189 **Changes from the "Third Draft Proposal on Work Stream 1 Recommendations"**

- Conflicts in timing for Board approval addressed by changing 60 days to 75 days and the total of 120 days to 135 days.

## 190 **Relevant Annexes**

191 Annex 08 – Details on Recommendation #8: Improving ICANN's Request for Reconsideration Process

## Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws



### 192 Summary

193 Based on stress test analysis, the CCWG-Accountability recommends incorporating the reviews specified in the Affirmation of Commitments, a 2009 bilateral agreement between ICANN and the U.S. National Telecommunications and Information Administration (NTIA), into the ICANN Bylaws. This will ensure that community reviews remain a central aspect of ICANN's accountability and transparency framework.

194 Specifically, the CCWG-Accountability proposes to:

- Add the relevant ICANN Commitments from the Affirmation of Commitments into the ICANN Bylaws.
- Add the four review processes specified in the Affirmation of Commitments to the ICANN Bylaws, including:
  - Ensuring accountability, transparency, and the interests of global Internet users.
  - Enforcing ICANN's existing policy relating to WHOIS, subject to applicable laws.
  - Preserving security, stability, and resiliency of the Domain Name System (DNS).
  - Promoting competition, consumer trust, and consumer choice.

195 In addition, to support the common goal of improving the efficiency and effectiveness of reviews, ICANN will publish operational standards to be used as guidance by the community, ICANN staff and the Board in conducting future reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet the community's needs.

### 196 CCWG-Accountability Recommendations



197 The CCWG-Accountability evaluated the contingency of ICANN or NTIA unilaterally withdrawing from the Affirmation of Commitments (see information about Stress Test #14 in the “Detailed Explanation of Recommendations” section, below).

198 To ensure continuity of these key commitments, the CCWG-Accountability proposes the following two accountability measures:

- Preserve in the ICANN Bylaws any Relevant ICANN Commitments from the Affirmation of Commitments<sup>4</sup>
  - This includes Sections 3, 4, 7, and 8 of the Affirmation of Commitments. Sections 3, 4, 8a, and 8c would be included in the Core Values section of the ICANN Bylaws.
  - Part of the content of Section 8b of the Affirmation of Commitments (the part relating to the location of ICANN’s principal office), is already covered by ICANN Bylaws Article XVIII. Article XVIII is to be classified as a Standard Bylaw and is not to be moved into the Core Values section with material derived from Affirmation of Commitments Sections 8a and 8c.
  - Section 7 of the Affirmation of Commitments would be inserted as a new Section 8 in Article III, Transparency, of the ICANN Bylaws.
- Bring the Four Affirmation of Commitments Review Processes into the ICANN Bylaws
  - The following four reviews will be preserved in the reviews section of the Bylaws:
    - Ensuring accountability, transparency, and the interests of global Internet users.
    - Enforcing ICANN’s existing policy relating to WHOIS, subject to applicable laws.
    - Preserving security, stability, and resiliency of the DNS.
    - Promoting competition, consumer trust, and consumer choice.

199 After these elements of the Affirmation of Commitments are adopted in the ICANN Bylaws, the following should take place:

- ICANN and NTIA should mutually agree to terminate the Affirmation of Commitments.

<sup>4</sup> Sections 3, 4, 7, and 8 of the Affirmation of Commitments contain relevant ICANN commitments. The remaining sections in the Affirmation of Commitments are preamble text and commitments of the U.S. Government. As such, they do not contain commitments by ICANN, and cannot usefully be incorporated in the Bylaws.

- New review rules will prevail as soon as the Bylaws have been changed, but care should be taken when terminating the Affirmation of Commitments to not disrupt any Affirmation of Commitments reviews that may be in process at that time. Any in-progress reviews will adopt the new rules to the extent practical. Any planned Affirmation of Commitments review should not be deferred simply because the new rules allow up to five years between review cycles. If the community prefers to do a review sooner than five years from the previous review, that is allowed under the new rules.
- Through its Work Party IRP Implementation Oversight Team (WP-IRP IOT), the CCWG-Accountability will examine the suggestion to include a mid-term review of the Independent Review Process (IRP).
- To support the common goal of improving the efficiency and effectiveness of reviews, ICANN will publish operational standards to be used as guidance by the community, ICANN staff, and the Board in conducting future reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet the community's needs.
- These operational standards should include issues such as: composition of Review Teams, Review Team working methods (meeting protocol, document access, role of observers, budgets, decision making methods, etc.), and methods of access to experts. These standards should be developed with the community and should require community input and review to be changed. The standards are expected to reflect levels of detail that are generally not appropriate for governance documents, and should not require a change to the Bylaws to modify. This is an implementation issue aligned with the need for review of the proposed Bylaws text developed by the CCWG-Accountability that has been provided as guidance to legal counsel.

200 A section related to the IANA Function Review and Special IANA Function Review will fit into these new sections of the Bylaws and will be classified as Fundamental Bylaws. Specifications will be based on the requirements detailed by the CWG-Stewardship. It is anticipated that the Bylaw drafting process will include the CWG-Stewardship.

201 **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- The AoC text for Competition, Consumer Trust & Consumer Choice review is reintroduced.
- All AoC reviews (and the IFR and Special IFR) should be incorporated into the Bylaws.
- The WP-IRP IOT will examine the suggestion to include a mid-term review of the IRP. The ATRT scope will be expanded to suggest a review of the IRP (paragraph 89).
- The representation and number of seats on Review Teams that relate to gTLD reviews will remain unchanged from the Third Draft Proposal (paragraph 54).
- The Board amendment on WHOIS/future Registration Directory Services policy (paragraph 127) should be included.
- The ICANN Articles of Incorporation address ICANN's state of incorporation (or corporate domicile), and the ICANN Bylaws (Article XVIII) address the separate issue of the location of ICANN's principal office. Article XVIII of the ICANN Bylaws will be classified as a Standard Bylaw (see paragraph 5).

- The Board suggestion regarding AoC reviews operational standards to be developed as part of implementation should be included on the understanding that Recommendation #9 would be respected and that this text would address implementation details only (see paragraph 8).
- CCWG-Accountability lawyers advised clarifying “diversity” in paragraph 54 regarding composition of AoC Review Teams. CCWG-Accountability notes that “diversity” considerations could include geography, skills, gender, etc., and that chairs of participating ACs and SOs should have flexibility in their consideration of factors in selecting Review Team members.
- CCWG-Accountability lawyers suggested “the group of chairs can solicit additional nominees or appoint less than 21 members to avoid potential overrepresentation of particular ACs or SOs if some nominate less than 3 members.” The CCWG-Accountability proposed “up to 21”, so it is not actually proposing a fixed number of Review Team members. “Fixed” has been replaced with “limited” in paragraph 54. CCWG-Accountability purposely allowed AC/SO chairs to select additional Review Team members from ACs/SOs that had offered more than 3 candidates. This is to accommodate ACs/SOs that had greater interest in a review, such as the GNSO, which would be the most concerned with reviews of new gTLDs and WHOIS/Directory Services. Therefore, the representation and number of seats on the Review Team will remain unchanged from the Third Draft Proposal.
- Replaced “participants” with “observers” in paragraph 54.

## Relevant Annexes

- 202 Annex 09 – Details on Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN’s Bylaws

## Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees

### 203 Summary

204 The CCWG-Accountability recommends addressing the accountability of Supporting Organizations (SOs) and Advisory Committees (ACs) in a two-stage approach:

- In Work Stream 1: Include the review of SO and AC accountability mechanisms in the independent structural reviews performed on a regular basis.
- In Work Stream 2: Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.

### 205 CCWG-Accountability Recommendations

206 Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that the current mechanisms need to be enhanced in light of the new responsibilities associated with the Work Stream 1 recommendations.

207 The CCWG-Accountability recommends the following.

208 **Work Stream 1:**

209 Include the review of SO and AC accountability mechanisms in the independent periodical structural reviews that are performed on a regular basis.

- These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.
- This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as:

*The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.*

- The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws, the Accountability and Transparency Review will include the following among the issues that merit attention in the review:

*assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*

210 **Work Stream 2:**

211 Include the subject of SO and AC accountability as part of the Accountability and Transparency Review process.

- Evaluate the proposed "Mutual Accountability Roundtable" to assess its viability and, if viable, undertake the necessary actions to implement it.<sup>5</sup>

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<sup>5</sup> CCWG-Accountability Advisor Willie Currie introduced a short description of the mutual accountability roundtable: *The idea of mutual accountability is that multiple actors are accountable to each other. How might this work in ICANN? It would be necessary to carve out a space within the various forms of accountability undertaken within ICANN that are of the principal-agent variety. So where the new Community Powers construct the community as a principal who calls the Board as agent to account, a line of mutual accountability would enable all ICANN structures to call one another to account. So one could imagine a Mutual Accountability Roundtable that meets at each ICANN meeting, perhaps replacing the current Public Forum. The form would be a roundtable of the Board, CEO, and all Supporting Organizations and Advisory Committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year who would be responsible for facilitating each Mutual Accountability Roundtable. Each Roundtable may pick one or two key topics to examine. Each participant could give an account of how his or her constituency addressed the issue, indicating what worked and didn't work. This could be followed by a discussion on how to improve matters of performance. The purpose would be to create a space for mutual accountability as well as a learning space for improvement.*

- Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.

212 Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities.

213 **Changes Made Since the Third Draft Proposal**

- Added: The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws, the Accountability and Transparency Review will include the following among the issues that merit attention in the review:

*assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*

- In Work Stream 2 recommendations, added: Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.

214 **Relevant Annexes**

215 Annex 10 – Details on Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees

## Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)

### 216 Summary

217 Currently, Governmental Advisory Committee (GAC) advice to the ICANN Board has special status as described in the ICANN Bylaws Article XI, Section 2:

*j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*

218 Stress Test #18 considers a scenario where ICANN's GAC would amend its operating procedures to change from consensus decisions (no objections) to majority voting for advice to the ICANN Board. Since the Board must seek a mutually acceptable solution if it rejects GAC advice, concerns were raised that the ICANN Board could be forced to arbitrate among sovereign governments if they were divided in their support for the GAC advice on public policy matters.

219 In addition, if the GAC lowered its decision threshold while also participating in the new Empowered Community (if the GAC chooses to so participate), some stakeholders believe that this could increase government influence over ICANN.

220 In order to mitigate these concerns, the CCWG-Accountability is recommending changes be made to the ICANN Bylaws relating to GAC advice.

### 221 CCWG-Accountability Recommendations

222 The CCWG-Accountability recommends that the following changes be made to the ICANN Bylaws Article XI, Section 2 (emphasis added):

223 *j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. **Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of 60% of the Board**, and the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*

224 This recommendation is intended only to limit the conditions under which the ICANN Board and GAC must "try to find a mutually acceptable solution," as required in ICANN's current Bylaws. This recommendation shall not create any new obligations for the ICANN Board to

consider, vote upon, or to implement GAC advice, relative to the Bylaws in effect prior to the IANA Stewardship Transition. This recommendation does not create any presumption or modify the standard applied by the Board in reviewing GAC advice.

225 The GAC has the autonomy to refine its operating procedures to specify how objections are raised and considered (for example, disallowing a single country to continue an objection on the same issue if no other countries will join in an objection). When transmitting consensus advice to the ICANN Board for which the GAC seeks to receive special consideration, the GAC has the obligation to confirm the lack of any formal objection.

226 The CCWG-Accountability recommends inserting a requirement that all ACs provide a rationale for their advice. A rationale must be provided for formal advice provided by an Advisory Committee to the ICANN Board. The Board shall have the responsibility to determine whether the rationale provided is adequate to enable determination of whether following that advice would be consistent with ICANN's Bylaws.

227 To address concerns regarding GAC advice that is inconsistent with the ICANN Bylaws, the CCWG-Accountability recommends adding this clarification for legal counsel to consider when drafting Bylaws language:

*ICANN cannot take action - based on advice or otherwise – that is inconsistent with its Bylaws. While the GAC is not restricted as to the advice it can offer to ICANN, it is clear that ICANN may not take action that is inconsistent with its Bylaws. Any aggrieved party or the Empowered Community will have standing to bring claims through the IRP that the Board acted (or failed to act) in a manner inconsistent with the ICANN Articles of Incorporation or Bylaws, even if the Board acted on GAC advice.*

228 Note: The language proposed in recommendations for ICANN Bylaw revisions are conceptual in nature at this stage. The CCWG-Accountability's external legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.

## 229 **Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- Changed the 2/3rds threshold for the Board rejecting GAC consensus advice to 60%. As part of the compromise, this required changes in Recommendations #1 and #2 to implement a GAC “carve out.”

## 230 **Relevant Annexes**

231 Annex 11 – Details on Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)

## Recommendation #12: Committing to Further Accountability Work in Work Stream 2

### 232 **Summary**

233 The CCWG-Accountability Work Stream 2 is focused on addressing those accountability topics for which a timeline for developing solutions may extend beyond the IANA Stewardship Transition.

234 As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms:

- Considering improvements to ICANN's standards for diversity at all levels.
- Staff accountability.
- Supporting Organizations and Advisory Committee accountability.
- Improving ICANN's transparency with a focus on:
  - Enhancements to ICANN's existing Documentary Information Disclosure Policy (DIDP).
  - Transparency of ICANN's interactions with governments.
  - Improvements to the existing whistleblower policy.
  - Transparency of Board deliberations.
- Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment and proposed Draft Bylaw.
- Addressing jurisdiction-related questions, namely: "Can ICANN's accountability be enhanced depending on the laws applicable to its actions?" The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements.
- Considering enhancements to the Ombudsman's role and function.

235 The CCWG-Accountability expects to begin refining the scope of Work Stream 2 during the upcoming [ICANN55 Meeting](#) in March 2016. It is intended that Work Stream 2 recommendations will be published for comments by the end of 2016.

236 The community raised concerns that after the IANA Stewardship Transition, there may be a lack of incentive for ICANN to implement the proposal arising out of Work Stream 2. To prevent this scenario, the CCWG-Accountability recommends that the ICANN Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability Work Stream 2 recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. In a [letter](#) dated 13 November 2015, the ICANN Board confirmed its intent to work with the ICANN community and to provide adequate support for work on these issues.

### 237 **CCWG-Accountability Recommendations**

238 The CCWG-Accountability recommends that the Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability consensus recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1

recommendations. The Bylaw would task the group with creating further enhancements to ICANN's accountability limited to the Work Stream 2 list of issues:

- Considering improvements to ICANN's standards for diversity at all levels.
- Staff accountability.
- Supporting Organizations and Advisory Committee accountability.
  - Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.
  - Evaluate the proposed "Mutual Accountability Roundtable" to assess viability.
  - Propose a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2.
  - Assess whether the IRP would also be applicable to SO and AC activities.
- Improving ICANN's transparency with a focus on:
  - Enhancements to ICANN's existing DIDP.
  - Transparency of ICANN's interactions with governments.
  - Improvements to the existing whistleblower policy.
  - Transparency of Board deliberations.
- Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment and proposed Draft Bylaw.
- Addressing jurisdiction-related questions, namely: "Can ICANN's accountability be enhanced depending on the laws applicable to its actions?" The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements.
- Considering enhancements to the Ombudsman's role and function.

239 The CCWG-Accountability notes that further enhancements to ICANN accountability can be accommodated through the accountability review process (see Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees) or through specific, ad hoc, cross community working group initiatives.

240 **Changes from the "Third Draft Proposal on Work Stream 1 Recommendations"**

- Interim Bylaws clarifications to address Board's concerns by highlighting that Work Stream 2 will be following similar rules as Work Stream 1: consensus recommendations, endorsement by Chartering Organizations, ability for the Board to engage in special dialogue, 2/3 threshold for such Board decision, etc.
- Edits to the documents will include focus on fact that Work Stream 2 deliberations will be open to all (similar to Work Stream 1).
- List of Work Stream 2 items is "limited to" instead of "related to." A note is added that clarifies that further items beyond this list can be accommodated through regular review cycles, or specific CCWG-Accountability.

- Timeframe discussion: target dates are needed, but hard deadlines would not be appropriate or helpful.
- Agreed to incorporate Public Experts Group (PEG) Advisor input to strengthen the diversity requirement.
- Enhancing the Ombudsman role and function is confirmed as a Work Stream 2 item.
- Re-inserted staff accountability requirement.

241 **Relevant Annexes**

242 Annex 12 – Details on Recommendation #12: Committing to Further Accountability Work in Work Stream 2

## Conclusion

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- 243 The CCWG-Accountability believes that the set of accountability mechanisms it has proposed, outlined above, empowers the community through the use of the bottom-up, multistakeholder model by relying on of the stakeholders within ICANN's existing and tested community structures. Furthermore, the CCWG-Accountability believes that this community-driven model is appropriate for replacing the accountability inherent in ICANN's historical relationship with the U.S. Government.

### **Community Powers are an Effective Replacement of the Safety Net Provided by the U.S. Government's Current IANA Stewardship Role**

- 244 The CCWG-Accountability believes that the Seven Community Powers, as a package, can effectively replace the safety net that the U.S. Government has provided to date as part of its oversight role. It is recommended that these powers need to be enforced by a court of law only as a last resort. The CCWG-Accountability has based its recommendations on existing structures and recommends:
- Considering the entire community as ICANN's Empowered Community.
  - Ensuring no part of the community has more rights than another part, either by having the ability to push through its individual interests or by blocking community consensus. The CCWG-Accountability has ensured that no Community Powers or statutory rights can be exercised singlehandedly.
  - Ensuring the community can only jointly exercise its powers using a consensus-based model.

### **The CCWG-Accountability Believes that the Recommended Accountability Frameworks Provided in this Proposal Meet the Requirements of the Domain Names Community and the IANA Stewardship Transition Proposal**

- 245 The CCWG-Accountability will seek confirmation from the Cross Community Working Group that developed the IANA Stewardship Transition that this Proposal meets its requirements.
- 246 The CCWG-Accountability believes that its Proposal also meets the requirements NTIA published for the transition and will present its analysis of this in the full Proposal.

# List of Annexes & Appendices

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- ⊙ **Annex 1** – Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers
- ⊙ **Annex 2** – Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement
- ⊙ **Annex 3** – Recommendation #3: Redefining ICANN’s Bylaws as “Standard Bylaws” and “Fundamental Bylaws”
- ⊙ **Annex 4** – Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers
- ⊙ **Annex 5** – Recommendation #5: Changing aspects of ICANN’s Mission, Commitments, and Core Values
- ⊙ **Annex 6** – Recommendation #6: Reaffirming ICANN’s Commitment to Respect Internationally Recognized Human Rights as it Carries Out its Mission
- ⊙ **Annex 7** – Recommendation #7: Strengthening ICANN’s Independent Review Process
- ⊙ **Annex 8** – Recommendation #8: Improving ICANN’s Request for Reconsideration Process
- ⊙ **Annex 9** – Recommendation #9: Incorporating the Affirmation of Commitments Reviews in ICANN’s Bylaws
- ⊙ **Annex 10** – Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees
- ⊙ **Annex 11** – Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)
- ⊙ **Annex 12** – Recommendation #12: Committing to Further Accountability Work in Work Stream 2
- ⊙ **Annex 13** – CWG-Stewardship Requirements of the CCWG-Accountability
- ⊙ **Annex 14** – Meeting NTIA’s Criteria for the IANA Stewardship Transition
- ⊙ **Annex 15** – Stress Testing

- ⊙ **Appendix A** – Documenting Consensus (Including Minority Views)
- ⊙ **Appendix B** – Charter
- ⊙ **Appendix C** – Background & Methodology
- ⊙ **Appendix D** – Engagement and Participation Summaries (Summary and Documenting Public Consultations)
- ⊙ **Appendix E** – Initial Work to Determine Focus of the Work Stream 1 Proposal
- ⊙ **Appendix F** – Legal Counsel
- ⊙ **Appendix G** – Legal Documents
- ⊙ **Appendix H** – Bylaws Drafting process & Implementation Timeline
- ⊙ **Appendix I** – Affirmation of Commitments
- ⊙ **Appendix J** – Glossary
- ⊙ **Appendix K** – Co-Chairs’ Special Appreciation of Staff and Rapporteurs Efforts

# Annex 01 – Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers

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## 1. Summary

- 01 Under California law and the current Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN), the ICANN Board of Directors has the final responsibility for the activities and affairs of ICANN.
- 02 With removal of the U.S. National Telecommunications and Information Administration (NTIA) as a perceived enforcement body over ICANN, the CCWG-Accountability requires a method to ensure that decisions produced by community accountability mechanisms can be enforced, including in situations where the ICANN Board may object to the results.
- 03 The CCWG-Accountability recommends creating a new entity that will act at the direction of the multistakeholder community to exercise and enforce Community Powers. The entity will take the form of a California unincorporated association and be given the role of “Sole Designator” of ICANN Board Directors and will have the ability to directly or indirectly the Community Powers. The entity will be referred to as the “Empowered Community.”
- 04 As permitted under California law, the Empowered Community will have the statutory power to appoint and, with that, the statutory power to remove ICANN Board Directors (whether an individual Director or the entire Board). Other powers, such as the power to approve or reject amendments to the Articles of Incorporation and Bylaws, may be provided to the Empowered Community.
- 05 The CCWG-Accountability accepts that its statutory power will be limited as described above, and that this is sufficient given:
  - The creation of “Fundamental Bylaws” that can only be modified jointly by the ICANN Board and Empowered Community.
  - All recommended Work Stream 1 accountability mechanisms are constituted as Fundamental Bylaws.
  - The right of inspection is granted to “Decisional Participants” in the Empowered Community.
  - The right of investigation is granted to the Decisional Participants in the Empowered Community.
- 06 The process for the Empowered Community to use a Community Power is outlined in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.

## 2. CCWG-Accountability Recommendations

- 07 The CCWG-Accountability recommends creating an entity that will act at the direction of the community to exercise and enforce Community Powers:
- This entity will take the form of a California unincorporated association and be given the role of Sole Designator of ICANN Board Directors and will have the ability to directly or indirectly enforce the Community Powers. This entity will be referred to as the Empowered Community.
  - The Empowered Community will act as directed by participating Supporting Organizations (SOs) and Advisory Committees (ACs), which will be referred to as the Decisional Participants in the Empowered Community.
  - The Empowered Community, and the rules by which it is governed, will be constituted in ICANN's Fundamental Bylaws, along with provisions to ensure the Empowered Community cannot be changed or eliminated without its own consent (see Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation).
  - The Articles of Incorporation will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process.
- 08 Additionally, the CCWG-Accountability recommends including in the ICANN Bylaws:
- The right for Decisional Participants in the Empowered Community to inspection as outlined in California Corporations Code 6333, although this specific code reference would not be mentioned in the Bylaws.
  - The right of investigation, which includes the adoption of the following audit process: upon three Decisional Participants in the Empowered Community coming together to identify a perceived issue with fraud or gross mismanagement of ICANN resources, ICANN will retain a third-party, independent firm to undertake a specific audit to investigate that issue. The audit report will be made public, and the ICANN Board will be required to consider the recommendations and findings of that report.
  - The following limitation associated with the Governmental Advisory Committee (GAC) acting as a Decisional Participant: If the GAC chooses to participate as a Decisional Participant in the Empowered Community, it may not participate as a decision-maker in the Empowered Community's exercise of a Community Power to challenge the ICANN Board's implementation of GAC consensus advice (referred to as the "GAC carve-out").
- In such cases, the GAC will still be entitled to participate in the Empowered Community in an advisory capacity in all other aspects of the escalation process, but its views will not count towards or against the thresholds needed to initiate a conference call, convene a Community Forum or exercise the Community Power.
- The GAC carve-out preserves the ICANN Board's unique obligation to work with the GAC to try to find a mutually acceptable solution to the implementation of GAC advice supported by consensus (as defined in Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18)) while protecting the Empowered Community's power to challenge such Board decisions.

## 3. Detailed Explanation of Recommendations

### 09 Background

- 10 With removal of NTIA as a perceived enforcement body over ICANN, the CCWG-Accountability requires a method to ensure that decisions produced by community accountability mechanisms can be enforced, including in situations where the Board may object to the results.

### 11 Objectives

- 12 In developing a mechanism to ensure the community can effectively enforce its decisions, the CCWG-Accountability agreed to:
- Minimize the degree of structural or organizational changes required in ICANN to create the mechanism for these powers.
  - Organize the mechanism in line and compatible with the current ICANN SO and AC structures (with flexibility to evolve these structures in the future).
  - Address the dependencies of the CWG-Stewardship.
  - Provide the following powers and rights that would be constituted in the Fundamental Bylaws and would also be legally enforceable:
    - The power to reject ICANN Budgets, IANA Budgets or Strategic/Operating Plans (CWG-Stewardship dependency).
    - The power to reject changes to ICANN Standard Bylaws.
    - The power to approve changes to Fundamental Bylaws (CWG-Stewardship dependency) and changes to the Articles of Incorporation, and to approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
    - The power to remove individual ICANN Board Directors (along with appointment, CWG-Stewardship dependency).
    - The power to recall the entire ICANN Board (CWG-Stewardship dependency).
    - The power to launch a community Independent Review Process (along with an appeal mechanism for issues relating to the IANA functions, CWG-Stewardship dependency) or Request for Reconsideration.
    - The power to reject ICANN Board decisions relating to reviews of the IANA functions, including the procedure to implement a separation process relating to Post-Transition IANA (CWG-Stewardship dependency).
    - The rights of inspection and investigation.

### 13 Why the Sole Designator Model?

#### Concerns with Supporting Organization/Advisory Committee Membership Model

- 14 The CCWG-Accountability's "[Initial Draft Proposal on Work Stream 1 Recommendations](#)" proposed a Supporting Organization/Advisory Committee Membership Model as the reference model for the community enforcement mechanism. However, in the Public Comment Period, 4

May – 3 June 2015, significant concerns were expressed and the CCWG-Accountability initiated work on alternative solutions.

15 A core concern of the Supporting Organization/Advisory Committee Membership Model was the ability of the ICANN community to fully participate in the new accountability framework, and was integral to the work in devising a new approach.

16 The CCWG-Accountability’s [“Second Draft Proposal on Work Stream 1 Recommendations”](#) proposed a “Sole Member” model instead of the Supporting Organization/Advisory Committee Membership Model.

### 17 **Concerns with a Sole Member Model**

18 In the Public Comment Period on the “Second Draft Proposal on Work Stream 1 Recommendations,” concerns were raised about the Sole Member model. Under California law, Members have certain statutory powers that cannot be waived. Commenters expressed concern that these rights, such as the ability to dissolve the corporation, could not be adequately constrained and might have unintended and unanticipated consequences.

### 19 **The Sole Designator Model**

20 To address the concerns described above, the CCWG-Accountability now recommends implementing a “Sole Designator” model. The Empowered Community will have the statutory power to appoint and, with that, the statutory power to remove individual ICANN Board Directors or the entire Board, which is a requirement of the CCWG-Accountability and the CWG-Stewardship.

21 This removes the concerns related to unintended and unanticipated consequences of the additional statutory powers associated with a Member. Other powers, such as the power to approve or reject amendments to the Articles of Incorporation and Bylaws, may be provided to the Empowered Community.

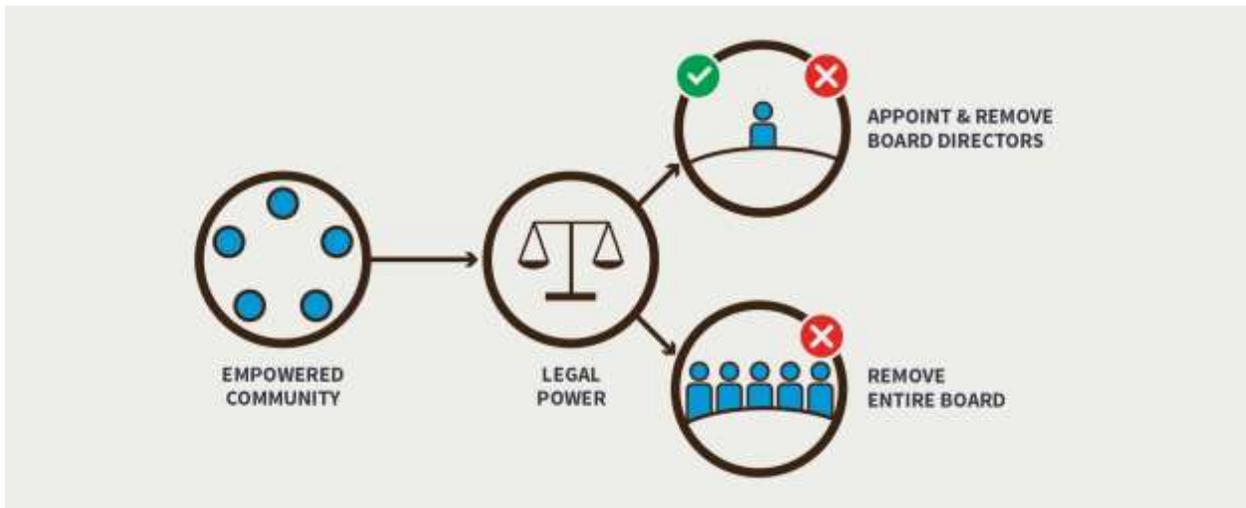
- Given that the right to inspect, as outlined in California Corporations Code 6333, is not a statutory right of a Sole Designator, and that the community felt this was a critical requirement, the CCWG-Accountability recommends this right be granted to Decisional Participants in the Empowered Community in the Fundamental Bylaws.

22 The CCWG-Accountability’s external legal counsel informed the group that adopting a Sole Designator model could effectively be implemented while meeting the community’s requirements and having minimal impact on the corporate structure of ICANN.

### 23 **Legal Advice on Implementing the Empowered Community**

24 To implement the Sole Designator model, ICANN’s SOs and ACs would create a unified entity to enforce their Community Powers. This unified entity will be referred to as the Empowered Community.

25 The Empowered Community will have the right to appoint and remove ICANN Board Directors, whether individually or in its entirety.



- 26 If the ICANN Board refused to comply with a decision by the Empowered Community to use the statutory rights, the refusal could be petitioned in a court that has jurisdiction to force the ICANN Board to comply with that decision.
- 27 The CCWG-Accountability accepts that its statutory power will be limited as described above and that this is sufficient given:

**1. All of the recommended Work Stream 1 accountability mechanisms are constituted as Fundamental Bylaws and protected from any changes without Empowered Community approval.**

- This includes the Independent Review Process (IRP), which issues binding decisions. This also includes the Empowered Community’s power to launch a community IRP challenge if it believes the ICANN Board is in breach of its Articles of Incorporation or Bylaws.<sup>1</sup>
- The ICANN Board would be in breach of its own Bylaws if it refused to comply with a decision by the Empowered Community with respect to an accountability mechanism defined in the Fundamental Bylaws.
- If a community IRP challenge with respect to such a decision is successful and the Board still refused to comply with the decision, the Empowered Community could petition a court that has jurisdiction to force the ICANN Board to comply with that decision.
- Alternatively, the Empowered Community could remove the Board with the expectation that the new Board would respect the decision.

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<sup>1</sup> For example, if the Board were not to accept the decision of the Empowered Community to use one of its Community Powers. Community Powers are documented in Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers.

**2. The Empowered Community has legal standing as a California unincorporated association.**

- The Empowered Community will act as directed by participating SOs and ACs (the Decisional Participants in the Empowered Community).

**3. The Empowered Community and the rules by which it is governed will be constituted as a Fundamental Bylaw, along with provisions in the Articles of Incorporation and Bylaws to protect it from any changes without its own approval.**

**4. The Articles of Incorporation will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process.**

- Note: Legal counsel indicated that the Articles of Incorporation could be amended to ensure that the ICANN Board must consider the community’s interpretation of the “global public interest” as ICANN pursues the charitable and public purposes set forth in Article III. The CCWG-Accountability recommends this change as part of the shift from a Sole Member to a Sole Designator model. The Articles will be amended to clarify that the global public interest will be determined through a bottom-up, multistakeholder process.

28 **Additional Rights Granted by Inclusion in the ICANN Bylaws**

29 **Right to inspect accounting books and records of ICANN**

30 In addition to the statutory rights that the Empowered Community will have and the new Community Powers described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers, the CCWG-Accountability recommends including in the ICANN Fundamental Bylaws the right for Decisional Participants in the Empowered Community to inspect as outlined in California Corporations Code 6333, although this specific code reference would not be mentioned in the Bylaws.

31 This inspection right is distinct from the Document Information Disclosure Policy (DIDP). While any eligible party can file a request according to the DIDP, inspection rights are only accessible to Decisional Participants in the Empowered Community. The scopes are also different as explained below.

32 This inspection right would include the accounting books and records of ICANN, and the minutes of proceedings of the Board of Directors and committees of the Board of Directors, on the conditions discussed below. Since ICANN will not have statutory “members,” the right to inspect “member” meeting minutes would not apply.

33 Although the Corporations Code does not define “books and records of account,” the term is generally understood to refer to the journals and ledgers in which financial transactions are originally entered and recorded, and the statements compiled from them. The term generally does not extend to source documents on which books and records of account are based, such as canceled checks and invoices. Similarly, the term generally encompasses documents relevant to the operation of the corporation as a whole, and not to those relevant to only a small or isolated aspect of the corporation’s operations.

34 Authority under Section 6333 is sparse, but it is nonetheless clear that a “purpose reasonably related to [a] person’s interests as a member” does not include a member’s commercial or political interests, harassment, or massive and repeated inspection demands probing the

minutiae of financial records and details of management and administration. Similar limitations will be applied to rights of inspection provided by the Bylaws.

35 Unlike the exercise of the other Community Powers, which require community engagement and escalation before initiating a request for action by the Empowered Community, the CCWG-Accountability recommends that a petition for inspection be brought directly by a single Decisional Participant in the Empowered Community or by multiple Decisional Participants in the Empowered Community through making a written demand on ICANN for the requested materials. If the Board refuses or ignores the request, the petitioning Decisional Participant(s) could enforce its inspection right directly through the IRP or by petitioning the Empowered Community to initiate the escalation processes for a community IRP or for removing the Board.

### 36 **Investigation right**

37 There could be events where the community might wish to have additional power of transparency into investigations of potential fraud or financial mismanagement in ICANN.

38 To address these concerns, the CCWG-Accountability recommends the adoption of the following audit process: Upon three Decisional Participants in the Empowered Community coming together to identify a perceived issue with fraud or gross mismanagement of ICANN resources, ICANN will retain a third-party, independent firm to undertake a specific audit to investigate that issue. The audit report will be made public, and the ICANN Board will be required to consider the recommendations and findings of that report.

39 This right of investigation would be included in the ICANN Fundamental Bylaws.

### 40 **The Empowered Community**

41 Implementation of the Empowered Community currently anticipates that all of ICANN's SOs, the At-Large Advisory Committee (ALAC), and the GAC (if the GAC chooses to participate) would participate in the Empowered Community—that is, they will be listed in the Bylaws as the five Decisional Participants.

42 However, if the GAC chooses to participate as a Decisional Participant in the Empowered Community, it may not participate as a decision-maker in the Empowered Community's exercise of a Community Power to challenge the ICANN Board's implementation of GAC consensus advice (referred to as the "GAC carve-out"). In such cases, the GAC will still be entitled to participate in the Empowered Community in an advisory capacity in all other aspects of the escalation process, but its views will not count towards or against the thresholds needed to initiate a conference call, convene a Community Forum or exercise the Community Power.

43 The GAC carve-out preserves the ICANN Board's unique obligation to work with the GAC to try to find a mutually acceptable solution to the implementation of GAC advice supported by consensus (as defined in Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice [Stress Test 18]) while protecting the Empowered Community's power to challenge such Board decisions.

44 Clarifications relating to the GAC carve-out:

- The GAC carve-out will only apply to Empowered Community challenges to ICANN Board actions that were based on GAC consensus advice, meaning the GAC advice was "approved by general agreement in the absence of any formal objection." The GAC carve-out will not apply to Empowered Community challenges to Board decisions that were based on GAC advice that was not supported by consensus (i.e., not "approved by general agreement in the absence of any formal objection").

- Process for identifying GAC consensus advice, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, and applying the GAC carve-out:
  - GAC confirmation: When the GAC provides advice to the Board, the GAC will need to indicate whether the advice was approved by consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.
  - Board confirmation: When the Board takes action that is based on GAC consensus advice, the Board will need to state in its resolution that its decision was based on GAC consensus advice.
  - GAC carve-out identified in petition to use Community Power: When a Board action that is based on GAC consensus advice is challenged, the petitioning SO or AC will need to indicate in the initial petition that the matter meets the requirements for the GAC carve-out and clearly identify the applicable Board action and GAC consensus advice at issue. The decision thresholds (as revised when the GAC carve-out is invoked in accordance in Annex 2) required for the escalation and enforcement processes will need to be met for the Community Power that is being exercised.
- Timing for invoking the GAC carve-out: The petitioning SO or AC will need to indicate in the initial petition to the Empowered Community that the matter meets the requirements for the GAC carve-out. Therefore, the timing restrictions for this aspect of the escalation process will apply (i.e., the petition must be brought within 21 days of a Board decision being published). While this addresses timing of the Board challenge, the Board decision that is being challenged could be based on standing GAC consensus advice that the GAC had provided at an earlier date.

<sup>45</sup> The thresholds presented in this document were determined based on five Decisional Participants. If fewer than five of ICANN's SOs and ACs agree to be Decisional Participants, these thresholds for consensus support may be adjusted. Thresholds may also have to be adjusted if ICANN changes to have more SOs or ACs.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- Scope and limitations with respect to the right to inspect accounting books and records of ICANN confirmed, emphasizing the difference between DIDP and inspection rights.
- Added inspection rights for accounting books and records and minutes based on a one Decisional Participant threshold.
- Introduced additional suggestion by the ICANN Board regarding investigation right (audits), based on three Decisional Participants in the Empowered Community threshold.
- Confirmed direction for implementation to avoid abusive claims.
- Compromise on Recommendation #11 required the creation of the “GAC carve-out.”

## 5. Stress Tests Related to this Recommendation

- ST5, 6, 7, 8, 9 10, 16, 24
- ST28
- ST31, 32, 36

## 6. How does this meet the CWG-Stewardship Requirements?

- 46 These recommendations meet the CWG-Stewardship requirement that the CCWG-Accountability recommend the creation of community rights regarding the ability to appoint/remove Directors of the ICANN Board and recall the entire ICANN Board.

## 7. How does this address NTIA Criteria?

47 **Support and enhance the multistakeholder model.**

- Decentralizing power within ICANN through an Empowered Community.
  - Providing a legal set of powers to the community while avoiding the risks of making changes to ICANN's organizational structure.
- 

48 **Maintain the security, stability, and resiliency of the Internet DNS.**

- Creates an effective system of checks and balances on the ICANN Board, which could affect the security, stability and resiliency of the Internet DNS.
- 

49 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- Provides a clear set of mechanisms and processes for how the community can participate in and interact with the Empowered Community.
- 

50 **Maintain the openness of the Internet.**

- Preserving policies of open participation in ICANN's SOs and ACs.
  - Retaining decision-making based on consensus rather than voting.
- 

51 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- To the extent the Government Advisory Committee (GAC) wishes to participate in decision-making by the Empowered Community, which the GAC has the flexibility to determine, it would be one of five Decisional Participants. In addition, the GAC will not participate as a decision-maker in community deliberations involving a challenge to the Board's implementation of GAC consensus advice. This "carve out," combined with the safeguards in Recommendation #11, leads the CCWG-Accountability to believe that this NTIA requirement is met, even when considering the increased threshold from 50 to 60% for the Board to reject GAC consensus advice.
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# Annex 02 – Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement

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## 1. Summary

### 01 Engagement

02 Today, the Internet Corporation for Assigned Names and Numbers (ICANN) Board of Directors voluntarily consults with the multistakeholder community on a variety of decisions, including the Annual Budget and changes to the ICANN Bylaws. To gather feedback, the ICANN Board uses mechanisms such as public consultations and information sessions to gauge community support and/or identify issues on the topic. These consultation mechanisms are referred to as an “engagement process.”

03 The CCWG-Accountability is recommending that engagement processes for specific ICANN Board actions be constituted in the Fundamental Bylaws. Although the ICANN Board engages voluntarily in these processes today, this recommendation would formally require the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:

- Approving ICANN’s Five-Year Strategic Plan.
- Approving ICANN’s Five-Year Operating Plan.
- Approving ICANN’s Annual Operating Plan & Budget.
- Approving the Internet Assigned Numbers Authority (IANA) Functions Budget.
- Approving any modifications to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN’s sale or other disposition of all or substantially all of ICANN’s assets.
- Making ICANN Board decisions relating to reviews of IANA functions, including the triggering of any Post-Transition IANA (PTI) separation process.

04 If it is determined that there is divergence between the ICANN Board and the community after the engagement process, the Empowered Community (as defined in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers) may decide to use a Community Power after the appropriate “escalation process” has been satisfied.

05 The Empowered Community may begin an escalation process to:

- Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget, or the IANA Functions Budget.
- Reject a change to ICANN Standard Bylaws.

- Approve changes to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
- Remove an individual ICANN Board Director.
- Recall the entire ICANN Board.
- Initiate a binding community Independent Review Process (IRP), where a panel decision is enforceable in any court recognizing international arbitration results, or a non-binding Request for Reconsideration, where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff.
- Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.

06 **Escalation**

07 The escalation process can differ, sometimes significantly, from one Community Power to another.

08 One of the most standardized versions of the escalation process is required for all Community Powers to “reject,” remove individual Nominating Committee-nominated Board Directors, or recall the entire Board.

09 **This escalation process comprises the following steps:**

1. An individual starts a petition in a Supporting Organization (SO) or Advisory Committee (AC) that is a Decisional Participant in the Empowered Community (see Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers).
  - If the petition is approved by that SO or AC, it proceeds to the next step.
  - If the petition is not approved by that SO or AC, the escalation process is terminated.
2. The SO or AC that approved the petition contacts the other Decisional Participants to ask them to support the petition.
  - At least one additional SO and/or AC must support the petition (for a minimum of two or, for Board recall, three) for a Community Forum to be organized to discuss the issue.
    - If the threshold is not met, the escalation process is terminated.
    - If the threshold is met, a Community Forum is organized to discuss the petition.
3. An open Community Forum of one or two days is organized for any interested stakeholder in the community to participate.
  - The petitioning SO and/or AC will:
    - Circulate a detailed rationale for proposing to use the Community Power to all Decisional Participants.
    - Designate a representative(s) to liaise with SOs/ACs to answer questions from the SOs/ACs.
    - If desired, optionally, request that ICANN organize a conference call prior to the Community Forum for the community to discuss the issue.

- If the ICANN Board and the Empowered Community can resolve their issues before or in the Community Forum, the escalation process is terminated.
  - Otherwise, the Empowered Community must decide if it wishes to use its Community Power.
4. The Empowered Community considers use of a Community Power.
    - If the threshold to use a Community Power is not met, or there is more than one objection, then the escalation process is terminated.
    - If the threshold is met for using the Community Power, and there is no more than one objection, the Empowered Community advises the ICANN Board of the decision and directs it to comply with the decision (as outlined in the Fundamental Bylaws for this Community Power).
  5. The Empowered Community advises the ICANN Board.
    - If the Empowered Community has decided to use its power, it will advise the ICANN Board of the decision and direct the Board to take any necessary action to comply with the decision.

## 10 **Enforcement**

- 11 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community using a Community Power (other than a decision to remove an individual Director or the entire ICANN Board pursuant to the Empowered Community's statutory power, as discussed below), the Empowered Community must decide if it wishes to begin the enforcement process.
- 12 The enforcement process can proceed in one of two ways:
  - The Empowered Community may initiate mediation and community IRP procedures.
  - The Empowered Community may initiate an escalation process to recall the entire ICANN Board.
- 13 The enforcement process may result in a resolution of the issue. Otherwise, if needed, the result of the enforcement process is enforceable in court.
- 14 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use the statutory power to remove an individual ICANN Director or recall the entire ICANN Board (or with the Empowered Community's appointment of a Director), the Empowered Community could address that refusal by bringing a claim in a court that has jurisdiction; there is no need for the Empowered Community to initiate or undertake other enforcement processes such as mediation or an IRP to enforce the power.

## **2. CCWG-Accountability Recommendations**

- 15 Establish a Fundamental Bylaw that requires the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:
  - Approving ICANN's Five-Year Strategic Plan.

- Approving ICANN's Five-Year Operating Plan.
  - Approving ICANN's Annual Operating Plan & Budget.
  - Approving the IANA Functions Budget.
  - Approving any modification to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  - Making any ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.
- 16 Include the engagement, escalation and enforcement processes in the Fundamental Bylaws.
- Note: The escalation processes for each Community Power are outlined in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.

### 3. Detailed Explanation of Recommendations

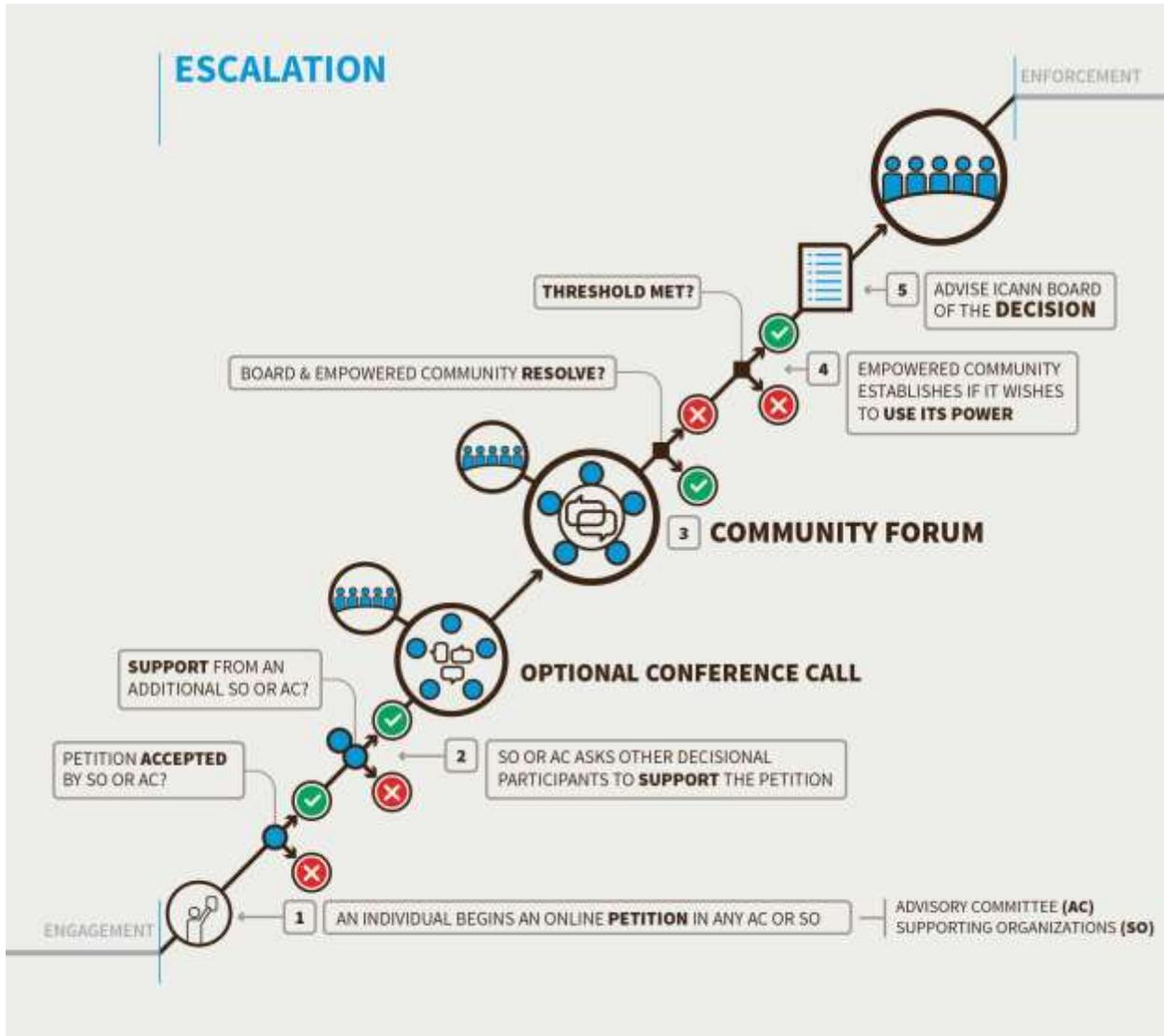
#### 17 Engagement

- 18 Today, the ICANN Board voluntarily consults with the community on a variety of decisions, such as the Annual Budget and changes to the ICANN Bylaws. To gather feedback, the ICANN Board uses mechanisms, such as public consultations, to gauge community support and/or identify issues on the topic. These consultation mechanisms are referred to as an engagement process.
- 19 The CCWG-Accountability is recommending that this engagement process be constituted in the Fundamental Bylaws. Although the ICANN Board already convenes this process, this recommendation would require the ICANN Board to undertake an extensive engagement process (including, at a minimum, a full public consultation process that complies with ICANN rules for public consultations) before taking action on any of the following:
- Approving ICANN's Five-Year Strategic Plan.
  - Approving ICANN's Five-Year Operating Plan.
  - Approving ICANN's Annual Operating Plan & Budget.
  - Approving the IANA Functions Budget.
  - Approving any modification to Standard or Fundamental Bylaws or the Articles of Incorporation, or approving ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  - Making any ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.
- 20 If it is determined that there is divergence between the ICANN Board and the community during the engagement process, the Empowered Community may decide to use a Community Power after the appropriate escalation process is satisfied.
- 21 The Empowered Community may begin an escalation process to:
- Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget, or the IANA Functions Budget.
  - Reject a change to ICANN Standard Bylaws.

- Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
- Remove an individual ICANN Board Director.
- Recall the entire ICANN Board.
- Initiate a binding IRP (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff).
- Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process.

## 22 Escalation

- 23 The escalation process can differ, sometimes significantly, from one Community Power to another. One of the most standardized versions of the escalation process is required for all Community Powers to "reject," remove individual Nominating Committee-nominated Board Directors, or recall the entire Board.
- Note: Certain exceptions apply to the power to reject changes to Standard Bylaws in cases where the Standard Bylaw change is the result of a Policy Development Process, as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
- 24 The right to reject an ICANN Board decision relating to IANA Function Reviews (including the triggering of any PTI separation process) may be exercised by the Empowered Community an unlimited number of times.
- Note: The power to approve changes to Fundamental Bylaws and the Articles of Incorporation, and to approve ICANN's sale or other disposition of all or substantially all of ICANN's assets, and the power to remove individual Directors nominated by an SO or AC contain special features that are covered in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.



25 **Step 1. Triggering Review by Community Petition**

26 (21 days)

- ⦿ Note: To exercise any of the rejection powers, such as rejection of a budget, the 21-day period begins at the time the Board publishes its vote on the element that may be rejected. If the first step of the petition is not successful within 21 days of the Board publication of the vote, the rejection process cannot be used. A petition begins in an SO or AC that is a Decisional Participant in the Empowered Community.
- ⦿ Any individual can begin a petition as the first step to using a Community Power.
- ⦿ For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition.

27 **Decision point:**

- ⦿ If the SO or AC does not approve the petition within 21 days, the escalation process terminates.
- ⦿ If the SO or AC approves the petition, it can proceed to the next step.

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28 **Step 2. Triggering Review by Community Petition, Part Two**

29 (7 days from the end of the previous step)

- ⦿ The SO or AC that approved the petition contacts the other Decisional Participants in the Empowered Community to ask them to support the petition. At least one additional Decisional Participant must support the petition (for a minimum of two) for a Community Forum to be organized to discuss the issue. To petition for a Community Forum to consider the recall of the entire ICANN Board requires three Decisional Participants to support the petition.

30 **Decision point:**

- ⦿ If the petition fails to gather the required level of support within seven days, the escalation process terminates.
- ⦿ If a minimum of two (or three, as applicable) Decisional Participants support the petition within seven days, a Community Forum is organized.

- ⦿ Note: For ICANN Board resolutions on changes to Standard Bylaws, Annual Budget, and Strategic or Operating Plans, the Board would be required to automatically provide a 28-day period before the resolution takes effect to allow for the escalation to be confirmed. If the petition is supported by a minimum of two Decisional Participants within the 28-day period, the Board is required to put implementation of the contested resolution on hold until the escalation and enforcement processes are completed. The purpose of this is to avoid requiring ICANN to undo things (if the rejection is approved), which could be potentially very difficult.

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31 **Step 3. Holding a Community Forum**

32 (21 days to organize and hold the event from the date of the petition causing it)

- ⦿ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing their preliminary views on the exercise of this Community Power, before or in the Community Forum.
- ⦿ The Forum is to be held within 21 days of the successful petition to hold a Community Forum.
- ⦿ Within 24 hours of a petition being approved, the petitioning Decisional Participant will:

- Circulate a detailed rationale for proposing to use the Community Power to all Decisional Participants. Any SO or AC may contribute preliminary thoughts or questions in writing via a specific publicly archived email list set up for this specific issue.
  - Designate a representative(s) to liaise with Decisional Participants to answer questions from the SOs/ACs.
  - If desired, optionally, request that ICANN organize a conference call for the community to discuss the issue.
- ⊙ Community Forum format:
- It is expected that for most powers, this will only involve remote participation methods such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face to face. The one exception to this is the power to recall the entire Board, which would require a face-to-face meeting.
  - The Decisional Participants who supported the petition would decide if holding the Community Forum can wait until the next regularly scheduled ICANN meeting or if a special meeting is required to bring participants together (only in the case of Board recall). In both these cases, the Decisional Participants who supported the petition leading to the Community Forum will publish the date for holding the event, which will not be subject to the 21-day limitation. In this case, the Community Forum would be considered completed at the end of the face-to-face meeting. Note: This extension is not available for exercise of the Community Power regarding the ICANN or IANA Budgets, due to the importance of maintaining a timely budget approval process.
  - Open to all interested participants.
  - Managed and moderated in a fair and neutral manner.
  - ICANN to provide support services. ICANN support staff will collect and publish a public record of the Forum(s), including all written submissions.
  - Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised.
  - Should the relevant Decisional Participants determine a need for further deliberation, a second and third session of the Community Forum could be held.
  - The Forum will not make decisions or seek consensus, and will not decide whether to advance the petition to the decision stage, although the issue may be resolved before or in the Community Forum, as discussed below.

33 **Decision point:**

- ⊙ If the Empowered Community and ICANN Board can resolve the issue before or in the Community Forum, the escalation process terminates. Resolving an issue will be confirmed by the Decisional Participants who supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted.
- ⊙ If the Empowered Community and ICANN Board cannot resolve the issue, the Empowered Community must decide if it wishes to take further action.

34 **Step 4. Decision to Use a Community Power as an Empowered Community**

35 (21 days from the conclusion of the Community Forum)

36 **Decision point:**

- ⦿ If four or more (for some powers, three) Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power. The Empowered Community will also publish an explanation of why it has chosen to do so. The published explanation can reflect the variety of underlying reasons.
- ⦿ If the proposal does not meet the required thresholds during the 21-day period, the escalation process terminates.

37 **Step 5. Advising the ICANN Board**

38 (1 day)

- ⦿ The Empowered Community will advise the ICANN Board of its decision and direct the Board to take any necessary action to comply with the decision.

39 **Enforcement**

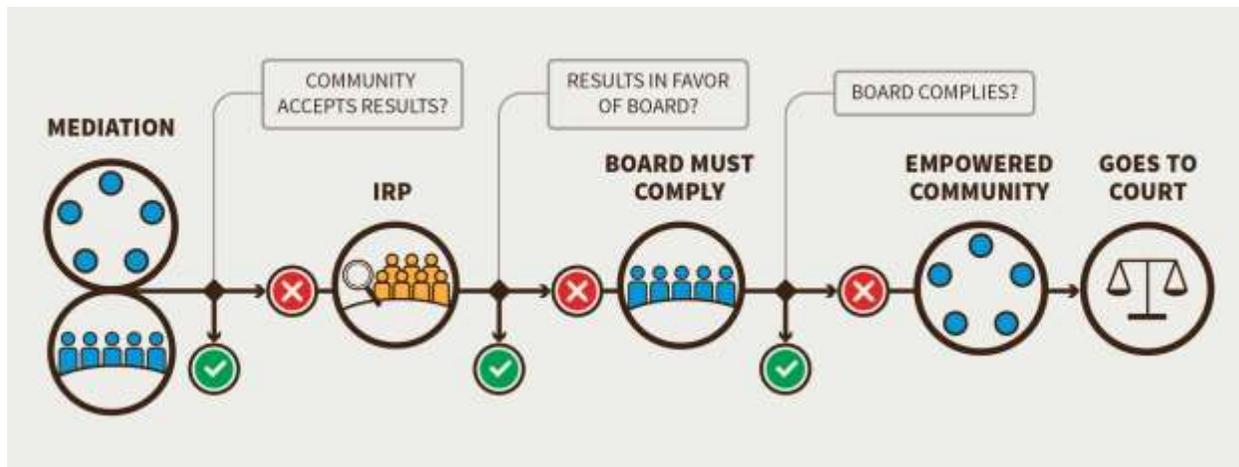
40 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use a Community Power (other than a decision to remove an individual Director or the entire ICANN Board pursuant to the Empowered Community's statutory power, as discussed below), the Empowered Community must decide if it wishes to begin the enforcement process.

41 The ICANN Board will be deemed to have refused or failed to comply with a request by the Empowered Community to use one of its Community Powers if it has not complied with the request within 30 days of being advised of the request by the Empowered Community.

42 The exception to this is removal of ICANN Board Directors or the entire ICANN Board, which should be effective immediately upon notice being provided to the Board. If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use the statutory power to remove an individual ICANN Director or recall the entire ICANN Board (or with the Empowered Community's appointment of a Director), the Empowered Community could address that refusal by bringing a claim in a court that has jurisdiction; there is no need for the Empowered Community to initiate or undertake other enforcement processes such as mediation or an IRP to enforce the power.

43 The enforcement process can proceed in one of two ways, discussed below.

44 **Option 1: Initiate mediation and community IRP procedures.**



**a) Representatives from ICANN Board and Empowered Community undertake a formal mediation phase.**

- If the Empowered Community accepts the result from the mediation phase (as discussed below), the enforcement process would be terminated.
- If the Empowered Community does not accept the result from the mediation phase, the Empowered Community will proceed with a community IRP.
- Process specification (general guidelines for implementation):
  - The individuals selected by the Decisional Participants to represent them in the Empowered Community will be the Empowered Community representatives in the mediation process.
  - Once the mediator has determined that mediation efforts are completed, the Empowered Community will produce and publicly post a report with its recommendations within 14 days.
  - The Decisional Participants in the Empowered Community should use the standard escalation process to confirm whether to proceed with a community IRP challenge to the Board failing to comply with a decision of the Empowered Community to use a Community Power, using the above report as the basis for the petition. If the Empowered Community does not approve initiating a community IRP, the Empowered Community will be considered as having accepted the result of the mediation.

**b) Representatives from the ICANN Board and Empowered Community undertake a formal and binding IRP.**

- If the result of the community IRP is in favor of the ICANN Board, the enforcement process is terminated.
- If the result of the binding IRP is in favor of the Empowered Community, then the ICANN Board must comply within 30 days of the ruling.

**c) If the ICANN Board does not comply with the decision of the IRP, the Empowered Community has two options:**

- The Empowered Community can petition a court of valid jurisdiction to enforce the result of the IRP.
- The Empowered Community can use its Community Power to recall the entire ICANN Board.

**45 Option 2: Initiate an escalation process to recall the entire ICANN Board.**

- If the requisite threshold of support of Decisional Participants is achieved, the Empowered Community will remove all of the members of the ICANN Board (except the CEO) and replace them with an Interim Board until a new Board can be seated.
- The Empowered Community may legally enforce the power to recall the entire Board in court.

**Table: Required Thresholds for the Various Escalation and Enforcement Processes (Based on a Minimum of Five Decisional Participants in the Empowered Community)**

Required Community Powers?	Petition Threshold to convene a Community Forum	Is there consensus support to exercise a Community Power?
46 1. Reject a proposed Operating Plan/Strategic Plan/Budget	47 Two SOs/ACs	48 Four support rejection, and no more than one objection
49 2. Approve a change to Fundamental Bylaws and Articles of Incorporation, and approve ICANN's sale or other disposition of all or substantially all of ICANN's assets	50 N/A	51 Three support approval, and no more than one objection
52 3. Reject changes to Standard Bylaws	53 Two SOs/ACs, including the SO that led the PDP that requires the Bylaw change (if any)	54 Three support rejection, including the SO that led the PDP that requires the Bylaw change (if any), and no more than one objection

Required Community Powers?	Petition Threshold to convene a Community Forum	Is there consensus support to exercise a Community Power?
55 4a. Remove an individual Board Director nominated by an SO or AC (and appointed by the Empowered Community)	56 Majority within nominating SO/AC	57 Invite and consider comments from all SOs/ACs. 3/4 majority within the nominating SO/AC to remove their director
58 4b. Remove an individual Board Director nominated by the Nominating Committee (and appointed by the Empowered Community)	59 Two SOs/ACs	60 Three support, and no more than one objection
61 5. Recall the entire Board of Directors	62 Three SOs/ACs	63 Four support, and no more than one objection <sup>1</sup>
64 6. Initiate a binding IRP or a Request for Reconsideration	65 Two SOs/ACs	66 Three support, including the SO(s) that approved the policy recommendations from the PDP which result is being challenged through the IRP (if any), and no more than one objection 67 Require mediation before IRP begins
68 7. Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any PTI separation process	69 Two SOs/ACs	70 Four support, and no more than one objection

71 Implementation of the Empowered Community currently anticipates that all of ICANN's SOs, the ALAC and GAC (if the GAC chooses to participate) would participate in the Empowered Community – that is, they will be listed in the Bylaws as the five Decisional Participants.

72 The thresholds presented in this document were determined based on this assessment. If fewer than five of ICANN's SOs and ACs agree to be Decisional Participants, these thresholds for consensus support may be adjusted. Thresholds may also have to be adjusted if ICANN changes to have more SOs or ACs.

<sup>1</sup> A minority of CCWG-Accountability participants prefer to require five SOs and ACs, or allow one objection to block consensus.

- 73 In the event of the creation (or removal) of SOs/ACs, the corresponding percentage could be used as useful guidelines in refining the thresholds. There would, however, need to be a conscious decision, depending on the circumstances, regarding these adjustments. If such a change were to affect the list of Decisional Participants in the Empowered Community, the change would follow the Fundamental Bylaw change process, which enables such a conscious decision to be undertaken.
- 74 The CCWG-Accountability also recommends that in a situation where the GAC may not participate as a Decisional Participant because the Community Power is proposed to be used to challenge the Board's implementation of GAC consensus advice and the threshold is set at four in support, the power will still be validly exercised if three are in support and no more than one objects, with the following exception:
- Where the power to be exercised is recalling the entire Board for implementing GAC advice, the reduced threshold would apply only after an IRP has found that, in implementing GAC advice, the Board acted inconsistently with the ICANN Bylaws. If the Empowered Community has brought such an IRP and does not prevail, the Empowered Community may not exercise its power to recall the entire the Board solely on the basis of the matter decided by the IRP. It may, however, exercise that power based on other grounds.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- Extended time for certain escalation steps in response to comments. Kept overall timeline similar by combining and removing some steps (mandatory conference call).
- Made it mandatory for petitioning party to reach out to SOs/ACs to socialize relevant information before Community Forum.
- Acknowledged comments regarding the thresholds adjustment in case the number of Decisional Participants is lower (page 12, paragraph 60 of the Third Draft Proposal), by removing this option and replacing it with a lower threshold for approving changes to Fundamental Bylaws. Since the Fundamental Bylaw change process is a requirement for “approval” and not a “rejection” option, this would preserve the requirement for stronger protection of Fundamental Bylaws.
- Determined that the use of the corresponding percentage for thresholds as recommended by the Board can be suggested as a guideline in the event of the creation of new SOs/ACs, but there would need to be a conscious decision, depending on the circumstances. If such a new SO/AC were to become a Decisional Participant in the Empowered Community, this change would require a change to the Fundamental Bylaws and would therefore require approval by the Empowered Community.
- Implemented the compromise for Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18) that the threshold requirements would be modified if the GAC was a Decisional Participant.

## 5. Stress Tests Related to this Recommendation

- ST5, 6, 7, 8, 9, 10, 16, 24, powers
- ST12
- ST13
- ST27
- ST28

## 6. How does this meet the CWG-Stewardship Requirements?

- 75 The CWG-Stewardship required community empowerment mechanisms that would be able to:
- Appoint and remove members of the ICANN Board and to recall the entire ICANN Board.
  - Exercise oversight with respect to key ICANN Board decisions (including with respect to the ICANN Board's oversight of the IANA functions) by reviewing and approving (1) ICANN Board decisions with respect to recommendations resulting from an IANA Function Review (IFR) or Special IFR and (2) the ICANN budget.
  - Approve amendments to ICANN's Fundamental Bylaws.
- The defined escalation and decision-making mechanism recommended by the CCWG-Accountability provide the processes needed to meet these requirements.

## 7. How does this address NTIA Criteria?

76 **Support and enhance the multistakeholder model.**

- Decentralizing power within ICANN through an Empowered Community.
- Solidifying consultation processes between the ICANN Board and community into the ICANN Bylaws.
- Establishing a public Community Forum to ensure that all voices and perspectives are heard before execution of a Community Power.
- Retaining decision-making based on consensus rather than voting.

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77 **Maintain the security, stability and resiliency of the Internet DNS.**

- Proposing a series of procedures that ensure both sides have had the chance to completely and thoroughly discuss any disagreements and have multiple opportunities to resolve any such issues without having to resort to the powers of the Empowered Community for accountability or enforceability.
- Embedding thresholds into procedures to eliminate any risks of capture.

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78 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- Including limited timeframes, transparent processes and associated thresholds to maintain operational viability.

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79 **Maintain the openness of the Internet.**

- Establishing a public Community Forum to ensure that all voices and perspectives are heard.
- Preserving policies of open participation in ICANN's SOs and ACs.

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80 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- To the extent the Government Advisory Committee (GAC) wishes to participate in decision-making by the Empowered Community, which the GAC has the flexibility to determine, it would be one of five Decisional Participants. In addition, the GAC will not participate as a decision-maker in community deliberations involving a challenge to the Board's implementation of GAC consensus advice. This "carve out," combined with the safeguards in Recommendation #11, leads the CCWG-Accountability to believe that this NTIA requirement is met, even when considering the increased threshold from 50 to 60% for the Board to reject GAC consensus advice.
  - Enabling all interested stakeholders to join consultations through SOs and ACs or through the Community Forum.
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# Annex 03 – Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation

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## 1. Summary

- 01 Currently, the Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN) have a single mechanism for amendment.
  - Any provision of the ICANN Bylaws can be changed by a 2/3 vote of all the Directors on the ICANN Board.
  - The ICANN Board is not required to consult the multistakeholder community or the wider public before amending the Bylaws, but has voluntarily done so up to this point.
- 02 The CCWG-Accountability recommends classifying each ICANN Bylaw as either a “Fundamental Bylaw” or a “Standard Bylaw,” with Fundamental Bylaws being more difficult to change.
- 03 Specifically, the CCWG-Accountability recommends that:
  - Public consultations be required on all changes to ICANN Bylaws, both Fundamental and Standard.
  - The requirement for public consultations to be added to the ICANN Bylaws as a Fundamental Bylaw to ensure that ICANN must continue to engage with the community in the future.
  - Any changes to Fundamental Bylaws require approval from both the ICANN Board and Empowered Community, as outlined in the respective Community Power (as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers).
  - The threshold for ICANN Board approval for changing a Fundamental Bylaw is raised from 2/3 to 3/4.
  - Approval for changes to the Articles of Incorporation use the same process required for approving changes to Fundamental Bylaws, including public consultations.
- 04 Why is the CCWG-Accountability recommending this?
  - The CCWG-Accountability felt that it was critical to ensure that the ICANN Bylaws that embody the purpose of the organization (Mission, Commitments and Core Values) and are meant to ensure the accountability of the ICANN Board, cannot be changed by the ICANN Board acting alone.

## 2. CCWG-Accountability Recommendations

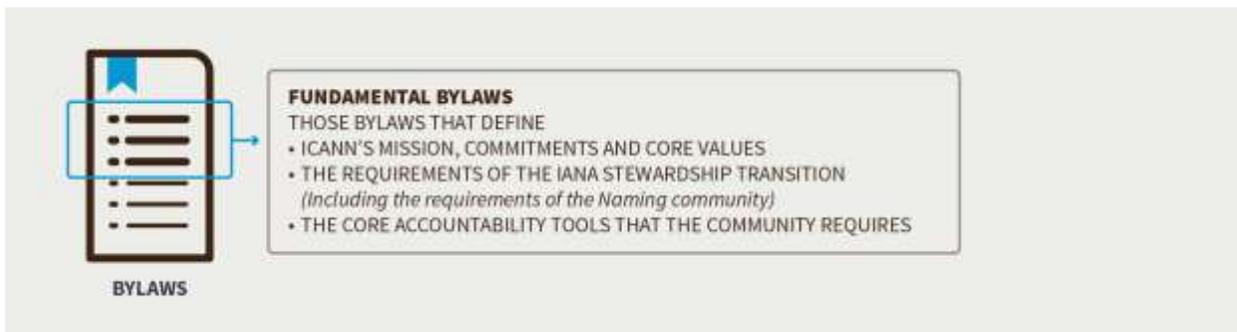
05 The CCWG-Accountability recommends:

- Classifying each ICANN Bylaw as either a Fundamental Bylaw or a Standard Bylaw.
- Making the following CCWG-Accountability and CWG-Stewardship Recommendations Fundamental Bylaws:
  - The Empowered Community for enforcing Community Powers, including the role of Sole Designator of ICANN's Directors, as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
  - The escalation and enforcement mechanisms as described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.
  - The process for amending Fundamental Bylaws and/or Articles of Incorporation, and for approving ICANN's sale or other disposition of all or substantially all of ICANN's assets as described in Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.
  - The seven Community Powers as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
  - The Mission, Commitments and Core Values as described in Recommendation #5: Changing Aspects of ICANN's Mission, Commitments and Core Values.
  - The framework for the Independent Review Process (IRP) as described in Recommendation #7: Strengthening ICANN's Independent Review Process.
  - The IANA Function Review, Special IANA Function Review and the Separation Process, accountability mechanisms for the IANA naming functions that are required under the CWG-Stewardship Proposal.
  - The PTI Governance and Customer Standing Committee (CSC) structures, also required by the CWG-Stewardship Proposal.
  - The rights of investigation and inspection as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
- Requiring ICANN to conduct public consultations on any proposed changes to Standard Bylaws, Fundamental Bylaws or the Articles of Incorporation.
- Requiring approval for any changes to Fundamental Bylaws and the Articles of Incorporation from both the ICANN Board and the Empowered Community as outlined in the Community Power as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
- Raising the threshold for ICANN Board approval for changing a Fundamental Bylaw or the Articles of Incorporation from 2/3 to 3/4 of all the Directors on the ICANN Board.

## 3. Detailed Explanation of Recommendations

06 **What Is a Fundamental Bylaw?**

- 07 ICANN Bylaws describe how power is exercised in ICANN, including setting out the organization's Mission, Commitments and Core Values. Together with the Articles of Incorporation, the Bylaws are an essential part of ICANN because they set the scope of the organization's corporate authority, determine its governance framework and define working practices.
- 08 Today, ICANN Bylaws can be changed by a resolution of the Board upon a 2/3 vote of all the Directors. The CCWG-Accountability believes that the set of key Bylaws that are fundamental to ICANN's stability and operational continuity and essential for the community's decision-rights should be given additional protection from changes by requiring Empowered Community approval of any amendments.
- 09 These key Bylaws will be identified as Fundamental Bylaws.



- 10 As such, the CCWG-Accountability proposes making Fundamental Bylaws harder to change than Standard Bylaws in two ways:
  - By sharing the authority to authorize changes between the ICANN Board and the Empowered Community, organized through participating Supporting Organizations (SOs) and Advisory Committees (ACs) as the “Decisional Participants” in the Empowered Community, as outlined in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
  - By requiring a higher threshold of ICANN Board support to authorize changes to Fundamental Bylaws than for Standard Bylaws.
- 11 The establishment of Fundamental Bylaws would indirectly enhance ICANN's accountability to the global Internet community by sharing the authority of decision-making more widely and increasing the difficulty of amending these key aspects of ICANN.
- 12 This recommendation is important in the context of the IANA Stewardship Transition because the historical contractual relationship with the U.S. Government provided assurance to the multistakeholder community that the fundamental nature of ICANN was unlikely to be changed without widespread agreement. Without that relationship in place, procedural protections and more widely shared decision-rights on core components of ICANN's scope and authority should help maintain the community's confidence in ICANN.

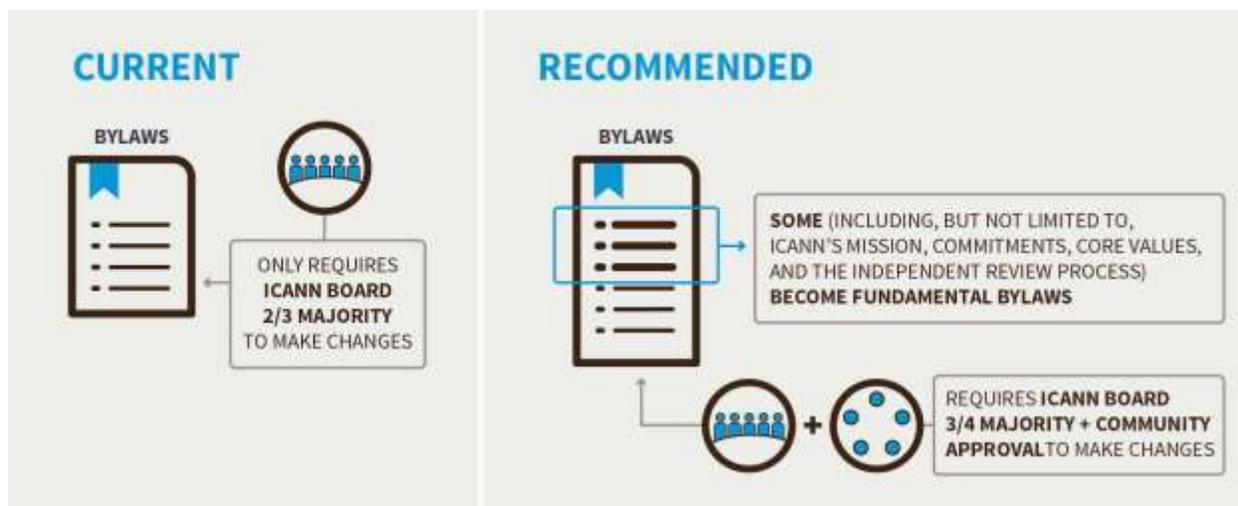
### 13 **Establishing Fundamental Bylaws**

- 14 To implement the establishment of Fundamental Bylaws, a new provision would be added to the Bylaws that sets out:

- Which sections of the Bylaws are Fundamental Bylaws (i.e., a list of the fundamental articles/sections/subsections).
- How new Fundamental Bylaws can be defined, and how existing Fundamental Bylaws can be amended or removed.

15 **Adding New or Amending Existing Fundamental Bylaws**

- 16 While the CCWG-Accountability recommends fortifying certain aspects of the ICANN Bylaws, the global public interest would not be served if ICANN could not evolve in response to the changing Internet environment.
- 17 Therefore, the CCWG-Accountability recognizes the importance of the ability to define new Fundamental Bylaws over time, or to amend or remove existing ones.



- 18 The following steps would be required to establish a new Fundamental Bylaw, or to amend or remove an existing one, where the ICANN Board (or the staff through the ICANN Board) is proposing the addition, amendment or removal:

- The Board proposes a new Fundamental Bylaw, amendment of a Fundamental Bylaw, or removal of a Fundamental Bylaw.
- The Board approves the addition, amendment, or removal of the Fundamental Bylaw with a 3/4 vote of all the Directors on the ICANN Board.
- The Empowered Community approves the addition, amendment or removal of the Fundamental Bylaw (as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers).

- 19 If the addition, amendment, or removal of the Fundamental Bylaw is agreed upon by both the ICANN Board and the Empowered Community:

- The new/revised Fundamental Bylaw would be inserted into the ICANN Bylaws, and an appropriate reference to the text as a Fundamental Bylaw would be added (if needed) to the part of the Bylaws that lists them.
- In the case of an amendment to existing ICANN Bylaws text, the text would be updated.

- In the case of a removal, the text would be removed from the ICANN Bylaws.

20 The CCWG-Accountability does not propose that the community gain the power to directly propose changes to the Bylaws.

## 21 **Which of the Current Bylaws Would Become Fundamental Bylaws?**

22 The CCWG-Accountability recommends that only critical aspects of the ICANN Bylaws be classified as Fundamental Bylaws to avoid introducing unnecessary rigidity into ICANN's structures. The CCWG-Accountability concluded that recommending that all changes to ICANN Bylaws should face the same thresholds that are proposed for Fundamental Bylaws would harm, not help, ICANN's overall accountability.

23 The CCWG-Accountability views "critical aspects" as those that define ICANN's Mission, Commitments and Core Values; the requirements of the CWG-Stewardship Proposal; and the core accountability tools the community requires.

24 Accordingly, the CCWG-Accountability recommends that the following aspects be made Fundamental Bylaws as a part of Work Stream 1:

- The Empowered Community for enforcing Community Powers, including the role of sole designator of ICANN's Directors, as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.
- The escalation and enforcement mechanisms, as described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.
- The process for amending Fundamental Bylaws and/or Articles of Incorporation, and for approving ICANN's sale or other disposition of all or substantially all of ICANN's assets, as described in Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.
- The seven Community Powers, as described in Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.
- The Mission, Commitments and Core Values, as described in Recommendation #5: Changing Aspects of ICANN's Mission, Commitments and Core Values.
- The framework for the Independent Review Process, as described in Recommendation #7: Strengthening ICANN's Independent Review Process.
- The IANA Function Review, Special IANA Function Review and the Separation Process, accountability mechanisms for the IANA naming functions that are required under the CWG-Stewardship Proposal.
- The PTI Governance and Customer Standing Committee (CSC) structures, also required by the CWG-Stewardship Proposal.
- The rights of investigation and inspection, as described in Recommendation #1: Establishing an Empowered Community for Enforcing Community Powers.

## 25 **Articles of Incorporation**

26 The CCWG-Accountability legal counsel has advised the following when considering changes to the ICANN Articles of Incorporation:

*“The constituent documents of a California nonprofit public benefit corporation such as ICANN are its Articles of Incorporation and its Bylaws. There is a hierarchy between these documents—the articles prevail to the extent that there is any conflict between the Articles and the Bylaws. This hierarchical relationship holds even if the conflict is between the Articles and a “fundamental” Bylaw that requires the consent of a third-party (in the case of ICANN, the Empowered Community) to be amended.*

*Under California nonprofit corporation law, if a corporation has no statutory members, amendments to the articles may be adopted by the Board. However, the amendment of articles may be made subject to the consent of a third party, just as the amendment of bylaws may be. In the case of ICANN, if the Empowered Community is not provided a right to approve amendments to the Articles, there is a risk that Fundamental Bylaw provisions could be undermined by amendment of the Articles by the ICANN Board, given the hierarchical relationship described above. Thus, we recommend including an approval right with respect to amendments to ICANN’s Articles in favor of the Empowered Community in the same way the Empowered Community has approval rights with respect to Fundamental Bylaws.”*

- 27 As such, the CCWG-Accountability is recommending that changes to the ICANN Articles of Incorporation follow the same approval process and thresholds described above for approving changes to Fundamental Bylaws.



- 28 It is important to note ICANN’s current Articles of Incorporation state that:

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

- 29 Therefore, the CCWG-Accountability recommends that the Articles of Incorporation be modified to remove the notion of members and reflect the need for a higher affirmative vote of at least 3/4 of all the Directors on the ICANN Board, as well as approval by the Empowered Community using the same approval process and thresholds as for approving changes to Fundamental Bylaws.

30 **Does the location of ICANN’s principal office need to be a Fundamental Bylaw?**

31 The ICANN Articles of Incorporation and Bylaws address both the state of incorporation (or corporate domicile) of ICANN and the location of its principal office:

- ICANN’s present Articles of Incorporation state:

*“3. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes.”*

- ICANN’s present Bylaws Article XVIII Section 1 state:

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

- The Affirmation of Commitments paragraph 8(b) states:

*“ICANN affirms its commitments to: (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community...”*

32 As recommended by the CCWG-Accountability in the above section, the Articles of Incorporation would require that approval of any changes to the Articles of Incorporation use the same process and thresholds required for approving changes to Fundamental Bylaws.

33 Thus, ICANN’s state of incorporation/corporate domicile could not be changed without the affirmative consent of the Empowered Community. However, to ensure that ICANN’s status as a California nonprofit public benefit corporation could not be changed by way of transfer of assets and/or dissolution without the affirmative consent of the Empowered Community, a provision will need to be added to the Articles of Incorporation requiring Empowered Community approval for a transfer of all or substantially all of the assets of ICANN.

34 The ICANN Board could propose a change to the Bylaws provision requiring the location of ICANN’s “principal office” in California, but the Empowered Community could block the change.

35 There was not consensus to support making this provision a Fundamental Bylaw requiring the affirmative consent of the Empowered Community.

36 **Community Power: Approve Changes to Fundamental Bylaws and the Articles of Incorporation**

37 Establishing Fundamental Bylaws and requiring Empowered Community approval of amendments to the Articles of Incorporation would ensure that critical aspects of the powers and processes required to maintain ICANN’s accountability to the community, and the organization’s Mission, Commitments and Core Values, can only be changed as a result of broad consensus of both the ICANN Board and the community.

- 38 The Empowered Community would have to affirmatively consent to any change proposed and adopted by the ICANN Board before the amendment could become legally effective, as part of a joint decision process between the ICANN Board and the Empowered Community. By creating this special joint decision process, authority to change fundamental aspects of ICANN's governing framework is shared more broadly than it is today.
- 39 The CCWG-Accountability is working under the assumption that the Articles of Incorporation and the ICANN Bylaws provisions that are recommended to become Fundamental Bylaws are not likely to change frequently. Where changes are made, they are unlikely to arise on short notice or be needed to deal with short-term operational situations.
- 40 The CCWG-Accountability therefore does not believe that this Community Power, as proposed, poses any challenges to ICANN's ongoing operational viability, stability or efficiency.
- 41 Such changes require a high degree of support from the Decisional Participants in the Empowered Community, as the purpose of this power is to make changing Fundamental Bylaws or the Articles of Incorporation possible only with very wide support from the community.
- 42 For further information about the other Community Powers recommended by the CCWG-Accountability, see Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- Clarified that IANA Function Review (IFR) provisions apply only to the IANA naming functions (CWG-Stewardship requirement).
- Clarified the process for changes of Articles of Incorporation to be similar to process for changes to Fundamental Bylaws, as well as the process for approving ICANN's sale or other disposition of all or substantially all of ICANN's assets.
- Added a specific recommendation that the current Articles of Incorporation be modified to remove the notion of members and reflect the need for an affirmative vote of at least 3/4 of all the Directors on the ICANN Board, as well as approval by the Empowered Community.

## 5. Stress Tests Related to this Recommendation

- N/A

## 6. How does this meet the CWG-Stewardship Requirements?

- 43 These recommendations meet the CWG-Stewardship requirement that the CCWG-Accountability recommend the creation of Fundamental Bylaws. These include the following:

- ICANN Budgets and Strategic/Operating Plans and IANA Budgets: Community rights regarding the development and consideration of ICANN Budgets, Strategic/Operating Plans and IANA Budgets.
- ICANN Board: Community rights regarding the ability to appoint/remove Directors of the ICANN Board and recall the entire Board.
- ICANN Bylaws: Incorporation of the following into ICANN's Bylaws: IANA Function Review, Special IANA Function Review, PTI Governance, Customer Standing Committee, and the Separation Process.
- Independent Review Process: Should be made applicable to IANA functions and accessible by managers of top-level domains.

## 7. How does this address NTIA Criteria?

44 **Support and enhance the multistakeholder model.**

- Ensuring the multistakeholder model accountability mechanisms cannot be modified without the Empowered Community's approval.
- 

45 **Maintain the security, stability and resiliency of the Internet DNS.**

- Establishing Fundamental Bylaws that provide additional protections to ICANN Bylaws that are critical to the organization's stability and operational continuity.
- 

46 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- N/A
- 

47 **Maintain the openness of the Internet.**

- N/A
- 

48 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A
-

# Annex 04 –Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Powers

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## 1. Summary

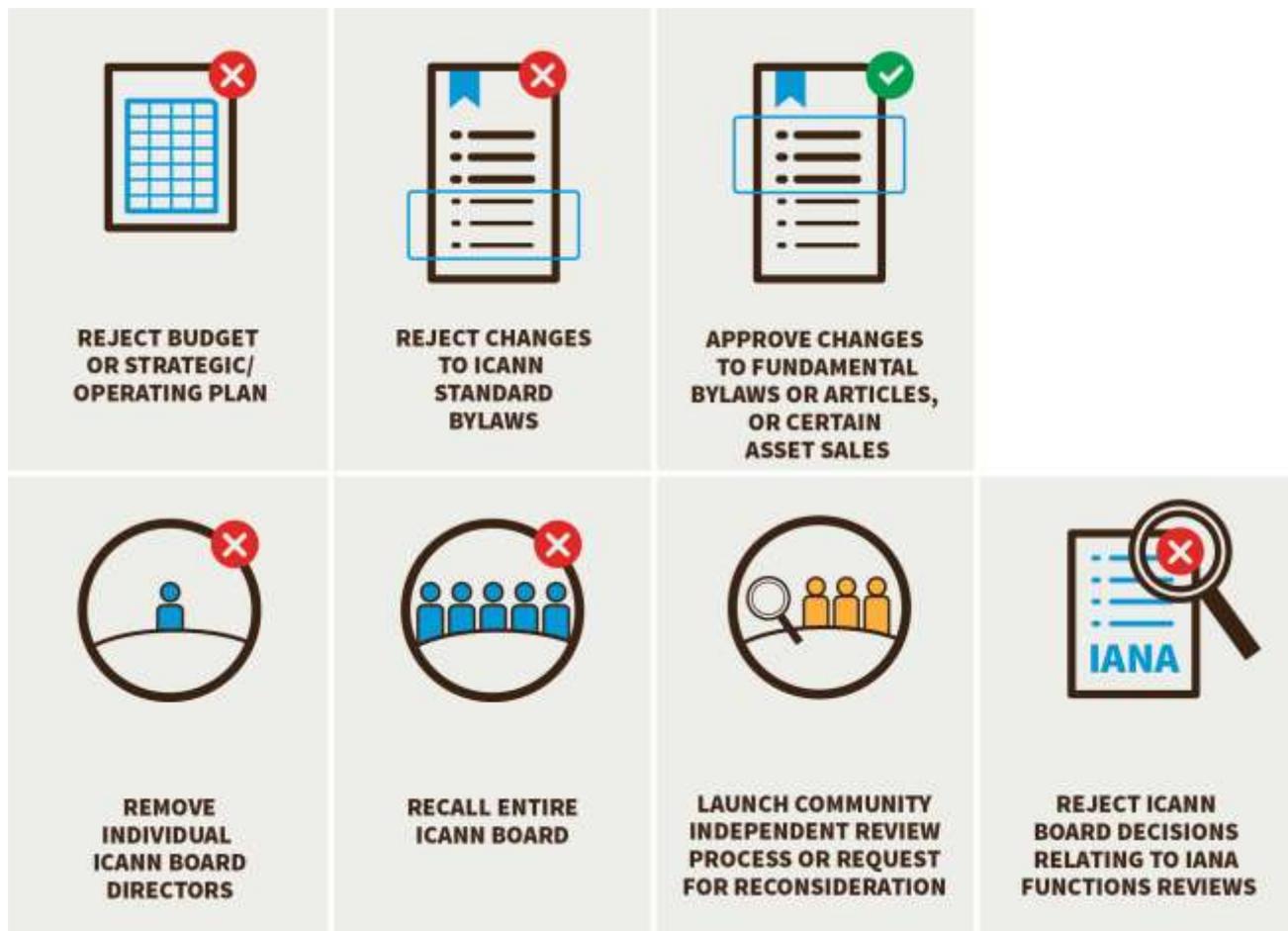
- 01 The CCWG-Accountability has recommended seven powers for the community that should be in place to improve ICANN's accountability and ensure community engagement.
- 02 These “Community Powers” are:
1. Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget or IANA Functions Budget.
  2. Reject a change to ICANN Standard Bylaws.
  3. Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  4. Remove an individual ICANN Board Director.
  5. Recall the entire ICANN Board.
  6. Initiate a binding Independent Review Process (IRP) (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff).
  7. Reject an ICANN Board decision relating to reviews of IANA functions, including the triggering of any Post-Transition IANA (PTI) separation process for the IANA naming functions.
- 03 The Community Powers and associated processes were designed to ensure that no stakeholder can singlehandedly exercise any power, and that under no circumstances, would any individual segment of the community be able to block the use of a power.

## 2. CCWG-Accountability Recommendations

- 04 The CCWG-Accountability recommends:
- Defining the following Community Powers as Fundamental Bylaws:
    1. Reject a Five-Year Strategic Plan, Five-Year Operating Plan, Annual Operating Plan & Budget or IANA Functions Budget.
    2. Reject a change to ICANN Standard Bylaws.

3. Approve a change to Fundamental Bylaws and/or Articles of Incorporation, and/or approve ICANN's sale or other disposition of all or substantially all of ICANN's assets.
  4. Remove an individual ICANN Board Director.
  5. Recall the entire ICANN Board.
  6. Initiate a binding IRP (where a panel decision is enforceable in any court recognizing international arbitration results) or a non-binding Request for Reconsideration (where the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff).
  7. Reject ICANN Board decisions relating to reviews of IANA functions, including the triggering of any PTI separation process for the IANA naming functions.
- Adding an ICANN Bylaw that states that if the entire ICANN Board is removed, an Interim Board will be established only as long as is required for the selection/election process for the Replacement Board to take place. Supporting Organizations (SOs), Advisory Committees (ACs), and the Nominating Committee (NOMCOM) will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days. The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.
    - The ICANN Bylaws will state that, except in circumstances in which urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the SO and AC leaderships before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN's strategy, policies or management, including replacement of the serving President and CEO.
    - Note: Details on what the powers do is presented in greater detail in the following section and the details of how these can be used can be found in Annex 2.
  - That there be an exception to rejecting Standard Bylaws in cases where the Standard Bylaw change is the result of a Policy Development Process. The exception would be as follows:
    - Fundamental Bylaws would require that the ICANN Board not combine the approval of ICANN Bylaw changes that are the result of a Policy Development Process with any other Bylaw changes.
    - Fundamental Bylaws would require the ICANN Board to clearly indicate if an ICANN Bylaw change is the result of a Policy Development Process when the Board approves it.
    - Fundamental Bylaws would require that if the change to the ICANN Bylaws is the result of a Policy Development Process, the SO that led the Policy Development Process must formally support holding a Community Forum and exercise the power to reject the Bylaw change. If the SO that led the Policy Development Process that requires the Bylaw change does not support holding a Community Forum or exercising the power to reject the Bylaw, then the Community Power to reject the Bylaw cannot be used.

### 3. Detailed Explanation of Recommendations



05 The CCWG-Accountability has proposed a set of seven Community Powers designed to empower the community to hold ICANN accountable for the organization's Principles (the Mission, Commitments and Core Values).

06 **The proposed Community Powers are:**

The Power to Reject ICANN's Budget, IANA Functions Budget or Strategic/Operating Plans

The Power to Reject Changes to ICANN Standard Bylaws

The Power to Remove Individual ICANN Board Directors

The Power to Recall the Entire ICANN Board

The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation and/or Approve ICANN's Sale or Other Disposition of All or Substantially All of ICANN's Assets

The Power to Initiate a Binding IRP or a Non-Binding Request for Reconsideration

The Power to Reject ICANN Board Decisions Relating to Reviews of IANA Functions, including the Triggering of Any PTI Separation Process

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07 It is important to note that the above powers, as well as the launch of a Separation Cross Community Working Group<sup>1</sup> (as required by the CWG-Stewardship dependencies), can be enforced by using the community IRP or the Community Power to recall the entire Board.

08 If the ICANN Board refuses or fails to comply with a decision of the Empowered Community to use the statutory power to remove an individual ICANN Director or recall the entire ICANN Board (or with the Empowered Community's appointment of a Director), the Empowered Community could address that refusal by bringing a claim in a court that has jurisdiction; there is no need for the Empowered Community to initiate or undertake other enforcement processes such as mediation or an IRP to enforce the power.

09 **The Power to Reject ICANN's Budget or Strategic/Operating Plans**

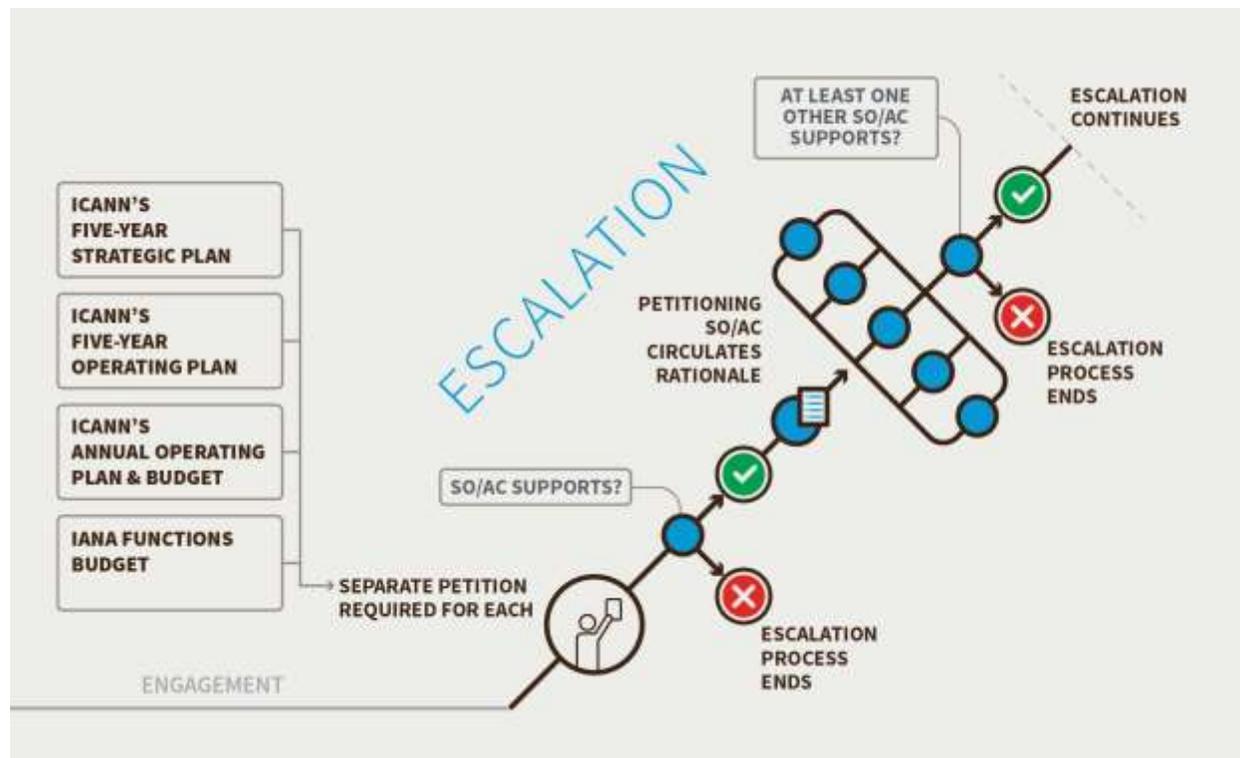
10 The right to set budgets and strategic direction is a critical governance power for any organization. By allocating resources and defining the goals to which these resources are directed, strategic plans, operating plans, and budgets have a significant impact on what ICANN does and how effectively it fulfills its role. The ICANN community already plays an active role in giving input into these key documents through participation in the existing consultation processes ICANN organizes.

11 To provide additional accountability safeguards, the CCWG-Accountability has proposed that the Empowered Community be given the power to reject:

- ICANN's Five-Year Strategic Plan
- ICANN's Five-Year Operating Plan
- ICANN's Annual Operating Plan & Budget
- IANA Functions Budget

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<sup>1</sup> If the CWG-Stewardship's IANA Function Review determines that a Separation Process for the IANA naming functions is necessary, it will recommend the creation of a Separation Cross Community Working Group. This recommendation will need to be approved by a supermajority of each of the Generic Names Supporting Organization and the Country-Code Names Supporting Organization Councils, according to their normal procedures for determining supermajority, and will need to be approved by the ICANN Board after a Public Comment Period, as well as by the Empowered Community.



- 12 The CCWG-Accountability has determined that a separate petition would be required for each budget or strategic/operating plan being challenged. A budget or strategic/operating plan could only be challenged if there are significant issue(s) brought up in the engagement process that were not addressed prior to approval.
- 13 To reinforce the bottom-up, transparent and collaborative approach that ICANN currently uses to enable the community to give input into ICANN's budget documents, the CCWG-Accountability recommends adding a similar consultation process into the ICANN Bylaws for both the ICANN Budget and the IANA Functions Budget. The Bylaws must assure that sufficient budget detail is available, in a timely way, for the community to carefully consider budget matters and provide informed and constructive input (and for this input to be thoroughly considered) prior to the Board making decisions on budget matters.
- 14 A community decision to reject a budget or a plan after it has been approved by the ICANN Board will be based on perceived inconsistency with the purpose, Mission and role set out in ICANN's Articles and Bylaws; the global public interest; the needs of ICANN stakeholders; financial stability, or other matters of concern to the community. The veto could only concern issues that had been raised in the public consultations conducted before the Board approved the budget or plan.
- 15 An SO or AC that is a Decisional Participant in the Empowered Community petitioning to reject a budget or strategic/operating plan would be required to circulate a rationale and obtain support for its petition from at least one other Decisional Participant according to the escalation process.
- 16 The escalation and enforcement processes for rejecting any strategic/operating plan or budget is detailed in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.
- 17 If the Community Power to reject the Annual Budget is used, a caretaker budget would be implemented. A caretaker budget is one that provides ongoing funding for crucial ICANN

functions, while the issue/s that caused the Empowered Community's use of the Community Power are resolved. It will be based on current ICANN operations, according to rules developed in the implementation process (which will form a public and transparent "defined approach" to the caretaker budget).

- 18 The CCWG-Accountability also recommends that the caretaker budget concept be embedded in the Fundamental Bylaws, including the responsibility of ICANN's Chief Financial Officer to establish the caretaker budget in accordance with the defined approach.

## 19 **The IANA Functions Budget**

- 20 Under this power, the community will be able to consider the IANA Functions Budget as a separate budget. The IANA Functions Budget is currently part of ICANN's Annual Operating Plan & Budget.

- 21 Under the CWG-Stewardship Final Proposal, an itemization of IANA costs as set forth in the IANA Functions Budget would include "direct costs for the IANA Department", "direct costs for shared resources" and "support functions allocation." Furthermore, the CWG-Stewardship Final Proposal states that these costs should be itemized into more specific costs related to each specific function to the project level and below as needed.

- 22 The IANA Functions Budget requires protection, as recommended by the CWG-Stewardship's Final Proposal. The IANA Functions Budget must be managed carefully and not decreased (without public input) regardless of the status of the other portions of the budget.

- 23 The CCWG-Accountability recommends that there be two distinct processes with respect to the Community Power to reject the IANA Functions Budget and the Community Power to reject the ICANN Budget, meeting the requirements of the CWG-Stewardship. The use of the Community Power to reject the ICANN Budget would have no impact on the IANA Functions Budget, and a rejection of the IANA Functions Budget would have no impact on the ICANN Budget.

- 24 The escalation and enforcement processes for rejecting an IANA Functions Budget is detailed in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.

- 25 Should the power be used to reject the annual IANA Functions Budget, a caretaker budget would be implemented (details regarding the caretaker budget are currently under development as noted above).

- 26 The CCWG-Accountability recommends that the caretaker budget approach be embedded in the Fundamental Bylaws, including the responsibility of ICANN's Chief Financial Officer to establish the caretaker budget in accordance with the defined approach.

- 27 The CCWG-Accountability acknowledges that the CWG-Stewardship (or a successor implementation group) is required to develop a proposed process for the IANA Functions Operations-specific Budget establishment and review. This process will be a key input for the implementation of this specific power.

- 28 The CWG-Stewardship may wish to detail the planning process by which the IANA Functions Budget is established as part of its implementation program of work, including the level of detail required to be provided for community input and the timeframes for consultations and approvals. The CCWG-Accountability limits its requirements to those set out in this Recommendation.

- 29 In implementation, any process through which a portion or the whole of the IANA Functions Budget is subject to rejection should include the voice of the operational communities served by the IANA functions (i.e., Domain Names, Numbering Resources and Protocol Parameters). The process must also be implemented in such a way as to ensure the stable and continuous

delivery of the IANA functions, and the proper delivery of contractual service levels to the respective operational communities.

### 30 **The Power to Reject Changes to ICANN Standard Bylaws**

31 In addition to the safeguard against the possibility of the ICANN Board unilaterally amending Fundamental Bylaws without consulting the community, the CCWG-Accountability recommends that the Empowered Community be given the power to reject changes to Standard ICANN Bylaws after the Board approves them, but before the changes go into effect.

32 Any changes approved by the Board would take 30 days to go into effect to enable the Empowered Community to decide whether a petition to reject the change should be initiated.

33 This power, with respect to Standard Bylaws, is a rejection process that is used to tell the ICANN Board that the Empowered Community does not support a Board-approved change. It does not enable the Empowered Community to rewrite a Standard Bylaw change that has been proposed by the Board.

34 It is important to note that the CCWG-Accountability has been careful to try not to change ICANN's core policy-making processes. The tools it has proposed to improve accountability are generally aimed at ICANN-wide issues, not policy development in the SOs. However, the power to reject a Standard Bylaw change could interfere with the implementation of a Policy Development Process that requires such a change.

- To ensure this power does not interfere with ICANN's bottom-up Policy Development Processes, the CCWG-Accountability has added an exception to the Standard Bylaws rejection power to ensure that a Bylaw change that is the result of a Policy Development Process cannot be rejected after it is approved by the ICANN Board without the approval of the SO that led the Policy Development Process.

35 The escalation and enforcement processes for this power are described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement, with the following exception:

- The CCWG-Accountability proposes that there be an exception to rejecting Standard Bylaws in cases where the Standard Bylaw change is the result of a Policy Development Process. The exception would be as follows:
  - Fundamental Bylaws would require that the ICANN Board not combine the approval of ICANN Bylaw changes that are the result of a Policy Development Process with any other Bylaw changes.
  - Fundamental Bylaws would require the ICANN Board to clearly indicate if an ICANN Bylaw change is the result of a Policy Development Process when the Board approves it.
    - Fundamental Bylaws dealing with rejection of an ICANN Bylaw change would require, if the Bylaws change is the result of a Policy Development Process, that the SO that led the Policy Development Process must formally support holding a Community Forum and exercise the power to reject the Bylaw change.
    - If the SO that led the Policy Development Process that requires the ICANN Bylaw change does not support holding a Community Forum or exercising the power to reject the Bylaw, then the Community Power to reject the Bylaw cannot be used.

36 **The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation and/or Approve ICANN's Sale or Other Disposition of All or Substantially All of ICANN's Assets**

37 To safeguard against the possibility that the ICANN Board could unilaterally amend ICANN Bylaws and/or the Articles of Incorporation without consulting the community, the CCWG-Accountability determined that the community consultation process should be reinforced in Fundamental Bylaws.

38 The proposed set of Fundamental Bylaws would be harder to change than the Standard Bylaws for two reasons:

- The authority to change Fundamental Bylaws and/or the Articles of Incorporation would be shared between the ICANN Board and the Empowered Community.
- The required threshold of ICANN Board support to change a Fundamental Bylaw would be significantly higher than the threshold to change a Standard Bylaw.

39 The CCWG-Accountability emphasizes the importance for the ICANN Board and Empowered Community to be able to define new Fundamental Bylaws and/or Articles of Incorporation over time, or to change or remove existing ones to ensure that ICANN can adapt to the changing Internet environment.

40 The same escalation process applies to ICANN's sale or other disposition of all or substantially all of ICANN's assets.

41 **The escalation process for this power is as follows:**

42 **Step 1. The ICANN Board publishes its approval of a change to the Fundamental Bylaws and/or Articles of Incorporation and/or sale or other disposition of all or substantially all of ICANN's assets**

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43 **Step 2. Holding a Community Forum**

44 (30 days to organize and hold the event from the date of the publication by the Board)

- ⊙ It is expected that this will only involve remote participation methods, such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face-to-face.
- ⊙ The Community Forum would be open to all interested participants and ICANN will provide support services, including the publishing of recordings and transcripts.
- ⊙ Representatives of the ICANN Board are expected to attend and be prepared to address the issues raised.
- ⊙ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate their preliminary views in writing on the exercise of this Community Power.
- ⊙ The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage; although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the Decisional

Participants that supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted.

- ⊙ The Community Forum should be managed/moderated in a fair and neutral manner.
  - ⊙ Should the relevant Decisional Participants determine a need for further deliberation, a second and third session of the Community Forum could be held.
  - ⊙ ICANN staff will collect and publish a public record of the Forum(s), including all written submissions.
- 

45 **Step 3. Decision to use a Community Power as an Empowered Community**

46 (21 days from the conclusion of the Community Forum)

- ⊙ If three or more Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power to approve the change to the Fundamental Bylaws or Articles of Incorporation.
  - ⊙ If the required thresholds during the 21-day period are not met, the escalation ends without the change to the Fundamental Bylaws or Articles of Incorporation being approved.
- 

47 **Step 4. Advising the ICANN Board**

48 (1 day)

- ⊙ The Empowered Community will advise the Board of its decision.
- 

49 **The Power to Remove Individual ICANN Board Directors**

50 The power to remove individual ICANN Board Directors would allow for the removal of an ICANN Board Director before the Director's current term comes to an end. This was a formal requirement from the CWG-Stewardship. Note that this power applies only to voting members of the ICANN Board, and not to liaisons (who, as non-voting members of the Board are not treated as Directors under California law).

51 Given that ICANN Board Directors can be nominated in two significantly different ways, (1) Specific SO or AC nomination or (2) Nomination Committee nomination, the processes for removing each type of Director will be different.

52 In cases where the nominating SO or AC perceives that there is a significant issue with its appointed Director, it can use the following escalation process to determine if removal of the Director is recommended.

- It is important to note that this power can only be used once during a Director's term if the escalation process reaches the step of holding a Community Forum, as described above, and then fails to remove the Director.

53 As a condition to being nominated by an SO, AC or the Nominating Committee and seated on the Board, each Director-nominee shall be required to sign an irrevocable letter agreement that:

- Expresses a contractual commitment that: (1) Acknowledges that the nominating AC or SO, or, for Directors nominated by the Nominating Committee, the Empowered Community, has the right to remove the Director from service at any time and for any reason through the processes set out in the ICANN Bylaws (as described below); and (2) Confirms that service as an ICANN Board Director does not establish any employment or other relationship to ICANN, the Empowered Community, the SOs, the ACs, the Nominating Committee, or the agents of any of them, that provides any due process rights related to termination of service as a Director other than those specified in the Bylaws.
- Provides a conditional irrevocable resignation from the ICANN Board that is automatically effective upon a final determination of removal through the individual Director removal process or the full Board recall process upon communication of such decision to the Board (as set forth below).

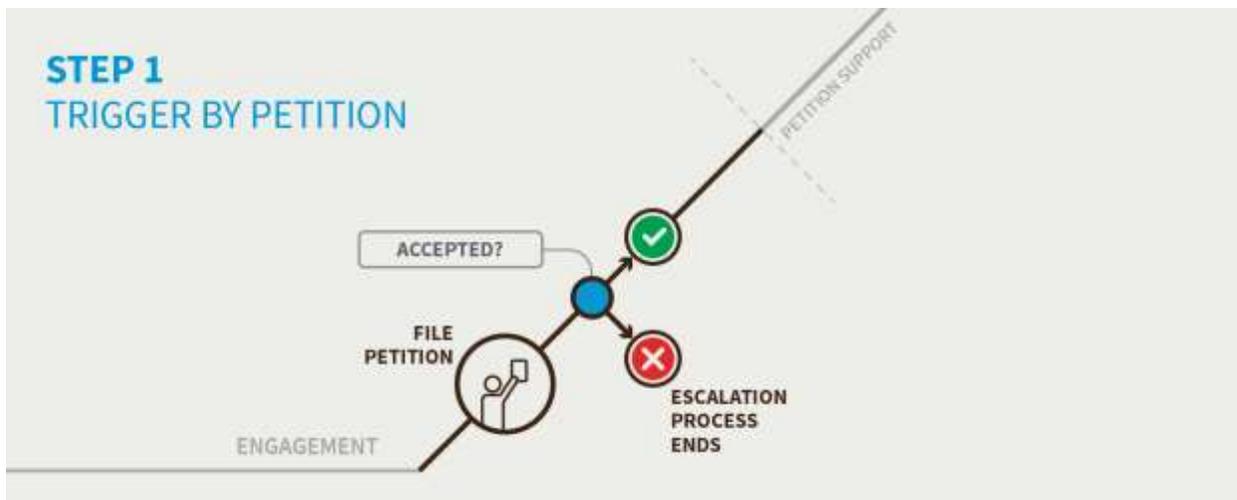
54 Indemnification associated with the removal of individual ICANN Board Directors:

- If a Director initiates a lawsuit in connection with his or her removal or recall (for example, a Director claims that he was libeled in the written rationale calling for his removal), ICANN will provide indemnification and advance expenses as provided below.
- Indemnification will be available (1) to a member of an SO, an AC, the Nominating Committee, or the Empowered Community (2) who is acting as a representative of such organization or committee (3) for actions taken by such representative in such capacity pursuant to processes and procedures set forth in the Bylaws (for example, the chair of an SO submitting a written rationale for the removal of a Director).
- As required by California law and consistent with ICANN's current Bylaws, indemnification will only be available if the actions were taken (1) in good faith and (2) in a manner that the indemnified person reasonably believed to be in the best interests of ICANN.
- Guidelines for standards of conduct that will be presumed to be in good faith (for example, conducting reasonable due diligence as to the truthfulness of a statement) will be developed in Work Stream 2.
- Indemnification will cover amounts actually and reasonably incurred in connection with the lawsuit, such as reasonable attorneys' fees of no more than one firm, judgments, and settlements approved by the Board in its reasonable discretion.
- ICANN will advance funds to cover defense expenses where the person meeting the requirements set forth above undertakes to repay to ICANN amounts received for expenses for which the requirements for indemnification are ultimately determined not to have been met.

55 **Directors Nominated by the Nominating Committee (and Appointed by the Empowered Community)**

56 **Step 1. Triggering Individual ICANN Board Director Removal by Community Petition**

57 (21 days from the official posting of the original petition)



- ⊙ Begin a petition in an SO or AC that is a Decisional Participant in the Empowered Community.
- ⊙ Any individual can begin a petition as the first step to using a Community Power. A petition must be supported by a written rationale stating the reasons why removal is sought.
- ⊙ For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition.
- ⊙ Prior to completion of the petition phase, the affected Director and the Chair of the Board (or Vice Chair if appropriate) are invited to a dialogue, which also includes the individual(s) bringing the petition and the chair of the SO/AC where the petition is under consideration. The purpose of the dialogue is to gain a full understanding of the issues leading to the petition and consider if there are other ways to address the concerns.
- ⊙ If the SO or AC does not approve the petition within 21 days, the escalation process terminates.
- ⊙ If the SO or AC approves the petition, it can proceed to the next step.

58 **Step 2. Triggering Review by Community Petition, Part Two**

59 (7 days from the end of the previous step)



- ⦿ The SO or AC that approved the petition contacts the other Decisional Participants in the Empowered Community to ask them to support the petition. At least one additional Decisional Participant must support the petition (for a minimum of two) for a Community Forum to be organized to discuss the issue.
- ⦿ If the petition fails to gather the required level of support within seven days, the escalation process terminates.
- ⦿ If a minimum of two Decisional Participants support the petition within seven days, a Community Forum is organized.

60 **Step 3. Holding a Community Forum**

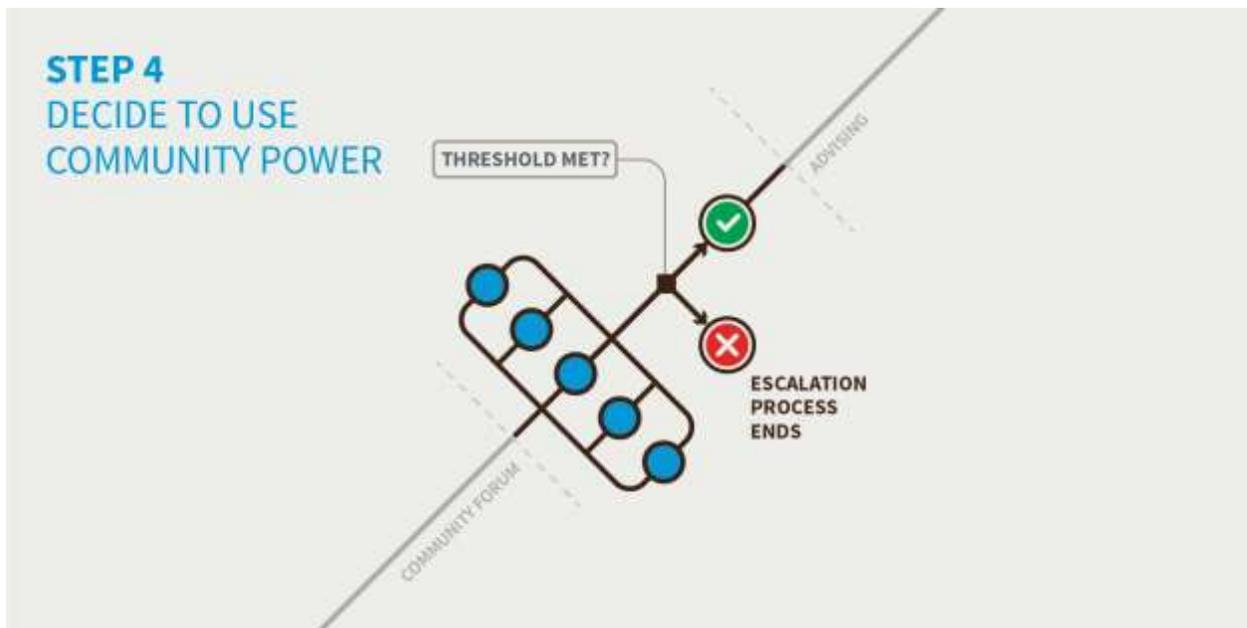
61 (21 days to organize and hold the event from the date of the decision to hold It)



- ⦿ It is expected that this will only involve remote participation methods, such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face-to-face.
- ⦿ The Community Forum would be open to all interested participants and ICANN will provide support services. The ICANN Board Director who is the subject of the petition would be invited and expected to attend and be prepared to address the issues raised.
- ⦿ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing their preliminary views on the exercise of this Community Power.
- ⦿ The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage; although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the Decisional Participants that supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted.
- ⦿ The Community Forum should be managed/moderated in a fair and neutral manner.
- ⦿ Should the relevant SOs or ACs determine a need for further deliberation, a second and third session of the Community Forum could be held.
- ⦿ Staff will collect and publish a public record of the Forum(s), including all written submissions.
- ⦿ If the Empowered Community and the ICANN Board Director can resolve the issue in the Community Forum, the escalation process terminates. Note after this point, this process cannot be used again by the Empowered Community to remove this specific ICANN Board Director during his or her current term.
- ⦿ If the Empowered Community and the ICANN Board Director cannot resolve the issue, the Empowered Community must decide if it wishes to take further action.

62 **Step 4. Decision to Use a Community Power as an Empowered Community**

63 (21 days from the conclusion of the Community Forum)

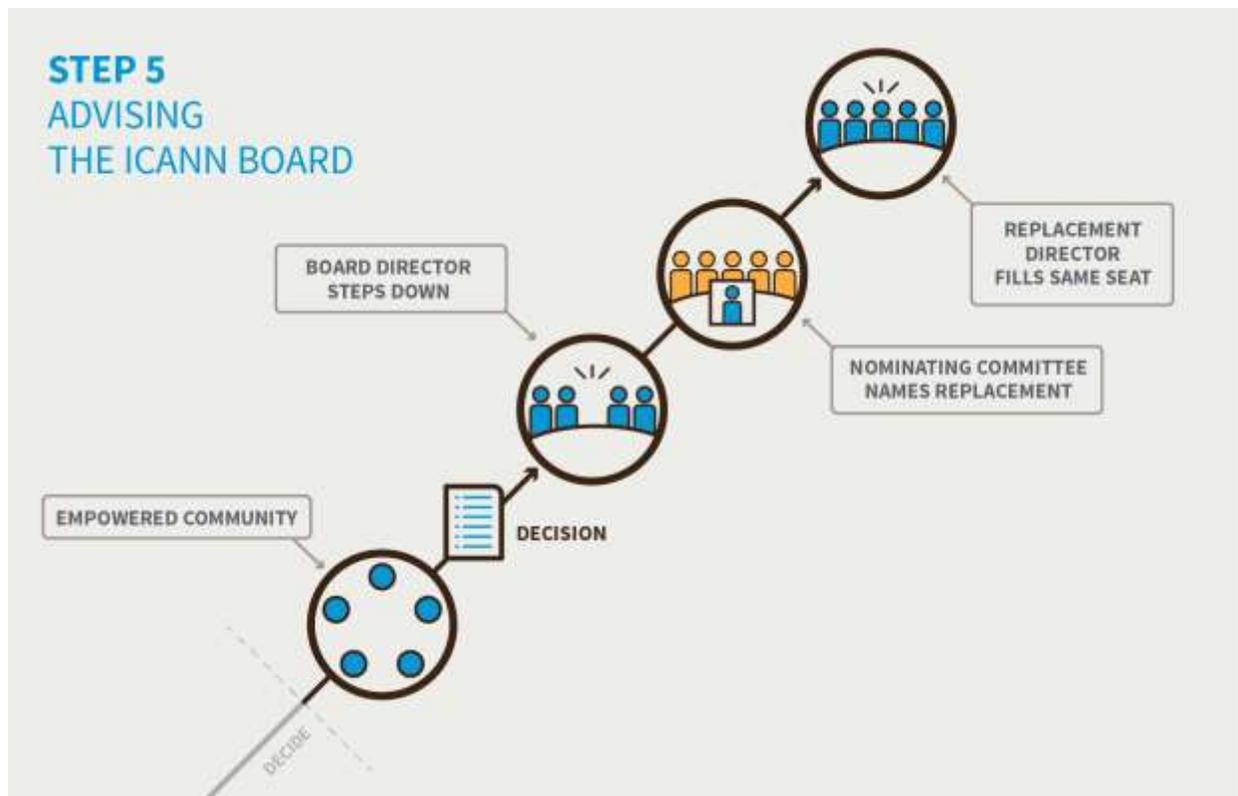


- ⦿ If three or more Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power. The Empowered Community will also publish an explanation of why it has chosen to do so. The published explanation can reflect the variety of underlying reasons.
- ⦿ If the proposal for the Empowered Community to use a Community Power does not meet the required thresholds during the 21-day period, the escalation process terminates.

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64 **Step 5. Advising the ICANN Board**

65 (1 day)

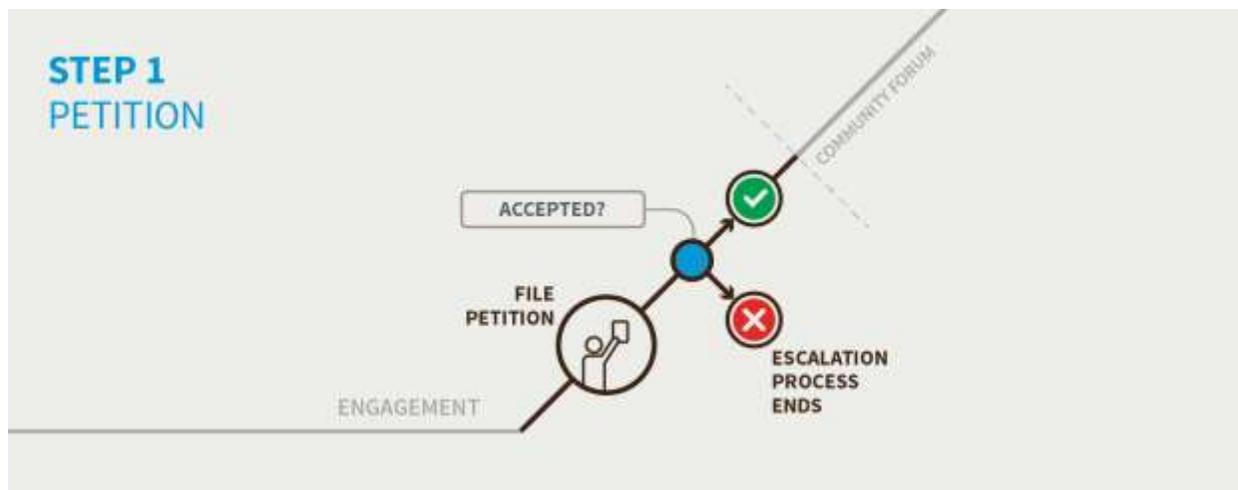


- ⦿ If the Empowered Community has decided to use its power, it will advise the ICANN Board Director of the decision and direct him or her to comply with the decision.
- ⦿ Naming a replacement:
  - The Nominating Committee may instruct the Empowered Community to appoint a new Director. It is expected that the Nominating Committee will amend its procedures so as to have several “reserve” candidates in place.
  - Replacement Directors will fill the same “seat” and their term will come to an end when the term of the original Director was to end.

66 **Directors Nominated by a Supporting Organization or Advisory Committee (and Appointed by the Empowered Community)**

67 **Step 1. Triggering Individual ICANN Board Director Removal by Community Petition**

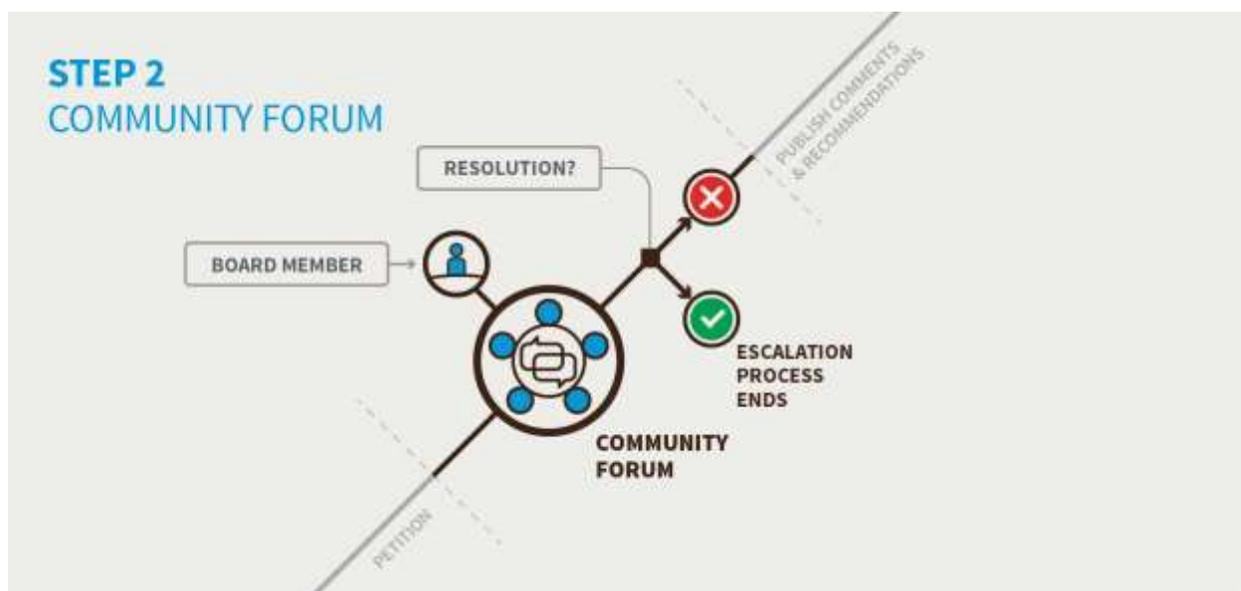
68 (21 days from the official posting of the original petition)



- ⦿ The petition can only be started in the SO or AC that nominated the Director and that is a Decisional Participant in the Empowered Community.
- ⦿ Any individual can begin a petition as the first step to using a Community Power.
- ⦿ For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition.
- ⦿ If the SO or AC does not approve the petition within 21 days, the escalation process terminates.
- ⦿ If the SO or AC approves the petition, it can proceed to the next step.

69 **Step 2. Holding a Community Forum**

70 (21 days to organize and hold the event from the date of the decision to hold it)



- ⦿ It is expected that this will only involve remote participation methods, such as teleconferences and Adobe Connect-type meetings over a period of one or two days at most. Unless the timing allows participants to meet at a regularly scheduled ICANN meeting, there is no expectation that participants will meet face to face. The Community Forum would be open to all interested participants, and ICANN will provide support services. The ICANN Board Director that is the subject of the petition would be invited and expected to attend and be prepared to address the issues raised.
- ⦿ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing its preliminary views on the exercise of this Community Power.
- ⦿ The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage, although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the nominating SO/AC that supported the petition formally agreeing, in accordance with its own mechanisms, that the escalation process should be halted.
- ⦿ The Community Forum should be managed/moderated in a fair and neutral manner and cannot involve a representative of the nominating SO or AC.
- ⦿ Should the relevant SO or AC determine a need for further deliberation, a second and third session of the Community Forum could be held.
- ⦿ Staff will collect and publish a public record of the Forum(s), including all written submissions.
- ⦿ If the Empowered Community and the ICANN Board Director can resolve the issue in the Community Forum, the escalation process terminates. Note after this point, this process cannot be used again by the Empowered Community to remove this specific ICANN Board Director during his or her current term.
- ⦿ If the Empowered Community and the ICANN Board Director cannot resolve the issue, the Empowered Community must decide if it wishes to take further action.
  - At the end of the Community Forum, the Community Forum Chair will issue a formal call for comments and recommendations from the community within seven days, and input received will be sent to the relevant SO or AC and posted publicly.

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71 **Step 3. Supporting Organizations and/or Advisory Committees Publish Their Comments and Recommendations**

72 (7 Days)



73 **Step 4. Decision to Use a Community Power as a Decisional Participant**

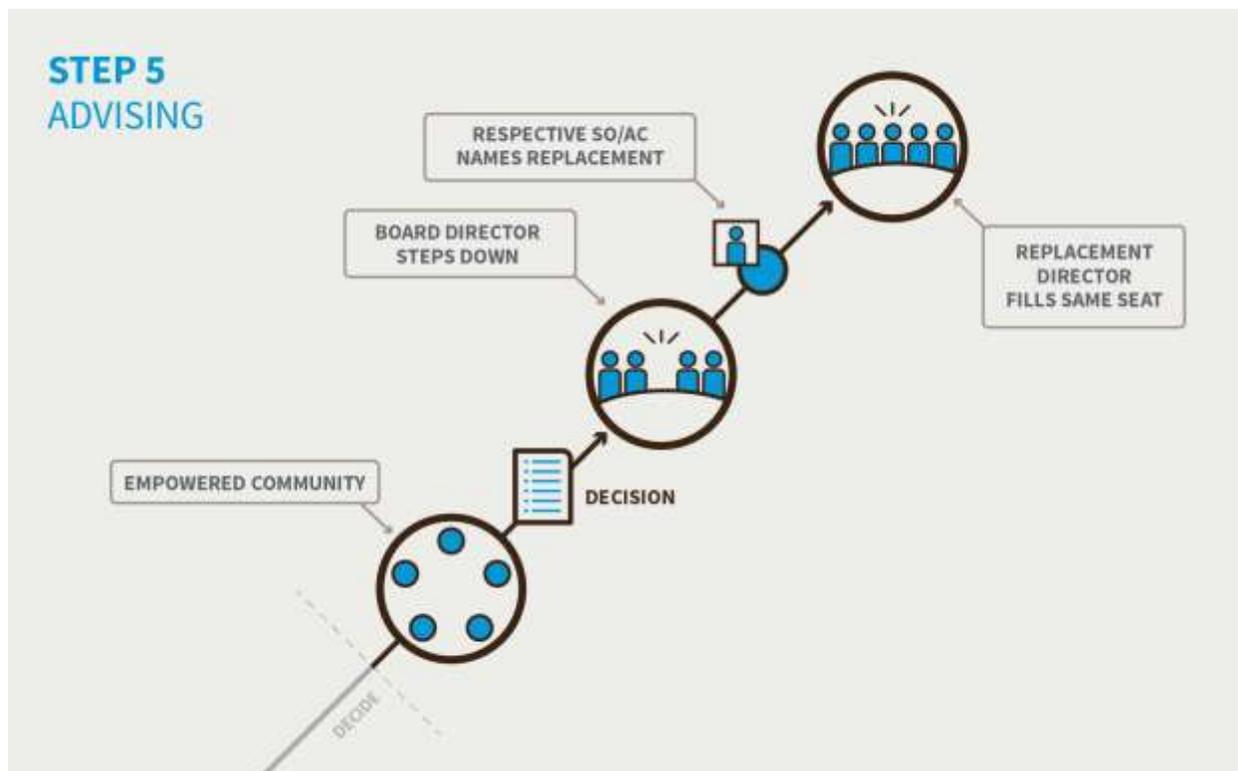
74 (21 days from the conclusion of the period for Supporting Organization and Advisory Committee comments)



- ⦿ If a three-quarters majority within the nominating SO or AC supports using the power within the 21-day period, the Empowered Community will use its power. The SO or AC will also publish an explanation of why it has chosen to do so.
- ⦿ If the nominating SO or AC does not adequately support using the power within the 21-day period, the escalation process terminates.

75 **Step 5. Advising the ICANN Board**

76 (1 Day)



- ⦿ If the Empowered Community has decided to use its power, it will advise the ICANN Board Director of the decision and direct him or her to comply with the decision.
- ⦿ Naming a replacement:
  - The nominating SO or AC is responsible for nominating an individual to fill the vacancy on the ICANN Board through its usual process (as set out in Article VI, Section 12.1 of the Bylaws).
  - Replacement Directors will fill the same “seat” and their term will come to an end when the term of the original Director was to end. Directors appointed in such circumstances will not have their remaining time in the role counted against any term limits, to which they would otherwise be subject.

77 **The Power to Recall the Entire ICANN Board**

78 The CCWG-Accountability believes there may be situations where removing individual Directors from the ICANN Board may not be a sufficient accountability remedy for the community.

- 79 In cases where the community perceives that a set of problems has become impossible to resolve, the community may wish to signal its lack of confidence in the ICANN Board by petitioning for a recall (i.e., the removal) of the entire Board (except the CEO, who is appointed by the Board).
- 80 The power to recall a Board is a critical enforcement mechanism for the Empowered Community because it can be used to support the other Community Powers and provide a final and binding accountability mechanism.
- 81 By exercising this power, the entire ICANN Board (except the CEO and liaisons who, as non-voting members of the Board are not treated as Directors under California law) could be removed by the Empowered Community. However, it is unlikely that the Empowered Community would use this power lightly, and the engagement and escalation processes are designed to encourage agreement between the ICANN Board and the Empowered Community.
- 82 If the ICANN Board were to be recalled, an Interim Board would be put in place. Interim Directors would be named with the exercising of the Community Power to ensure continuity.
- 83 The CCWG-Accountability expects that this power would only be exercised as a last resort after all other attempts at resolution have failed. As a recall of the Board would be extremely disruptive for the entire organization, the CCWG-Accountability has included several safeguards in the proposed escalation process to ensure that this decision reaches the maturity and level of support needed before it can be used
- Note: Special conditions may apply if the “carve out” is invoked for recalling the entire Board. Please consult Annex 2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement for further details.
- 

84 **Step 1. Triggering Recalling the ICANN Board Directors by Community Petition**

85 (21 days from the official posting of the original petition)

- ⊙ Begin a petition in an SO or AC that is a Decisional Participant in the Empowered Community.
  - ⊙ Any individual can begin a petition as the first step in using a Community Power.
  - ⊙ For the petition to be accepted, the SO or AC, in accordance with its own mechanisms, must accept the petition.
  - ⊙ If the SO or AC does not approve the petition within 21 days, the escalation process terminates.
  - ⊙ If the SO or AC does approve the petition within the 21-day period, it proceeds to the next step.
- 

86 **Step 2. Triggering Removal of ICANN Board by Community Petition, Part Two**

87 (7 days from the end of the 21-day period of the previous step)

- ⊙ The SO or AC that approved the petition contacts the other Decisional Participants in the Empowered Community to ask them to support the petition. At least two additional Decisional Participants must support the petition (for a minimum total of three) for a Community Forum to be organized to discuss the issue.

- ⊙ If the petition fails to gather the required level of support within seven days, the escalation process terminates.
- ⊙ If a minimum of three Decisional Participants support the petition within seven days, a Community Forum is organized.

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88 **Step 3. Holding a Community Forum**

89 (21 days to organize and hold the event from the date of the decision to hold it)

- ⊙ The power to recall the entire Board would require a face-to-face meeting. The three or more SOs or ACs that approved holding the Community Forum would decide if holding the Community Forum can wait until the next regularly scheduled ICANN meeting or if a special meeting is required to bring participants together. In both of these cases, the three or more SO or ACs that have requested the Community Forum will publish the date for holding the event which will not be subject to the 21-day limitation. In this case, the Community Forum would be considered completed at the end of the face-to-face meeting.
- ⊙ The Community Forum would be open to all interested participants, and ICANN will provide support services. The ICANN Board would be invited and expected to attend and be prepared to address the issues raised.
- ⊙ The purpose of the Community Forum is information-sharing (the rationale for the petition, etc.) and airing views on the petition by the community. Accordingly, any SO or AC may circulate in writing its preliminary views on the exercise of this Community Power.
- ⊙ The Community Forum will neither make decisions nor seek consensus. It will not decide whether to advance the petition to the decision stage, although the issue may be resolved before or in the Community Forum. Resolving an issue will be confirmed by the Decisional Participants that supported the petition formally agreeing, in accordance with their own mechanisms, that the escalation process should be halted.
- ⊙ The Community Forum should be managed/moderated in a fair and neutral manner.
- ⊙ Should the relevant SOs or ACs determine a need for further deliberation, a second and third session of the Community Forum could be held.
- ⊙ Staff will collect and publish a public record of the Forum(s), including all written submissions.
- ⊙ If the Empowered Community and the ICANN Board can resolve the issue in the Community Forum, the escalation process terminates.
- ⊙ If the Empowered Community and the ICANN Board cannot resolve the issue, the Empowered Community must decide if it wishes to take further action.

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90 **Step 4. Decision to Use a Community Power as an Empowered Community**

91 (21 days from the conclusion of the Community Forum)

- ⊙ If four or more Decisional Participants support and no more than one objects within the 21-day period, the Empowered Community will use its power. The Empowered Community will also publish an explanation of why it has chosen to do so. The published

explanation can reflect the variety of underlying reasons. In a situation where the GAC may not participate as a Decisional Participant because the Community Power is proposed to be used to challenge the Board's implementation of GAC consensus advice and the threshold is set at four in support, the power will still be validly exercised if three are in support and no more than one objects.

- ⊙ If the proposal to use a Community Power as the Empowered Community does not meet the required thresholds during the 21-day period, the escalation process terminates.

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92 **Step 5. Advising the ICANN Board**

93 (1 day)

- ⊙ If the Empowered Community has decided to use its power, it will advise the ICANN Board of the decision and direct it to comply with the decision.

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94 **Interim Board**

95 The CCWG-Accountability proposes that a Bylaw be added that states that if the Board is removed, the Interim Board will be in place only as long as is required for the selection/election process for the Replacement Board to take place.

96 SOs, ACs and the Nominating Committee will develop replacement processes that ensure the Interim Board will not be in place for more than 120 days.

97 The Interim Board will have the same powers and duties as the Board it replaces. Having a Board in place at all times is critical to the operational continuity of ICANN and is a legal requirement.

98 The ICANN Bylaws will state that, except in circumstances of where urgent decisions are needed to protect the security, stability and resilience of the DNS, the Interim Board will consult with the community through the SO and AC leaderships before making major decisions. Where relevant, the Interim Board will also consult through the ICANN Community Forum before taking any action that would mean a material change in ICANN's strategy, policies or management, including replacement of the serving President and CEO.

99 **The Power to Initiate a Community Independent Review Process or Request for Reconsideration**

100 A community IRP or Request for Reconsideration may be launched as described in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement. One example could be to require ICANN to provide documents as required under the right of inspection requirement.

101 A community IRP may be launched for any of the following reasons:

- To hear and resolve claims that ICANN, through its Board of Directors or staff, has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Articles of Incorporation or Bylaws resulting from action taken in response to advice/input from any AC or SO).

- To hear and resolve claims that PTI, through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
- To hear and resolve claims that expert panel decisions are inconsistent with the ICANN Bylaws.
- To hear and resolve issues relating to Documentary Information Disclosure Policy (DIDP) decisions by ICANN, which are inconsistent with the ICANN Bylaws.
- To hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or ICANN Bylaws.

102 A Request for Reconsideration can be initiated, to require the Board of Directors to reconsider a recent decision or action/inaction by the ICANN Board or staff.

103 The escalation and enforcement processes for initiating a community IRP or a Request for Reconsideration are detailed in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.

104 **The Power to Reject ICANN Board Decisions Relating to Reviews of IANA Functions, Including the Triggering of any Post-Transition IANA Separation Process for the IANA Naming Functions**

105 The IANA Functions Review, Special IANA Function Review, and the Separation Cross Community Working Group are all accountability mechanisms for the IANA naming functions that the CWG-Stewardship has requested the CCWG-Accountability constitute in the Fundamental Bylaws.

106 As such, these structures will exist within ICANN and many of their recommendations will require ICANN Board approval before implementation (i.e., change in the Statement of Work for the IANA Functions Operator). The CWG-Stewardship determined it was critical that the recommendations of these various bodies be respected by the ICANN Board, and so further required that the CCWG-Accountability provide mechanisms to ensure that the recommendations from these bodies could be enforced.<sup>2</sup>

107 The escalation and enforcement processes for rejecting an ICANN Board decision relating to IANA Function Review, Special IANA Function Review and Separation Cross Community Working Group recommendations are detailed in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, Enforcement.

108 The right to reject ICANN Board decisions relating to reviews of IANA naming functions, including ICANN Board decisions relating to Special IANA Function Review and Separation Cross Community Working Group recommendations, can be exercised by the Empowered Community an unlimited number of times.

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<sup>2</sup> Consult the [CWG-Stewardship Final Report](#) for further details.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- Budget rejection for PTI significantly updated.
- Caretaker budget expanded.
- Indemnification for removal of an ICANN Board Director greatly expanded.
- Escalation steps amended to match process in Recommendation #2: Empowering the Community through Consensus: Engagement, Escalation, and Enforcement.
- Scope of community IRP modified to match Recommendation #7: Strengthening ICANN’s Independent Review Process.
- “The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation” is now: “The Power to Approve Changes to Fundamental Bylaws and/or Articles of Incorporation and/or Approve ICANN’s Sale or Other Disposition of All or Substantially All of ICANN’s Assets.”
- “The Power to Initiate a Binding IRP (Where a Panel Decision is Enforceable in any Court Recognizing International Arbitration Results)” now includes the possibility for the Empowered Community to file a Request for Reconsideration.

## 5. How does this meet the CWG-Stewardship Requirements?

- “The Power to Reject ICANN’s Budget or Strategy/Operating Plans” directly meets the following CWG-Stewardship requirement:
  - ICANN Budget: Community rights regarding the development and consideration of the ICANN Budget.
- “The Power to Remove Individual ICANN Board Directors” and “The Power to Recall the Entire ICANN Board” directly meets the following CWG-Stewardship requirement:
  - ICANN Board: community rights regarding the ability to appoint/remove Directors of the ICANN Board, and recall the entire Board.
- “The Power to Approve Changes to Fundamental Bylaws” is directly related to the following CWG-Stewardship requirement:
  - Fundamental Bylaws: All of the foregoing mechanisms are to be provided for in the ICANN Bylaws as Fundamental Bylaws.

## 6. How does this address NTIA Criteria?

### 109 Support and enhance the multistakeholder model.

- Decentralizing power within ICANN through an Empowered Community.
- Establishing a public Community Forum to ensure that all voices and perspectives are heard before execution of a Community Power.

- Recommending a process where all are welcome to participate in the consultation processes prior to designing the document that will be put for discussion.
  - Retaining decision-making based on consensus rather than voting.
- 

110 **Maintain the security, stability, and resiliency of the Internet DNS.**

- Elaborating Community Powers associated with a defined escalation process.
  - The multi-step engagement process associated with the escalation process prevents single-step actions and encourages a conciliatory approach.
  - The escalation process includes high thresholds for using accountability actions that are based on consensus of the Empowered Community. This process provides safeguards to prevent a situation where an SO/AC might initiate a petition to reject with the intention of negatively impacting another SO/AC's budget by ensuring that no single SO/AC can use a power singlehandedly and no single AC/SO can singlehandedly block the use of a power.
- 

111 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- Including limited timeframes, transparent processes, and associated thresholds to maintain operational viability.
- 

112 **Maintain the openness of the Internet.**

- Establishing a public Community Forum to ensure that all voices and perspectives are heard before execution of a Community Power.
  - Preserving policies of open participation in ICANN's SOs and ACs.
  - The escalation process includes the convening of a Community Forum where all would be welcome to participate as a potential step. In addition, all are welcome to participate in the consultation process that organized to elaborate these key documents.
- 

113 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- To the extent the Government Advisory Committee (GAC) wishes to participate in decision-making by the Empowered Community, which the GAC has the flexibility to determine, it would be one of five Decisional Participants. In addition, the GAC will not participate as a decision-maker in community deliberations involving a challenge to the Board's implementation of GAC consensus advice. This "carve out," combined with the safeguards in Recommendation #11, leads the CCWG-Accountability to believe that this NTIA requirement is met, even when considering the increased threshold from 50 to 60% for the Board to reject GAC consensus advice.

- Enabling all interested stakeholders to join consultations through SOs and ACs or through the Community Forum.
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# Annex 05 – Recommendation #5: Changing Aspects of ICANN’s Mission, Commitments and Core Values

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## 1. Summary

01 The CCWG-Accountability is recommending changes to the ICANN Bylaws to assure that the Bylaws reflect the CCWG-Accountability recommendations.

- Note: The language proposed in this recommendation for ICANN Bylaw revisions is conceptual in nature at this stage. External legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.

### 02 **Mission Statement**

03 The CCWG-Accountability recommends the following changes to ICANN’s “Mission Statement,” (Bylaws, Article I, Section 1):

- Clarify that ICANN’s Mission is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability.
- Clarify that ICANN’s Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide.
- Clarify that ICANN’s powers are “enumerated.” Simply, this means that anything that is not articulated in the Bylaws is outside the scope of ICANN’s authority.
  - Note: This does not mean ICANN’s powers can never evolve. However, it ensures that any changes will be deliberate and supported by the community.

### 04 **Core Values**

05 The CCWG-Accountability recommends the following changes to ICANN’s “Core Values” (Bylaws, Article I, Section 2 and Article II, Section 3):

- Divide ICANN’s existing Core Values provisions into “Commitments” and “Core Values”.
  - Incorporate ICANN’s obligation to “operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law and international law and conventions through open and transparent processes that enable competition” into the Bylaws.
  - Note: These obligations are currently contained in ICANN’s Articles of Incorporation.

- Designate certain Core Values as “Commitments.” ICANN’s Commitments will include the values that are fundamental to ICANN’s operation, and are intended to apply consistently and comprehensively.

Commitments will include ICANN’s obligations to:

- Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
  - Limit its activities to those within ICANN’s Mission that require, or significantly benefit from, global coordination.
  - Employ open, transparent, bottom-up, multistakeholder processes.
  - Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.
- Slightly modify the remaining Core Values to:
    - Reflect various provisions in the Affirmation of Commitments, such as efficiency, operational excellence, and fiscal responsibility.
    - Add an obligation to avoid capture.
    - Although previous CCWG-Accountability draft proposals proposed to modify existing Core Value 5 (“Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment”) to drop the phrase “where feasible and appropriate,” the CCWG-Accountability has reconsidered this recommendation. While acknowledging that ICANN is not an antitrust authority, on balance the CCWG-Accountability elected to retain the introductory language to ensure that ICANN continues to have the authority, for example, to refer competition-related questions regarding new registry services to competent authorities under the RSEP program and to establish bottom-up policies for allocating top-level domains (e.g., community preference).

## 06 **Balancing or Reconciliation Test**

- 07 The CCWG-Accountability recommends modification to the “balancing” language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:

*These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities. The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN’s Mission that is identified through the bottom-up, multistakeholder process.*

## 08 **Fundamental Bylaws Provisions**

- 09 The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws. See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.

## 2. CCWG-Accountability Recommendations

- 10 Modify ICANN's Fundamental Bylaws to implement the following:

11 **Mission**

- 12 The Mission of the Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described below. Specifically, ICANN:

1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's scope is to coordinate the development and implementation of policies:
  - For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and
  - That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.
2. Facilitates coordination of the operation and evolution of the DNS root name server system.
3. Coordinates the allocation and assignment of the top-most level of Internet Protocol ("IP") and Autonomous System ("AS") numbers. In this role, ICANN provides registration services and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.
4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

- 13 ICANN shall act strictly in accordance with, and only as reasonably appropriate, to achieve its Mission.

- 14 ICANN shall not impose regulations on services that use the Internet's unique identifiers, or the content that such services carry or provide.

- 15 ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments ("PICs"), with contracted parties in service of its Mission.

- 16 Note to drafters: In crafting proposed Bylaws language to reflect this Mission Statement, the CCWG wishes the drafters to note the following:

1. The prohibition on the regulation of "content" is not intended to prevent ICANN policies from taking into account the use of domain names as identifiers in various natural languages.

2. The issues identified in Specification 1 to the Registry Agreement and Specification 4 to the Registrar Accreditation Agreement (the so-called “Picket Fence”) are intended and understood to be within the scope of ICANN’s Mission. A side-by-side comparison of the formulation of the Picket Fence in the respective agreements is included for reference at the end of this Annex.
3. For the avoidance of uncertainty only, the language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN’s Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN’s approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement, neither a contracting party nor anyone else should be able to bring a case alleging that any provisions of such agreements on their face are ultra vires. It does not, however, modify any contracting party’s right to challenge the other party’s interpretation of that language. It does not modify the right of any person or entity materially affected (as defined in the Bylaws) by an action or inaction in violation ICANN’s Bylaws to seek redress through an IRP. Nor does it modify the scope of ICANN’s Mission.
4. The CCWG-Accountability anticipates that the drafters may need to modify provisions of the Articles of Incorporation to align with the revised Bylaws.

17 **Section 2. Commitments & Core Values**

18 In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN’s Commitments and respects ICANN’s Core Values, both described below.

19 **Commitments**

20 In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN’s action must:

1. Preserve and enhance its neutral and judgment-free administration of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
2. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet.
3. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN’s activities to matters that are within ICANN’s Mission and require or significantly benefit from global coordination.
4. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities that (1) seek input from the public, for whose benefit ICANN shall in all events act, (2) promote well-informed decisions based on expert advice, and (3) ensure that those entities most affected can assist in the policy development process.

5. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment.
6. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.

21 **Core Values**

22 In performing its Mission, the following Core Values should also guide the decisions and actions of ICANN:

1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies.
2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.
3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.
4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.
  - a. Operating with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.
5. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.
6. Striving to achieve a reasonable balance between the interests of different stakeholders.

23 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.

24 The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.

25 In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.

26 Note: Specific recommendations on how to implement these modifications can be found at the end of the next section.

### 3. Detailed Explanation of Recommendations

#### 27 **Background**

28 To whom is ICANN accountable? For what is it accountable? Those questions were a necessary starting point for the work of the CCWG-Accountability, and the answers inform all of our recommendations. The Bylaws changes recommended here are designed to answer these questions. Most important, ICANN has a limited Mission, and it must be accountable for actions that exceed the scope of its Mission. In undertaking its Mission, ICANN is also obligated to adhere to policy supported by community consensus and an agreed-upon standard of behavior, articulated through its Commitments and Core Values. Taken together, the proposed Mission, Commitments, and Core Values articulate the standard against which ICANN's behavior can be measured and to which it can be held accountable. Because these Bylaws provisions are fundamental to ICANN's accountability, we propose that they be adopted as Fundamental Bylaws that can only be changed with the approval of the Empowered Community subject to procedural and substantive safeguards.

#### 29 **Mission and Core Values**

30 ICANN's current Bylaws contain:

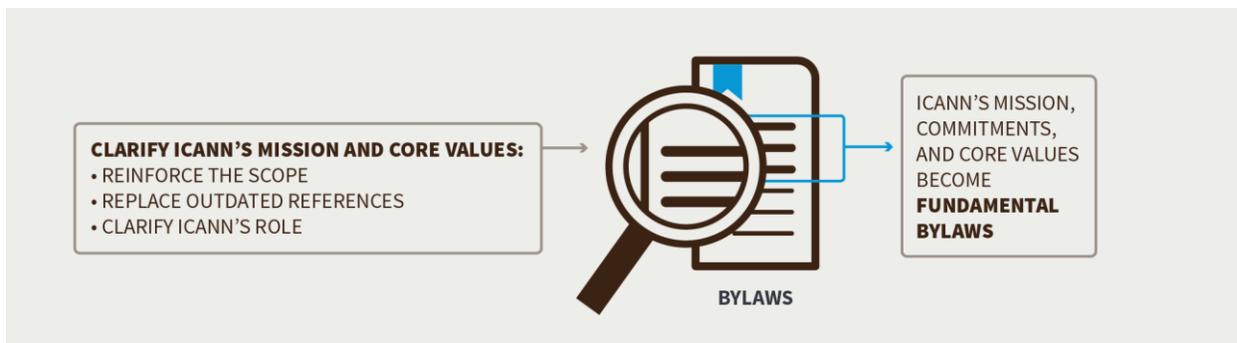
- Mission statement.
- Statement of Core Values.
- Provision prohibiting policies and practices that are inequitable or single out any party for disparate treatment.

31 These three sections are at the heart of ICANN's accountability because they obligate ICANN to act only within the scope of its limited Mission, and to conduct its activities in accordance with certain fundamental principles. As such, these three sections also provide a standard against which ICANN's conduct can be measured and held accountable through existing and enhanced mechanisms such as the Request for Reconsideration process and the Independent Review Process.<sup>1</sup>

32 Based on community input and CCWG-Accountability discussions, it was concluded that these ICANN Bylaws provisions, which were originally adopted in 2003, should be strengthened and enhanced to provide greater assurances that ICANN is accountable to its stakeholders and the global Internet community.

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<sup>1</sup> The current relevant language on this in the ICANN Bylaws was adopted in 2003.

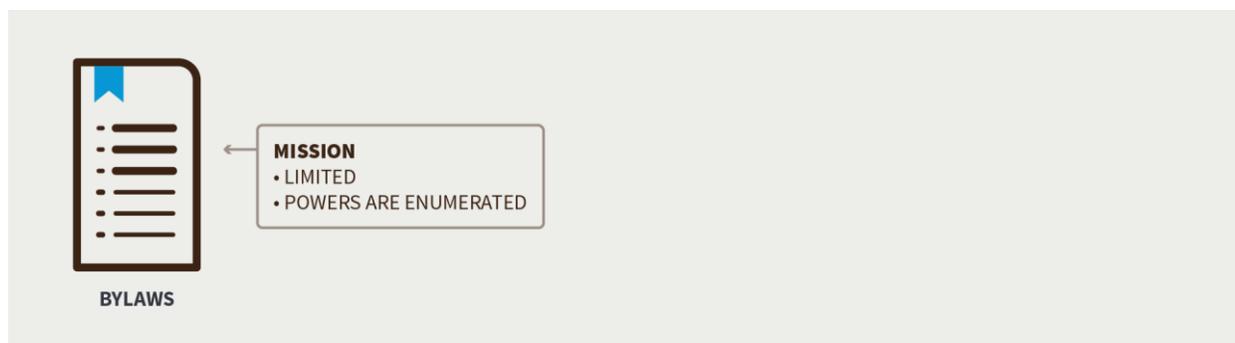


33 In particular, the CCWG-Accountability found that:

- ICANN's Mission statement needed clarification with respect to the scope of ICANN's policy authority.
- The language in the Bylaws describing how ICANN should apply its Core Values was weak and could permit ICANN decision-makers to exercise excessive discretion.
- The current Bylaws did not reflect key elements of the Affirmation of Commitments.
- The Board should have only a limited ability to change these key accountability provisions of ICANN's Bylaws.

34 The CCWG-Accountability recommendations to change aspects of ICANN's Mission, Commitments and Core Values are to address the deficiencies described above. The CCWG-Accountability discussed how to balance the needs of limiting ICANN's Mission and the necessary ability of the organization to adjust to a changing environment.

### 35 Mission Statement

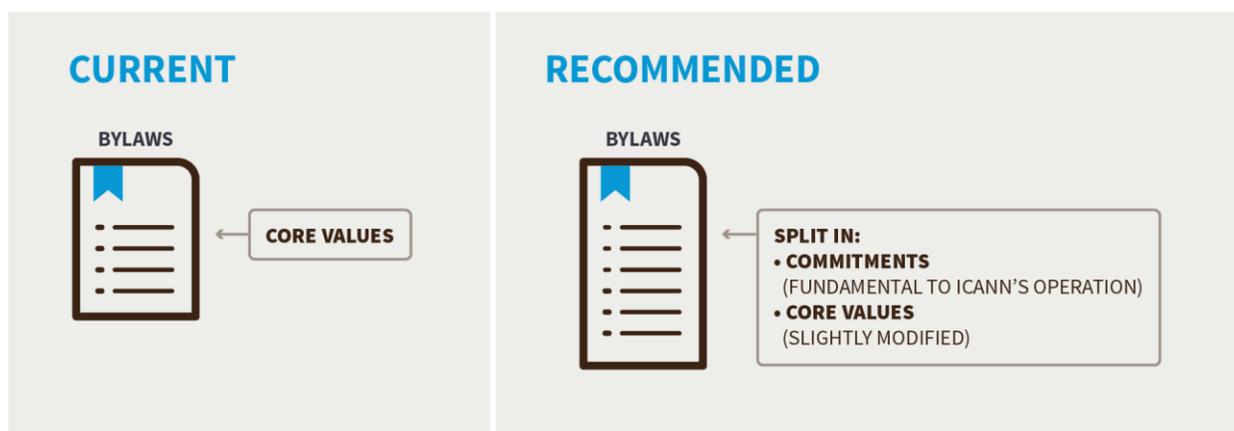


36 The CCWG-Accountability recommends the following changes to ICANN's "Mission Statement," (Bylaws, Article I, Section 1):

- Clarify that ICANN's Mission with respect to naming is limited to coordinating the development and implementation of policies that are designed to ensure the stable and secure operation of the Domain Name System and are reasonably necessary to facilitate its openness, interoperability, resilience, and/or stability.

- Clarify ICANN’s Mission with respect to numbering, protocol ports and parameters, and the DNS root name server system.
- Clarify that ICANN’s Mission does not include the regulation of services that use the Domain Name System or the regulation of the content these services carry or provide.
- Clarify that ICANN’s powers are “enumerated.” Simply, this means that anything that is not articulated in the Bylaws is outside the scope of ICANN’s authority.
  - Note: This does not mean ICANN’s powers can never evolve, however it ensures that any changes will be deliberate and supported by the community.

## 37 Core Values



38 The CCWG-Accountability recommends the following changes to ICANN’s Core Values (Bylaws, Article I, Section 2 and Article II, Section 3):

- Divide ICANN’s existing Core Values provisions into Commitments and Core Values.
  - Incorporate ICANN’s obligation to “operate for the benefit of the Internet community as a whole, and to carry out its activities in accordance with applicable law and international law and conventions through open and transparent processes that enable competition” into the Bylaws.
  - Note: These obligations are currently contained in ICANN’s Articles of Incorporation.
- Designate certain Core Values as Commitments. ICANN’s Commitments will include the values that are fundamental to ICANN’s operation, and are intended to apply consistently and comprehensively.

Commitments will include ICANN’s obligations to:

- Preserve and enhance the stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
- Limit its activities to those within ICANN’s Mission that require or significantly benefit from global coordination.
- Employ open, transparent, bottom-up, multistakeholder processes.

- Apply policies consistently, neutrally, objectively and fairly, without singling any party out for discriminatory treatment.
- Slightly modify the remaining Core Values to:
  - Reflect various provisions in the Affirmation of Commitments, such as efficiency, operational excellence, and fiscal responsibility.
  - Add an obligation to avoid capture.

### 39 **Balancing or Reconciliation Test**

40 The CCWG-Accountability recommends modification to the “balancing” language in the ICANN Bylaws to clarify the manner in which this balancing or reconciliation takes place. Specifically:

*These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities. The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN’s Mission that is identified through the bottom-up, multistakeholder process.*

### 41 **Fundamental Bylaws Provisions**

42 The CCWG-Accountability recommends that the revised Mission Statement, Commitments and Core Values be constituted as Fundamental Bylaws. See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.

### 43 **Proposed Mission, Commitments and Core Values** **Mission**

44 The Mission of the Internet Corporation for Assigned Names and Numbers (ICANN) is to ensure the stable and secure operation of the Internet’s unique identifier systems as described below. Specifically, ICANN:

1. Coordinates the allocation and assignment of names in the root zone of the Domain Name System (DNS). In this role, ICANN’s scope is to coordinate the development and implementation of policies:
  - a. For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and
  - b. That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet’s unique names systems.
2. Facilitates coordination of the operation and evolution of the DNS root name server system.
3. Coordinates the allocation and assignment of the top-most level of Internet Protocol (IP) and Autonomous System (AS) numbers. In this role, ICANN provides registration services

and open access for global number registries as requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.

4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

45 ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.

46 ICANN shall not impose regulations on services that use the Internet's unique identifiers, or the content that such services carry or provide.

47 ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments (PICs), with contracted parties in service of its Mission.

48 Note to drafters: In crafting proposed Bylaws language to reflect this Mission Statement, the CCWG wishes the drafters to note the following:

1. The prohibition on the regulation of "content" is not intended to prevent ICANN policies from taking into account the use of domain names as identifiers in various natural languages.
2. The issues identified in Specification 1 to the Registry Agreement and Specification 4 to the Registrar Accreditation Agreement (the so-called "Picket Fence") are intended and understood to be within the scope of ICANN's Mission. A side-by-side comparison of the formulation of the Picket Fence in the respective agreements is included for reference at the end of this Annex.
3. For the avoidance of uncertainty only, the language of existing registry agreements and registrar accreditation agreements (including PICs and as-yet unsigned new gTLD Registry Agreements for applicants in the new gTLD round that commenced in 2013) should be grandfathered to the extent that such terms and conditions might otherwise be considered to violate ICANN's Bylaws or exceed the scope of its Mission. This means that the parties who entered/enter into existing contracts intended (and intend) to be bound by those agreements. It means that until the expiration date of any such contract following ICANN's approval of a new/substitute form of Registry Agreement or Registrar Accreditation Agreement, neither a contracting party nor anyone else should be able to bring a case alleging that any provisions of such agreements on their face are ultra vires. It does not, however, modify any contracting party's right to challenge the other party's interpretation of that language. It does not modify the right of any person or entity materially affected (as defined in the Bylaws) by an action or inaction in violation ICANN's Bylaws to seek redress through an IRP. Nor does it modify the scope of ICANN's Mission.
4. The CCWG-Accountability anticipates that the drafters may need to modify provisions of the Articles of Incorporation to align with the revised Bylaws.

## 49 **Section 2. Commitments & Core Values**

50 In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below.

## 51 **Commitments**

1. In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:
2. Preserve and enhance its neutral and judgment free administration of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;
3. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;
4. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;
5. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities that (i) seek input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;
6. Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;
7. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.

52 **Core Values**

53 In performing its Mission, the following Core Values should also guide the decisions and actions of ICANN:

1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies.
2. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.
3. Where feasible and appropriate, depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market.
4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.
  - a. Operating with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community.
5. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that

governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.

6. Striving to achieve a reasonable balance between the interests of different stakeholders.

- 54 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN’s fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN’s activities.
- 55 The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.
- 56 In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN’s Mission that is identified through the bottom-up, multistakeholder process.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

### 57 Comparison of Mission Statement in Current Bylaws, 3<sup>rd</sup> Draft Proposal and Final Proposal

58 Existing Bylaws	59 3 <sup>rd</sup> Draft Proposal 60 (Text in RED shows changes from Existing Bylaws)	61 Final Proposal 62 (Text in RED shows changes from 3 <sup>rd</sup> Draft Proposal)
63 The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:	64 The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to <del>coordinate, at the overall level, the global Internet's systems of unique identifiers and in particular</del> to ensure the stable and secure operation of the Internet's unique identifier systems <del>as described below. In particular,</del> Specifically, ICANN:	65 The Mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described below. Specifically, ICANN:
66 1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are:	67 <del>1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are:</del> NOTE: This language has been	

	<i>modified and distributed over the specific functions. See below.</i>	
68 a. <i>[Coordinates the allocation and assignment of] Domain names (forming a system referred to as "DNS");</i>	<p>69 1. Coordinates the allocation and assignment of <b>names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's Mission is to coordinate the development and implementation of policies:</b></p> <p>70 <b>For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability; and</b></p> <p>71 <b>That are developed through a bottom-up, consensus-based multi-stakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.</b></p>	<p>72 Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS"). In this role, ICANN's <b>Mission scope</b> is to coordinate the development and implementation of policies:</p> <p>73 For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability <b>of the DNS; and</b></p> <p>74 That are developed through a bottom-up, consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.</p>
75 2. Coordinates the operation and evolution of the DNS root name server system.	76 2. Coordinates the operation and evolution of the DNS root name server system. <b>In this role, ICANN's Mission is to [to be provided by root server operators].</b>	77 <b>Facilitates coordination of the operation and evolution of the DNS root name server system. <del>In this role, ICANN's Mission is to [to be provided by RSSAC].</del></b>
78 b. <i>[Coordinates the allocation and assignment of] Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and</i>	79 3. Coordinates the allocation and assignment <b>at the top-most level</b> of Internet Protocol ("IP") and Autonomous System ("AS") numbers. <b>ICANN's Mission is described in the ASO MoU between ICANN and RIRs.</b>	80 3. Coordinates the allocation and assignment at the top-most level of Internet Protocol ("IP") and Autonomous System ("AS") numbers. <b>ICANN's Mission is described in the ASO MoU between ICANN and RIRs. In this role, ICANN provides registration services and open access for global number registries as</b>

		<p>requested by the Internet Engineering Task Force and the Regional Internet Registries and facilitates the development of related global number registry policies by the affected community as agreed with the RIRs.</p>
<p>81 c. [Coordinates the allocation and assignment of] Protocol port and parameter numbers.</p>	<p>82 4. Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's Mission is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations, such as the Internet Engineering Task Force.</p>	<p>83 Collaborates with other bodies as appropriate to publish core registries needed for the functioning of the Internet. In this role, with respect to protocol ports and parameters, ICANN's <del>Mission</del> scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations, <del>such as the Internet Engineering Task Force.</del></p>
<p>84 3. Coordinates policy development reasonably and appropriately related to these technical functions.</p>	<p>85 <del>3. Coordinates policy development reasonably and appropriately related to these technical functions.</del></p> <p>86 <i>Note: The chapeau has been deleted and the remainder of the language has been distributed as shown above.</i></p>	
	<p>87 ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.</p> <p>88 ICANN shall not impose regulations on services (i.e., any software process that accepts connections from the Internet) that use the Internet's unique identifiers, or the content</p>	<p>90 ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission.</p> <p>91 ICANN shall not impose regulations on services <del>(i.e., any software process that accepts connections from the Internet)</del> that use the Internet's unique identifiers, or the content</p>

	<p>89 that such services carry or provide. ICANN shall have the ability to negotiate, enter into and enforce agreements with contracted parties in service of its Mission.</p>	<p>92 that such services carry or provide. ICANN shall have the ability to negotiate, enter into and enforce agreements, including Public Interest Commitments ("PICs"), with contracted parties in service of its Mission.</p>
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93 **COMMITMENTS & CORE VALUES: ANNOTATED COMPARISON OF CURRENT BYLAWS, 3RD DRAFT PROPOSAL, AND FINAL PROPOSAL**

94 <b>Current Bylaws</b>	95 <b>3<sup>rd</sup> Draft Proposal</b> 96 (Text in <b>RED</b> indicates changes from Existing Bylaws)	97 <b>Final Draft Proposal</b> 98 (Text in <b>RED</b> indicates changes from 3 <sup>rd</sup> Draft Proposal)
99 Section 2. CORE VALUES 100 101 In performing its mission, the following core values should guide the decisions and actions of ICANN:	102 Section 2. COMMITMENTS & CORE VALUES 103 In carrying out its Mission, <del>the following core values should guide the decisions and actions of</del> ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below.	104 Section 2. COMMITMENTS & CORE VALUES 105 In carrying out its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, both described below.
	106 COMMITMENTS 107 1. In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:	108 COMMITMENTS 109 In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN's action must:
110 1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.	111 2. Preserve and enhance <del>the neutral and judgment free operation of the DNS,</del> and the operational stability, reliability, security, global interoperability, resilience, and openness	112 1. Preserve and enhance <del>its</del> neutral and judgment free <del>operation</del> <del>administration</del> of the <del>technical</del> DNS, and the operational stability, reliability, security, global

	of the DNS and the Internet;	interoperability, resilience, and openness of the DNS and the Internet;
113	114 3. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;	115 2. Maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet;
116 2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.	117 4. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;	118 3. Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;
119 7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.	120 5. Employ open, transparent and <b>bottom-up, multistakeholder</b> policy development processes, <b>led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities, that (i) seek input from the public, for whose benefit ICANN shall in all events act,</b> (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;	121 4. Employ open, transparent and bottom-up, multistakeholder policy development processes, led by the private sector, including business stakeholders, civil society, the technical community, academia, and end users, while duly taking into account the public policy advice of governments and public authorities, that (i) seek input from the public, for whose benefit ICANN shall in all events act, (ii) promote well-informed decisions based on expert advice, and (iii) ensure that those entities most affected can assist in the policy development process;
122 8. Making decisions by applying documented policies neutrally and	125 6. Make decisions by applying documented policies consistently,	126 5. Make decisions by applying documented policies consistently,

<p>objectively, with integrity and fairness.</p> <p>123 (From ARTICLE II, Section 3. NON-DISCRIMINATORY TREATMENT)</p> <p>124 ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.</p>	<p>neutrally, <del>objectively, and fairly with integrity and fairness, without singling out any particular party for discriminatory treatment;</del></p>	<p>neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment;</p>
<p>127 10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.</p>	<p>128 7. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.</p>	<p>129 6. Remain accountable to the Internet Community through mechanisms defined in the Bylaws that enhance ICANN's effectiveness.</p>
	<p>130 CORE VALUES</p>	<p>131 CORE VALUES</p>
	<p>132 1. In performing its Mission, the following core values should also guide the decisions and actions of ICANN:</p>	<p>133 In performing its Mission, the following core values should also guide the decisions and actions of ICANN:</p>
<p>134 3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.</p>	<p>135 2. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties <del>and the roles of both ICANN's internal bodies and external expert bodies;</del></p>	<p>136 1. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties and the roles of both ICANN's internal bodies and external expert bodies;</p>
<p>137 4. Seeking and supporting broad, informed participation</p>	<p>138 3. Seeking and supporting broad, informed participation reflecting the</p>	<p>139 2. Seeking and supporting broad, informed participation</p>

	reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.	functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making <b>to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;</b>	reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;
140	5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.	141 4. Depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market;	142 3. <b>Where feasible and appropriate,</b> depending on market mechanisms to promote and sustain a healthy competitive environment in the DNS market;
143	6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.	144 5. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest <b>as identified through the bottom-up, multistakeholder policy development process;</b>	145 4. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest as identified through the bottom-up, multistakeholder policy development process.
146	9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.	147 6. Operate with efficiency and excellence, in a fiscally responsible and accountable manner and <b>acting with</b> at a speed that is responsive to the needs of the <b>global Internet community while, as part of the decision-making process, obtaining informed input from those entities most affected.</b>	148 5. Operate with efficiency and excellence, in a fiscally responsible and accountable manner and at a speed that is responsive to the needs of the global Internet community;

<p>149 11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.</p>	<p>150 7. While remaining rooted in the private sector, <del>including business stakeholders, civil society, the technical community, academia, and end users,</del> recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.</p>	<p>151 6. While remaining rooted in the private sector, including business stakeholders, civil society, the technical community, academia, and end users, recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities.</p>
	<p>152 8. Striving to achieve a reasonable balance between the interests of different stakeholders.</p>	<p>153 7. Striving to achieve a reasonable balance between the interests of different stakeholders.</p>
<p>154 These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances.</p> <p>155 Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on</p>	<p>157 <del>These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances.</del></p> <p>158 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.</p> <p>159 <del>Because they are not narrowly prescriptive</del> The specific way in which Core Values apply, individually and collectively, to each new situation <del>will</del></p>	<p>161 These Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities.</p> <p>162 The specific way in which Core Values apply, individually and collectively, to each new situation may depend on many factors that cannot</p>

<p>many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible.</p> <p>156 Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.</p>	<p><del>necessarily may</del> depend on many factors that cannot be fully anticipated or enumerated. <del>and because they are statements of principle rather than practice,</del> Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.</p> <p>160 <del>Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.</del> In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.</p>	<p>be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible.</p> <p>163 In any situation where one Core Value must be reconciled with another, potentially competing Core Value, the balancing must further an important public interest goal within ICANN's Mission that is identified through the bottom-up, multistakeholder process.</p>
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## 5. Stress Tests Related to this Recommendation

- ST17: respond to formal advice from ACs (i.e., SSAC)
- ST23 (enforcement / contracts)

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

164 **Support and enhance the multistakeholder model.**

- Ensuring the multistakeholder model accountability mechanisms cannot be modified without the Empowered Community's approval.
- 

165 **Maintain the security, stability and resiliency of the Internet DNS.**

- Establishing "Fundamental Bylaws" that provide additional protections to ICANN Bylaws that are critical to the organization's stability and operational continuity.
- 

166 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- N/A
- 

167 **Maintain the openness of the Internet.**

- N/A
- 

168 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A
- 

## 8. Additional Material

169 **Comparison of Registrar Accreditation Agreement (2013) Specification 4 vs. Registry Agreement (New gTLDs) Specification 1**

170 (the text in RED shows changes between the two agreements)

<b>Registrar Accreditation Agreement (2013) Specification 4</b>	<b>Registry Agreement (New gTLDs) Specification 1</b>
<p>Consensus Policies.</p> <p>1.1. "Consensus Policies" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.</p> <p>1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including registrars. Consensus Policies shall relate to one or more of the following:</p> <p>1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, <b>Registrar Services, Registry Services</b>, or the Domain Name System ("DNS");</p> <p>1.2.2. functional and performance specifications for the provision of Registrar [and Registry] Services;</p> <p>2.3. registrar policies reasonably necessary to</p>	<p>Consensus Policies.</p> <p>1.1. "<i>Consensus Policies</i>" are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.</p> <p>1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:</p> <p>1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System ("DNS");</p> <p>1.2.2 functional and performance specifications for the provision of Registry Services;</p> <p><b>1.2.3 Security and Stability of the registry database for the TLD;</b></p> <p>1.2.4 registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;</p>

<p>implement Consensus Policies relating to a gTLD registry;</p> <p>1.2.4. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, <b>but including where such policies take into account use of the domain names</b>); or</p> <p>1.2.5. restrictions on cross-ownership of registry operators and registrars or Resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or Reseller are affiliated.</p> <p>1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:</p> <p>1.3.1. principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);</p> <p>1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;</p> <p>1.3.3. reservation of registered names in a TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);</p> <p>1.3.4. maintenance of and access to accurate and up-to-date</p>	<p>1.2.5 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or</p> <p>1.2.6 restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.</p> <p>1.3. Such categories of issues referred to in Section 1.2 of this Specification shall include, without limitation:</p> <p>1.3.1 principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);</p> <p>1.3.2 prohibitions on warehousing of or speculation in domain names by registries or registrars;</p> <p>1.3.3 reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and</p> <p>1.3.4 maintenance of and access to accurate and up-to-date information concerning <b>domain name registrations</b>; and</p>
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<p>information concerning Registered Names and name servers;</p> <p>1.3.5. procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility among continuing registrars of the Registered Names sponsored in a TLD by a registrar losing accreditation; and</p> <p>1.3.6. the transfer of registration data upon a change in registrar sponsoring one or more Registered Names.</p> <p>1.4. In addition to the other limitations on Consensus Policies, they shall not:</p> <p>1.4.1. prescribe or limit the price of Registrar Services;</p> <p>1.4.2. modify the limitations on Temporary Policies (defined below) or Consensus Policies;</p> <p>1.4.3. modify the provisions in the Registrar Accreditation Agreement regarding terms or conditions for the renewal, termination or amendment of the Registrar Accreditation Agreement or fees paid by Registrar to ICANN; or</p> <p>1.4.4. modify ICANN's obligations to not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and to not single out Registrar for disparate treatment unless justified by substantial and reasonable cause, and</p>	<p>1.3.5 procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.</p> <p>1.4. In addition to the other limitations on Consensus Policies, they shall not:</p> <p>1.4.1 prescribe or limit the price of Registry Services;</p> <p>1.4.2 modify the terms or conditions for the renewal or termination of the Registry Agreement;</p> <p>1.4.3 modify the limitations on Temporary Policies (defined below) or Consensus Policies;</p> <p>1.4.4 modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or</p> <p>1.4.5 modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.</p>
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<p><b>exercise its responsibilities</b> in an open and transparent manner.</p>	
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# Annex 06 – Recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries Out its Mission

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## 1. Summary

- 01 The subject of including a commitment to respect Human Rights in the ICANN Bylaws has been extensively discussed by the CCWG-Accountability.
- 02 The CCWG-Accountability sought legal advice on whether, upon the termination of the IANA Functions Contract between ICANN and the U.S. National Telecommunications and Information Administration (NTIA), ICANN's specific Human Rights obligations could be called into question. It was found that, upon termination of the contract, there would be no significant impact on ICANN's Human Rights obligations. However, the CCWG-Accountability reasoned that a commitment to respect Human Rights should be included in ICANN's Bylaws in order to comply with the NTIA criteria to maintain the openness of the Internet.
- 03 This proposed draft Bylaw on Human Rights would reaffirm ICANN's existing obligations within its Core Values, and would clarify ICANN's commitment to respect Human Rights.
- 04 Amendments to the proposed draft Bylaw text since the Second Draft Proposal aimed to prevent Mission expansion or "Mission creep," and under the proposed draft Bylaw, ICANN commits to respect internationally recognized Human Rights "within its Core Values."
- 05 The proposed draft Bylaw does not impose any enforcement duty on ICANN, or any obligation on ICANN to take action in furtherance of the Bylaw.
- 06 The proposed draft Bylaw also clarifies that no IRP challenges can be made on the grounds of this Bylaw until a Framework of Interpretation on Human Rights (FOI-HR) is developed and approved as part of Work Stream 2 activities. It further clarifies that acceptance of the FOI-HR will require the same process as for Work Stream 1 recommendations (as agreed for all Work Stream 2 recommendations).
- 07 Additionally, the CCWG-Accountability has identified several work areas that need to be undertaken as part of Work Stream 2 in order to fully operationalize ICANN's commitment to respect Human Rights.

## 2. CCWG-Accountability Recommendations



- Include a Bylaw with the following intent in Work Stream 1 recommendations:

“Within its Core Values, ICANN will commit to respect internationally recognized Human Rights as required by applicable law. This provision does not create any additional obligation for ICANN to respond to or consider any complaint, request, or demand seeking the enforcement of Human Rights by ICANN. This Bylaw provision will not enter into force until (1) a Framework of Interpretation for Human Rights (FOI-HR) is developed by the CCWG-Accountability as a consensus recommendation in Work Stream 2 (including Chartering Organizations’ approval) and (2) the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations.”

- Note: This proposed draft Bylaw will be reviewed by both CCWG-Accountability’s lawyers and ICANN’s legal department and then submitted to the CCWG-Accountability for approval before its submission to the Board for approval.
- Include the following in Work Stream 2 activities:
  - Develop an FOI-HR for the Human Rights Bylaw.
  - Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.
  - Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights.
  - Consistent with ICANN’s existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process.
  - Consider what effect, if any, this Bylaw will have on ICANN’s consideration of advice given by the Governmental Advisory Committee (GAC).
  - Consider how, if at all, this Bylaw will affect how ICANN’s operations are carried out.
  - Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

### 3. Detailed Explanation of Recommendations

- 08 As part of the discussion of the inclusion of a draft Bylaw on Human Rights, the CCWG-Accountability requested analysis from its legal counsel about whether, upon the termination of the IANA Functions Contract between ICANN and the NTIA, ICANN's specific Human Rights obligations could be called into question. The key aspects are as follows:
- Only nation states have direct Human Rights obligations under international law. However, private sector organizations are required to comply with all applicable laws, including those related to Human Rights.
  - Upon termination of the Contract, there would be no significant impact on ICANN's Human Rights obligations.<sup>1</sup>
- 09 However, the CCWG-Accountability reasoned that a commitment to respect Human Rights **should be included** in ICANN's Bylaws in order to comply with the NTIA criteria to maintain the openness of the Internet. These criteria include free expression and the free flow of information.
- 10 Further, the CCWG-Accountability emphasized that adding a commitment to respect Human Rights to the ICANN Bylaws should not lead to an expansion of ICANN's Mission or scope. While there was general agreement that ICANN should commit to respect Human Rights within the limited scope of its Core Values, any type of external enforcement or regulatory activity would be wholly out of scope.
- 11 The CCWG-Accountability also disagreed with any attempt to single out any specific Human Right (such as "freedom of expression") in the proposed draft Bylaw text on the basis that Human Rights cannot be selectively mentioned, emphasized, or applied since they are universal, indivisible, interdependent, and interrelated.
- 12 The CCWG-Accountability considered comments received during the third public comment period, which were overall in favor of including Human Rights language. There remained a few not in favor of the inclusion, including the ICANN Board.
- 13 The CCWG-Accountability engaged with the ICANN Board to specifically address its concerns through discussion and debate in three plenary calls. Additionally, ICANN's legal team and CCWG-Accountability's legal advisors discussed the concerns raised by ICANN legal regarding the possibility of having a significant number of IRP challenges initiated on the grounds of Human Rights claims and the problems this could create without having a Framework of Interpretation in place to properly implement the proposed Bylaw provision.
- 14 The CCWG-Accountability developed compromise text based on a proposal by its legal advisors, which it believed addressed these concerns. The ICANN Board maintained that this compromise text did not address its concerns, but did not provide any specific examples of its concerns regarding the alleged unintended consequences.
- 15 The Board responded with proposed changes to the draft Bylaw text, which reflected a compromise position and included a commitment to respect Human Rights within ICANN's Core Values, which was accepted by the CCWG-Accountability.

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<sup>1</sup> See the 29 July 2015 memorandum here:

[https://community.icann.org/download/attachments/53783718/Memo\\_%20%20%20ICANN%20%20Human%20Rights%20Obligations.pdf?version=1&modificationDate=1438504619000&api=v2](https://community.icann.org/download/attachments/53783718/Memo_%20%20%20ICANN%20%20Human%20Rights%20Obligations.pdf?version=1&modificationDate=1438504619000&api=v2). All other legal documents provided are available at <https://community.icann.org/x/OiQnAw>.

- 16 This proposed draft Bylaw on Human Rights reaffirms ICANN's existing obligations within its Core Values and clarifies ICANN's commitment to respect Human Rights.
- 17 Amendments to the proposed draft Bylaw text since the Second Draft Proposal aimed to prevent Mission expansion or "Mission creep", and under the proposed draft Bylaw, ICANN commits to respect internationally recognized Human Rights "within its Core Values."
- 18 The proposed draft Bylaw does not impose any enforcement duty on ICANN, or any obligation on ICANN to take action in furtherance of the Bylaw.
- 19 The proposed draft Bylaw also clarifies that no IRP challenges can be made on the grounds of this Bylaw until an FOI-HR is developed and approved as part of Work Stream 2 activities. It further clarifies that acceptance of the FOI-HR will require the same process as for Work Stream 1 recommendations (as agreed for all Work Stream 2 recommendations).
- 20 Additionally, the CCWG-Accountability has identified several work areas that need to be undertaken as part of Work Stream 2 in order to fully operationalize ICANN's commitment to respect Human Rights, including the development of an FOI-HR.

### 21 **Draft Bylaw on Human Rights**

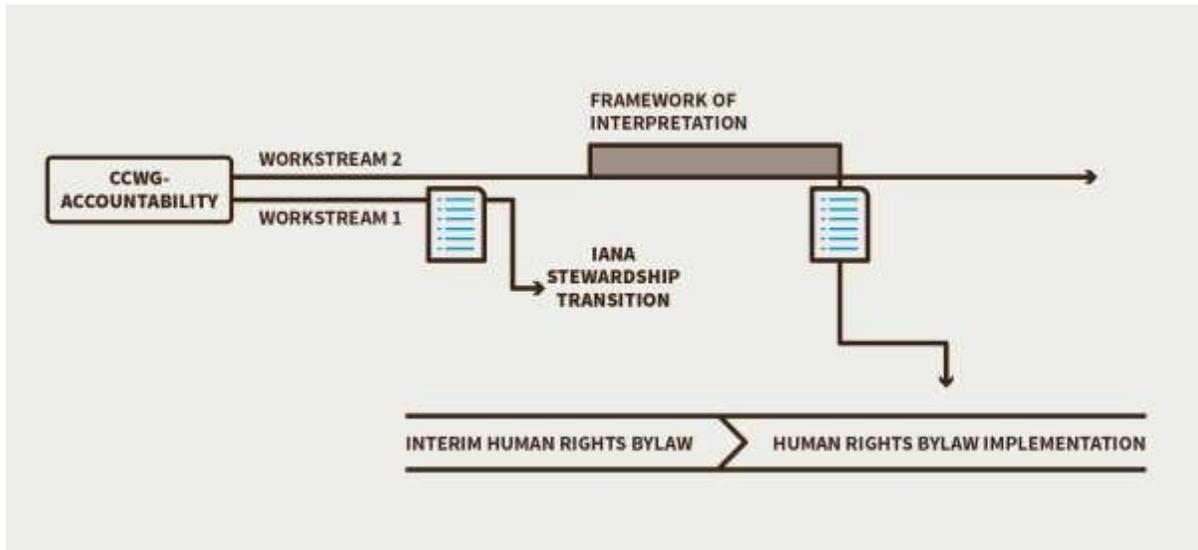
- 22 Responding to public comments received on the Third Draft Proposal, the CCWG-Accountability presents the following proposed draft Bylaw for consideration:

- 23 "Within its Core Values, ICANN will commit to respect internationally recognized Human Rights as required by applicable law. This provision does not create any additional obligation for ICANN to respond to or consider any complaint, request, or demand seeking the enforcement of Human Rights by ICANN. This Bylaw provision will not enter into force until (1) a Framework of Interpretation for Human Rights (FOI-HR) is developed by the CCWG-Accountability as a consensus recommendation in Work Stream 2 (including Chartering Organizations' approval) and (2) the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations."

### 24 **Operationalizing the Commitment to Respect Human Rights**

- 25 To ensure that these Work Stream 2 activities are implemented, the CCWG-Accountability requires that a Bylaw be adopted as part of Work Stream 1. The Bylaw proposed for adoption as part of Work Stream 1 will not enter into force until the FOI-HR is approved.
- 26 The CCWG-Accountability has identified several activities that it recommends be undertaken as part of Work Stream 2 that will fully operationalize ICANN's commitment to respect Human Rights. Work Stream 2 focuses on accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

27



28 The Human Rights-related activities to be addressed in Work Stream 2 are:

- Developing an FOI-HR for the Bylaw.
- Considering which specific Human Rights conventions or other instruments should be used by ICANN in interpreting and implementing the Bylaw.
- Considering the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights.
- Considering how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process, consistent with ICANN's existing processes and protocols.
- Considering what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the GAC.
- Considering how, if at all, this Bylaw will affect how ICANN's operations are carried out once an FOI-HR is developed by the CCWG-Accountability as a consensus recommendation in Work Stream 2 (including Chartering Organizations' approval) and the FOI-HR is approved by the ICANN Board using the same process and criteria it has committed to use to consider the Work Stream 1 recommendations.
- Considering how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- The CCWG-Accountability considered comments received during the third public comment period, which were overall in favor of including Human Rights language with a few exceptions which included the ICANN Board.
- The CCWG-Accountability engaged with the ICANN Board to specifically address its concerns through discussion and debate in three plenary calls. Additionally, ICANN's legal team and CCWG-Accountability's legal advisors discussed the concerns raised by ICANN legal regarding the possibility of having a significant number of IRP challenges initiated on the grounds of Human Rights claims and the problems this could create without having a Framework of Interpretation in place to properly implement the proposed Bylaw provision.
- The CCWG-Accountability developed compromise text based on a proposal by its legal advisors, which it believed addressed these concerns. The ICANN Board maintained that this compromise text did not address its concerns, but did not provide any specific examples of its concerns regarding the alleged unintended consequences.
- The ICANN Board responded with proposed changes to the draft Bylaw text, which reflected a compromise position and included a commitment to respect Human Rights within ICANN's Core Values, which were accepted by the CCWG-Accountability.

## 5. Stress Tests Related to this Recommendation

- N/A

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

### 29 Support and enhance the multistakeholder model.

- N/A
- 

### 30 Maintain the security, stability and resiliency of the Internet DNS.

- N/A

31 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- The global customers and partners of the IANA services have expectations with respect to Human Rights. The implementation of these recommendations will partially address these expectations.
- 

32 **Maintain the openness of the Internet.**

- Recommendation #6 is instrumental to meeting this requirement
- 

33 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A
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# Annex 07 – Recommendation #7: Strengthening ICANN’s Independent Review Process

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## 1. Summary

- 01 The purpose of the Independent Review Process (IRP) is to ensure that ICANN does not exceed the scope of its limited technical Mission and complies with its Articles of Incorporation and Bylaws.
- 02 A consultation process undertaken by ICANN produced numerous comments calling for overhaul and reform of ICANN’s existing IRP. Commenters called for ICANN to be held to a substantive standard of behavior rather than just an evaluation of whether or not its action was taken in good faith.
- 03 The CCWG-Accountability therefore proposes several enhancements to the IRP to ensure that the process is:
  - Transparent, efficient and accessible (both financially and from a standing perspective).
  - Designed to produce consistent and coherent results that will serve as a guide for future actions.
- 04 The CCWG-Accountability also proposes that the IRP:
  - Hear and resolve claims that ICANN, through its Board of Directors or staff, has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws – including any violation of the Bylaws resulting from action taken in response to advice/input from any Supporting Organization (SO) or Advisory Committee (AC).
  - Hear and resolve claims that Post-Transition IANA (PTI), through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
  - Hear and resolve claims that expert panel decisions are inconsistent with the ICANN Bylaws.
  - Hear and resolve claims that DIDP decisions by ICANN are inconsistent with the ICANN Bylaws.
  - Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws. In such cases, ICANN will bear the costs associated with the Standing Panel, as well as the Empowered Community’s legal expenses.
  - Be subject to certain exclusions relating to the results of an SO’s policy development process, country code top-level domain delegations/redelegations, numbering resources, and protocols parameters.

## 2. CCWG-Accountability Recommendations

- Modifying the Fundamental Bylaws to implement the modifications associated with this recommendation on the IRP which include:
  - Hear and resolve claims that ICANN through its Board of Directors or staff has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Bylaws resulting from action taken in response to advice/input from any AC or SO).
  - Hear and resolve claims that PTI through its Board of Directors or staff has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
  - Hear and resolve claims that expert panel decisions are inconsistent with ICANN's Bylaws.
  - Hear and resolve claims that DIDP decisions by ICANN are inconsistent with ICANN's Bylaws.
  - Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws.
- A standing judicial/arbitral panel: The IRP should have a standing judicial/arbitral panel tasked with reviewing and acting on complaints brought by individuals, entities, and/or the community who have been materially affected by ICANN's action or inaction in violation of the Articles of Incorporation and/or Bylaws.
  - Composition of Panel and Expertise: Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration is necessary.
  - Diversity: English will be the primary working language with provision of translation services for claimants as needed. Reasonable efforts will be taken to achieve cultural, linguistic, gender, and legal diversity, with an aspirational cap on number of panelists from any single region (based on the number of members of the Standing Panel as a whole).
  - Size of Panel:
    - Standing Panel: Minimum of seven panelists.
    - Decisional Panel: Three panelists.
  - Independence: Panel members must be independent of ICANN, including ICANN SOs and ACs.
  - Recall: Appointments shall be made for a fixed term of five years with no removal except for specified cause (corruption, misuse of position for personal use, etc.). The recall process will be developed by way of the IRP subgroup.
- Initiation of the Independent Review Process: An aggrieved party would trigger the IRP by filing a complaint with the panel alleging that a specified action or inaction is in violation of ICANN's Articles of Incorporation and/or Bylaws, or otherwise within the scope of IRP jurisdiction. The Empowered Community could initiate an IRP with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws.

- **Standing:** Any person/group/entity “materially affected” by an ICANN action or inaction in violation of ICANN’s Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress. The Board’s failure to fully implement an Empowered Community decision will be sufficient for the Empowered Community to be materially affected.
- **Community Independent Review Process:** The CCWG-Accountability recommends giving the Empowered Community the right to present arguments on behalf of the Empowered Community to the IRP Panel. In such cases, ICANN will bear the costs associated with the Standing Panel, as well as the Empowered Community’s legal expenses.
- **Standard of Review:** The IRP Panel, with respect to a particular IRP, shall decide the issue(s) presented based on its own independent interpretation of the ICANN Articles of Incorporation and Bylaws in the context of applicable governing law and prior IRP decisions.
- **Accessibility and Cost:** The CCWG-Accountability recommends that ICANN bear all the administrative costs of maintaining the system (including panelist salaries), while each party should bear the costs of their own legal advice, except that the legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN. The panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive. ICANN should seek to establish access – for example access to pro bono representation for community, non-profit complainants and other complainants that would otherwise be excluded from utilizing the process.
- **Implementation:** The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. Implementation of these enhancements will necessarily require additional detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. The functional processes by which the Empowered Community will act, such as through a council of the chairs of the ACs and SOs, should also be developed. These processes may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, the CCWG-Accountability proposes to subject the IRP to periodic community review.
- **Transparency:** The community has expressed concerns regarding the ICANN document/information access policy and implementation. Free access to relevant information is an essential element of a robust IRP, and as such, the CCWG-Accountability recommends reviewing and enhancing ICANN’s Documentary Information Disclosure Policy as part of the accountability enhancements in Work Stream 2.

### 3. Detailed Explanation of Recommendations

- 05 A consultation process undertaken by ICANN produced numerous comments calling for overhaul and reform of ICANN’s existing IRP. Commenters called for ICANN to be held to a substantive standard of behavior rather than just an evaluation of whether or not its action was taken in good faith. Commenters called for an IRP that was binding rather than merely advisory, and also strongly urged that the process be:
- Transparent, efficient and accessible (both financially and from a standing perspective).

- Designed to produce consistent and coherent results that will serve as a guide for future actions.

## 06 **Purpose of the Independent Review Process**

07 The purpose of the IRP is to ensure that ICANN does not exceed the scope of its limited technical Mission, and otherwise complies with its Articles of Incorporation and Bylaws. The IRP should:

- Empower the community and affected individuals/entities to prevent “Mission creep,” and enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable, accessible expert review of ICANN actions or inaction.
- Ensure that ICANN is accountable to the community and individuals/entities for actions or inaction outside its Mission or that otherwise violate its Articles of Incorporation or Bylaws.
- Reduce disputes going forward by creating precedent to guide and inform the ICANN Board, staff, Supporting Organizations (SOs) and Advisory Committees (ACs), and the community in connection with policy development and implementation.
- Hear and resolve claims that PTI, through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.

## 08 **Role of the Independent Review Process**

09 The role of the IRP will be to:

- Hear and resolve claims that ICANN, through its Board of Directors or staff, has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Bylaws resulting from action taken in response to advice/input from any AC or SO).
- Hear and resolve claims that PTI, through its Board of Directors or staff, has acted (or has failed to act) in violation of its contract with ICANN and the CWG-Stewardship requirements for issues related to the IANA naming functions.
  - Per the CWG-Stewardship Final Proposal, ICANN will enter into a contract with PTI that grants PTI the rights and obligations to serve as the IANA Functions Operator for the IANA naming functions, sets forth the rights and obligations of ICANN and PTI, and includes service level agreements for the IANA naming functions.
  - The ICANN Bylaws will require ICANN to enforce its rights under the ICANN-PTI Contract/Statement of Work, to ensure that PTI complies with its contractual obligations. ICANN’s failure to enforce material obligations will constitute a Bylaws violation and be grounds for an IRP by the Empowered Community.
  - The ICANN Bylaws will provide that PTI service complaints of direct customers of the IANA naming functions that are not resolved through mediation may be appealed by way of the IRP, in both cases as provided for in the CWG-Stewardship Final Proposal Annex I, Phase 2.
    - Note that CWG-Stewardship Final Proposal Annex I, Phase 2 also permits PTI Direct Customers to pursue “other applicable legal recourses that may

be available.” ICANN must modify Registry Agreements with gTLD Operators to expand the scope of arbitration available thereunder to cover PTI service complaints and potential inclusion of optional arbitration under agreements with ccTLD registries if developed through the appropriate processes or the development of another alternative dispute resolution mechanism.

- The standard of review for PTI cases will be an independent assessment of whether there was a material breach of PTI obligations under the contract with ICANN, whether through action or inaction, where the alleged breach has resulted in material harm to the complainant.
- Hear and resolve claims that expert panel decisions are inconsistent with the ICANN Bylaws.
- Hear and resolve claims that DIDP decisions by ICANN are inconsistent with the ICANN Bylaws.
- Hear and resolve claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in the Articles of Incorporation or Bylaws.

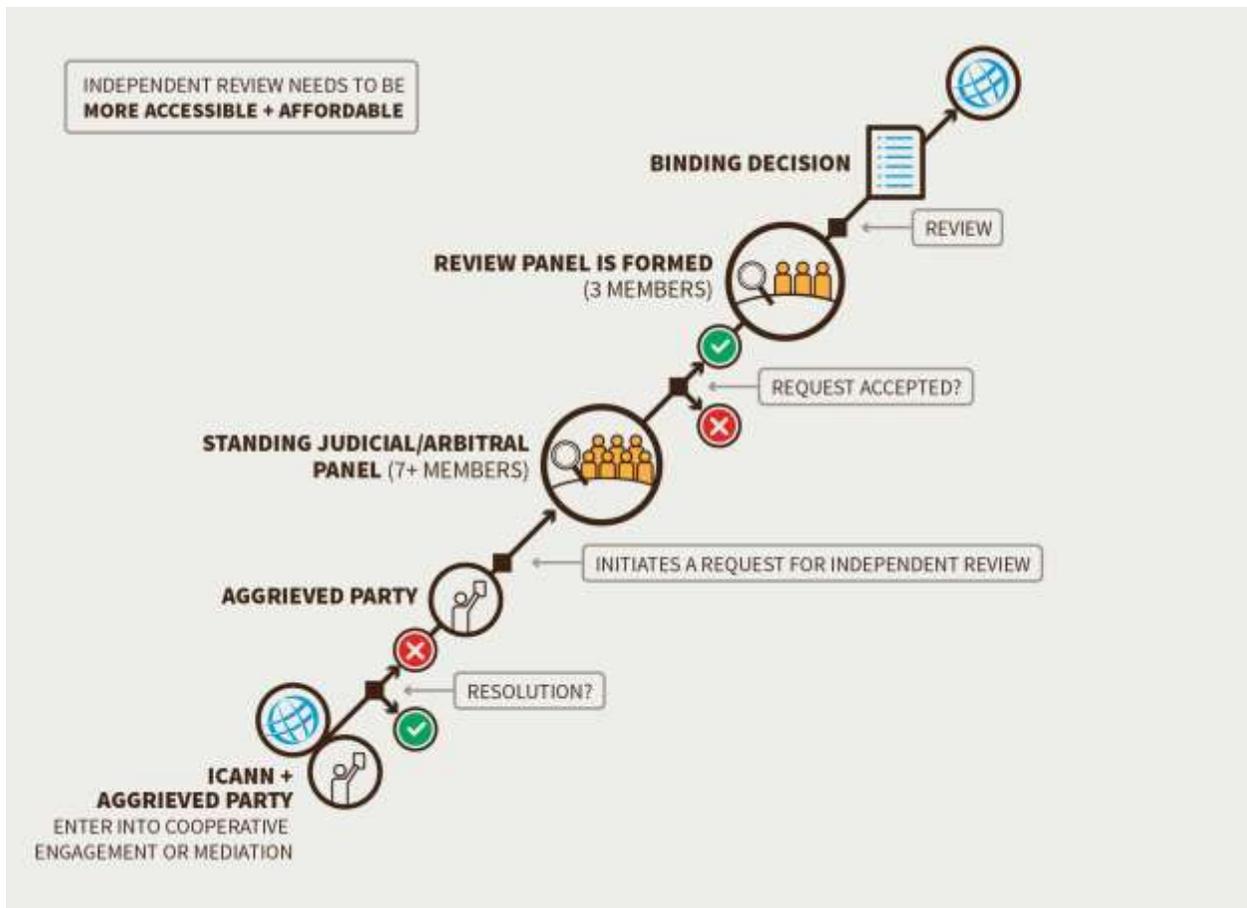
## 10 **Standing Panel**

11 The IRP should have a standing judicial/arbitral panel tasked with reviewing and acting on complaints brought forward by individuals, entities, and/or the community who have been materially affected by ICANN’s action or inaction in violation of the Articles of Incorporation and/or Bylaws.

## 12 **Initiation of the Independent Review Process**

13 An aggrieved party would trigger the IRP by filing a complaint with the panel alleging that a specified action or inaction is in violation of ICANN’s Articles of Incorporation and/or Bylaws, or otherwise within the scope of IRP jurisdiction. The Empowered Community could initiate an IRP with respect to matters reserved to the Empowered Community in ICANN’s Articles of Incorporation or Bylaws.

14 When the Empowered Community has decided to pursue an IRP, the decision would be implemented by the chairs of the SOs and ACs who supported the proposal. The chairs of the SOs and ACs who supported the decision to file a community IRP would constitute a “Chairs Council” that would act subject to the direction of those SOs and ACs of the Empowered Community that supported the proposal. The Chairs Council would, by majority vote, act on behalf of the Empowered Community in taking any reasonably necessary ministerial steps to implement the decision to pursue the community IRP, and to delegate and oversee tasks related to the community IRP, including but not limited to, engagement of legal counsel to represent the Empowered Community in the community IRP, approval of court filings, or enforcement of a community IRP award in court if ultimately necessary.



## 15 Possible Outcomes of the Independent Review Process

16 An IRP would result in a declaration that an action/failure to act *complied* or *did not comply* with ICANN's Articles of Incorporation and/or Bylaws. To the extent permitted by law, IRP decisions shall be binding on ICANN.

- Decisions of a three-member Decisional Panel will be appealable to the full IRP Panel sitting en banc, based on a clear error of judgment or the application of an incorrect legal standard. The standard may be revised or supplemented by way of the IRP Subgroup process, which will be developed.
- This balance between the limited right of appeal and the limitation to the type of decision made is intended to mitigate the potential effect that one key decision of the panel might have on several third parties, and to avoid an outcome that would force the Board to violate its fiduciary duties.
- The limited right to appeal is further balanced by the seven Community Powers, relevant policy development processes, and advice from ACs, each as set forth in the Bylaws.
- IRP panelists shall consider and give precedential effect to prior decisions of other Independent Review Processes that address similar issues.
- Interim (prospective, interlocutory, injunctive, status quo preservation) relief will be available in advance of Board/management/staff actions where a complainant can demonstrate each of the following factors:

- Harm that cannot be cured once a decision has been taken or for which there is no adequate remedy once a decision has been taken.
- Whichever:
  - A likelihood of success on the merits.
  - Sufficiently serious questions going to the merits.
  - A balance of hardships tipping decidedly toward the party seeking the relief.

17 **Standing**

- 18 Any person, group or entity “materially affected” by an ICANN action or inaction in violation of ICANN’s Articles of Incorporation and/or Bylaws shall have the right to file a complaint under the IRP and seek redress.
- 19 They must do so within a certain number of days (to be determined by the IRP Subgroup) after becoming aware of the alleged violation and how it allegedly affects them. The Empowered Community has standing to bring claims involving its rights under the Articles of Incorporation and ICANN Bylaws.
- 20 The ICANN Board’s failure to fully implement an Empowered Community decision will be sufficient for the Empowered Community to be materially affected. Issues relating to joinder and intervention will be determined by the IRP Subgroup, assisted by experts and the initial Standing Panel, based on consultation with the community.

21 **Community Independent Review Process**

- 22 The CCWG-Accountability recommends giving the Empowered Community the right to present arguments on behalf of the Empowered Community to the IRP Panel (see Recommendation #4: Ensuring Community Involvement in ICANN Decision-Making: Seven New Community Power). In such cases, ICANN will bear the costs associated with the Standing Panel as well as the Empowered Community’s legal expenses, although the IRP Subgroup may recommend filing or other fees to the extent necessary to prevent abuse of the process.

23 **Exclusions:**

24 **Challenges the result(s) of a Supporting Organization’s Policy Development Process (PDP)**

- 25 Notwithstanding the foregoing and notwithstanding any required threshold for launching a community IRP, no community IRP that challenges the result(s) of an SO’s PDP may be launched without the support of the SO that approved the policy recommendations from the PDP or, in the case of the result(s) of a Cross Community Working Group (CCWG) chartered by more than one SO, without the support of the SOs that approved the policy recommendations from that CCWG.

26 **Country Code Top-Level Domain Delegation/Redelegation**

27 In its letter dated 15 April 2015, the CWG-Stewardship indicated that “any appeals mechanism developed by the CCWG-Accountability should not cover country code top-level domain delegation/redelegation issues as these are expected to be developed by the country code top-level domain community through the appropriate processes.”

28 As requested by the CWG-Stewardship, decisions regarding country code top-level domain delegations or redelegations would be excluded from standing, until the country code top-level domain community, in coordination with other parties, has developed relevant appeals mechanisms.

### 29 **Numbering Resources**

30 The Address Supporting Organization (ASO) has likewise indicated that disputes related to Internet number resources should be out of scope for the IRP, since an existing dispute settlement mechanism already exists as part of the ICANN Address Supporting Organization Memorandum of Understanding<sup>1</sup>. As requested by the ASO, decisions regarding numbering resources would be excluded from standing.

### 31 **Protocol Parameters**

32 The Internet Architecture Board (IAB) has likewise indicated that disputes related to protocol parameters should be out of scope for the IRP, since an existing dispute settlement mechanism already exists as part of the ICANN / IANA - IETF MoU. As requested, decisions regarding resources for protocol parameters would be excluded from standing.

### 33 **Standard of Review**

34 The IRP Panel, with respect to a particular IRP, shall decide the issue(s) presented based on its own independent interpretation of ICANN’s Articles of Incorporation and Bylaws in the context of applicable governing law and prior IRP decisions. The standard of review shall be an objective examination as to whether the complained-of action exceeds the scope of ICANN’s Mission and/or violates ICANN’s Articles of Incorporation and/or Bylaws and prior IRP decisions. Decisions will be based on each IRP panelist’s assessment of the merits of the claimant’s case. The panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts.

35 With respect to PTI cases, the standard of review will be an independent assessment of whether there was a material breach of PTI obligations under the contract with ICANN, whether through action or inaction, where the alleged breach has resulted in material harm to the complainant.

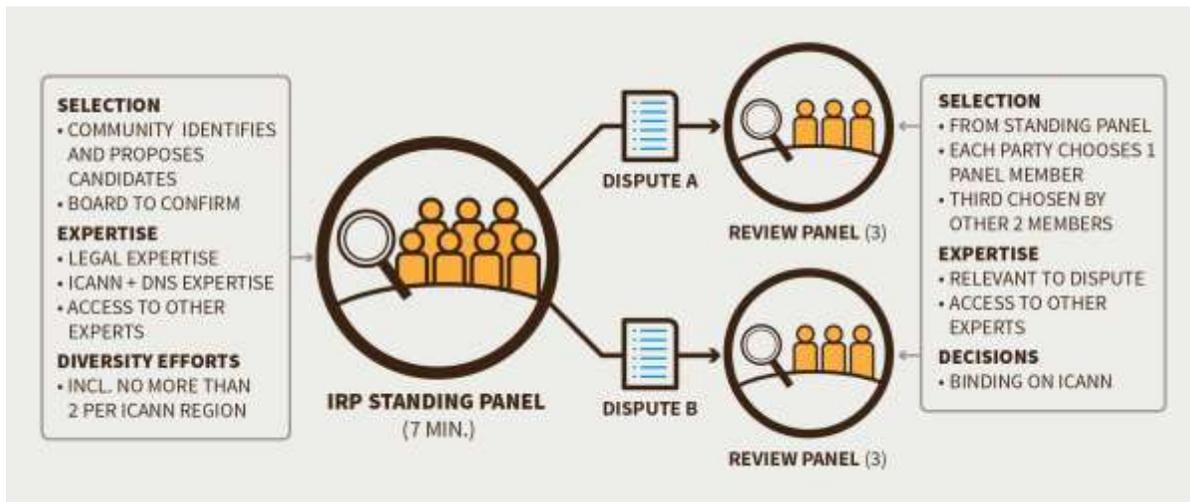
### 36 **Composition of Panel and Expertise**

37 Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration, is necessary. Panelists should either already possess expertise about the DNS and ICANN’s policies, practices, and procedures, or commit to develop an expertise through training, at a minimum, on the workings and management of the DNS. Panelists must have access to skilled technical experts upon request. In addition to legal expertise and a strong understanding of the DNS, panelists may confront issues where highly technical, civil society, business, diplomatic, and regulatory skills are needed. To the extent that

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<sup>1</sup> <https://archive.icann.org/en/aso/aso-mou-29oct04.htm>

individual Panelists have one or more of these areas of expertise, the process must ensure that this expertise is available upon request.



### 38 Diversity

39 English will be the primary working language with provision of translation services for claimants as needed. Reasonable efforts will be taken to achieve cultural, linguistic, gender, and legal diversity, with an aspirational cap on number of panelists from any single region (based on the number of members of the Standing Panel as a whole).

### 40 Size of Panel

- Standing Panel: Minimum of seven panelists.
- Decisional Panel: Three panelists.

### 41 Independence

42 Panel members must be independent of ICANN, including ICANN SOs and ACs. Members should be compensated at a rate that cannot decline during their fixed term. To ensure independence, term limits should apply (five years, no renewal), and post-term appointment to the ICANN Board, Nominating Committee, or other positions within ICANN will be prohibited for a specified time period. Panelists will have an ongoing obligation to disclose any material relationship with ICANN, SOs, ACs, or any other party in an IRP. Panelists will be supported by a clerk’s office that is separate from ICANN.

### 43 Selection and Appointment

44 The selection of panelists would follow a four-step process:

1. ICANN, in consultation with the community, will initiate a tender process for an organization to provide administrative support for the IRP, beginning by consulting the community on a draft tender document.

2. ICANN will then issue a call for expressions of interest from potential panelists, work with the community and Board to identify and solicit applications from well-qualified candidates with the goal of securing diversity, conduct an initial review and vetting of applications, and work with ICANN and community to develop operational rules for IRP.
3. The community would nominate a slate of proposed panel members.
4. Final selection is subject to ICANN Board confirmation.

#### 45 **Recall**

46 Appointments shall be made for a fixed term of five years with no removal except for specified cause (corruption, misuse of position for personal use, etc.). The recall process will be developed by the IRP subgroup.

#### 47 **Settlement Efforts**

48 Reasonable efforts, as specified in a published policy, must be made to resolve disputes informally prior to/in connection with filing an IRP case.

49 Parties may cooperatively engage informally, but either party may inject an independent dispute resolution facilitator (mediator) after an initial Cooperative Engagement Process (CEP) meeting. Either party can terminate informal dispute resolution efforts (CEP or mediation) if, after a specified period, that party concludes in good faith that further efforts are unlikely to produce agreement.

50 The process must be governed by clearly understood and prepublished rules applicable to both parties and be subject to strict time limits. In particular, the CCWG-Accountability will review the CEP as part of Work Stream 2.

#### 51 **Decision-Making**

52 In each case, a three-member panel will be drawn from the Standing Panel. Each party will select one panelist, and those panelists will select the third. The CCWG-Accountability anticipates that the Standing Panel would draft, issue for comment, and revise procedural rules. The Standing Panel should focus on streamlined, simplified processes with rules that conform with international arbitration norms and are easy to understand and follow.

53 Panel decisions will be based on each IRP Panelist's assessment of the merits of the claimant's case. The panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts. All decisions will be documented and made public, and will reflect a well-reasoned application of the standard to be applied.

#### 54 **Decisions**

55 Panel decisions would be determined by a simple majority. Alternatively, this could be included in the category of procedures that the IRP Panel itself should be empowered to set.

56 The CCWG-Accountability recommends that IRP decisions be precedential, meaning that IRP Panelists shall consider and give precedential effect to prior IRP decisions. By conferring precedential weight on panel decisions, the IRP can provide valuable guidance for future actions and inaction by ICANN decision-makers. It also reduces the chances of inconsistent treatment of

one claimant over another, based on the specific individuals making up the Decisional Panel in particular cases.

57 The CCWG-Accountability intends that if the panel determines that an action or inaction by the Board or staff is in violation of ICANN's Articles of Incorporation or Bylaws, then that decision is binding and the ICANN Board and staff shall be directed to take appropriate action to remedy the breach. However, the Panel shall not replace the Board's fiduciary judgment with its own judgment.

58 It is intended that judgments of a Decisional Panel or the Standing Panel would be enforceable in the court of the United States and other countries that accept international arbitration results.

### 59 **Accessibility and Cost**

60 The CCWG-Accountability recommends that ICANN bear all the administrative costs of maintaining the system (including panelist salaries and the costs of technical experts), while each party should bear the costs of their own legal advice, except that the legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN. The panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive. ICANN should seek to establish access – for example access to pro bono representation for community, non-profit complainants, and other complainants that would otherwise be excluded from utilizing the process.

61 The panel should complete work expeditiously, issuing a scheduling order early in the process and in the ordinary course, and should issue decisions within a standard time frame (six months). The panel will issue an update and estimated completion schedule in the event it is unable to complete its work within that period.

### 62 **Implementation**

63 The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. Implementation of these enhancements will necessarily require additional detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld. The functional processes by which the Empowered Community will act, such as through a council of the chairs of the ACs and SOs, should also be developed. These processes may be updated in the light of further experience by the same process, if required. In addition, to ensure that the IRP functions as intended, the CCWG-Accountability proposes to subject the IRP to periodic community review.

### 64 **Transparency**

65 The community has expressed concerns regarding the ICANN document/information access policy and implementation. Free access to relevant information is an essential element of a robust IRP, and as such, the CCWG-Accountability recommends reviewing and enhancing the ICANN Documentary Information Disclosure Policy as part of the accountability enhancements in Work Stream 2.

66 All IRP proceedings will be conducted on the record, in public, except for settlement negotiations or other proceedings which could materially and unduly harm participants if conducted in public, such as by exposing trade secrets or violating rights of personal privacy.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- The scope of the IRP will be restricted to the IANA naming functions for claims that PTI through its Board of Directors or staff has acted (or has failed to act) in violation of its contract with ICANN.
- The scope of the IRP will include actions and inactions of PTI by way of the PTI Board being bound to ensure that PTI complies with its contractual obligations with ICANN in the Bylaws. ICANN’s failure to enforce material obligations will be appealable by way of the IRP as a Bylaws violation.
- The scope of the IRP will include claims that DIDP decisions by ICANN are inconsistent with ICANN’s Bylaws.
- Clarified that ICANN must modify Registry Agreements with gTLD Operators to expand scope of arbitration available thereunder to cover PTI service complaints.
- Exclusion: The IRP will not be applicable to protocols parameters.
- Exclusion: An IRP cannot be launched that challenges the result(s) of an SO’s policy development process (PDP) without the support of the SO that developed such PDP or, in the case of joint PDPs, without the support of all of the SOs that developed such PDP.
- Limitation: An IRP challenge of expert panel decisions is limited to a challenge of whether the panel decision is consistent with ICANN’s Bylaws.
- The legal expenses of the Empowered Community associated with a community IRP will be borne by ICANN.

## 5. Stress Tests Related to this Recommendation

- ST3 & 4
- ST5, 6, 7, 8
- ST11
- ST14
- ST19, 20
- ST10, 16, 24
- ST13
- ST22
- ST23
- ST25
- ST26
- ST29, 30

## 6. How does this meet the CWG-Stewardship Requirements?

- 67 The recommendations as outlined above meet the CWG-Stewardship requirements by:
- Creating the IRP directly meets the requirement of the CWG-Stewardship for an IRP.
  - Excluding ccTLD delegation/re-delegation from the IRP.
  - As requested by the CWG-Stewardship, decisions regarding country code top-level domains delegations or re-delegations would be excluded from standing, until the country code top-level domains community, in coordination with other parties, has developed relevant appeals mechanisms.
  - Excluding Number Resources from the IRP. The ASO has indicated that disputes related to Internet Number Resources should be out of scope for the IRP. As requested by the ASO, decisions regarding numbering resources would be excluded from standing.

## 7. How does this address NTIA Criteria?

68 **Support and enhance the multistakeholder model.**

- By enhancing ICANN's appeals mechanisms and binding arbitration processes and further fortifying and expanding their remit, the community is further empowered.
- 

69 **Maintain the security, stability and resiliency of the Internet DNS.**

- These accountability measures were designed to contribute to maintaining the operational functioning of the organization.
- 

70 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- These accountability measures were designed to contribute to maintaining the operational functioning of the organization.
- 

71 **Maintain the openness of the Internet.**

- The accountability measures help to mitigate the likelihood of problematic scenarios by ensuring that robust accountability mechanisms are in place.
- 

72 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A



# Annex 08 – Recommendation #8: Improving ICANN’s Request for Reconsideration Process

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## 1. Summary

- 01 Currently, any person or entity may submit a Request for Reconsideration or review of an ICANN action or inaction as provided for in [Article IV, Section 2 of ICANN's Bylaws](#).
- 02 The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process, including:
  - Expanding the scope of permissible requests.
  - Extending the time period for filing a Request for Reconsideration from 15 to 30 days.
  - Narrowing the grounds for summary dismissal.
  - Making the ICANN Board of Directors responsible for determinations on all requests (rather than a committee handling staff issues).
  - Making ICANN's Ombudsman responsible for initial substantive evaluation of the requests.
- 03 The CCWG-Accountability also proposes several enhancements to transparency requirements and firm deadlines in issuing of determinations, including:
  - Recordings/transcripts of Board discussion should be posted at the option of the requestor.
  - An opportunity to rebut the Board Governance Committee’s (BGC’s) final recommendation before a final decision by the ICANN Board should be provided.
  - Adding hard deadlines to the process, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.
- 04 ICANN’s Document and Information Disclosure Policy (DIDP) will be addressed in Work Stream 2. The CCWG-Accountability recommends that the policy should be improved to accommodate the legitimate need for requestors to obtain internal ICANN documents that are relevant to their requests.

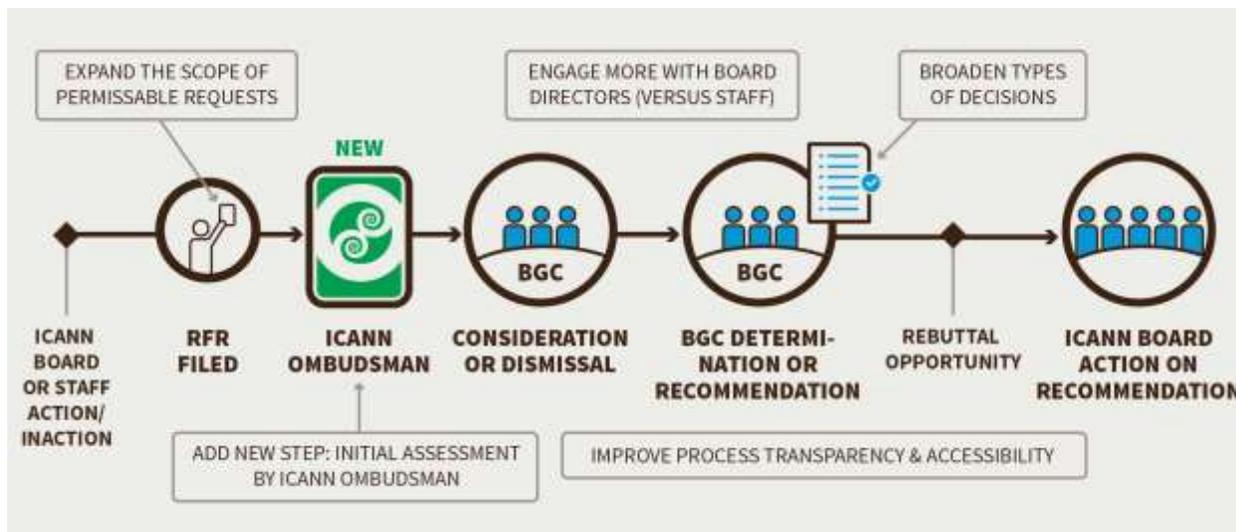
## 2. CCWG-Accountability Recommendations

- 05 Modify [Article IV, Section 2 of ICANN's Bylaws](#) to reflect the following changes:
  - Expanding the scope of permissible requests.
  - Extending the time period for filing a Request for Reconsideration from 15 to 30 days.
  - Narrowing the grounds for summary dismissal.

- Requiring determinations on all requests to be made by the ICANN Board of Directors (rather than a committee handling staff issues).
- Requiring ICANN's Ombudsman to make the initial substantive evaluation of the requests.
- Requiring recordings/transcripts of Board discussion to be posted at the option of the requestor.
- Providing a rebuttal opportunity to the BGC's final recommendation before a final decision by the ICANN Board.
- Adding hard deadlines to the process, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.

### 3. Detailed Explanation of Recommendations

- 06 The CCWG-Accountability proposes a number of key reforms to ICANN's Request for Reconsideration process, whereby the ICANN Board of Directors is obliged to reconsider a recent decision or action/inaction by ICANN's Board or staff, and which is provided for in Article IV, Section 2 of ICANN's Bylaws.
- 07 The key reforms proposed include:
- The scope of permissible requests should be expanded to include Board/staff actions or inactions that contradict ICANN's Mission, Commitments, and/or Core Values and for reconciling conflicting/inconsistent "expert opinions."
  - The time for filing a Request for Reconsideration should be extended from 15 to 30 days.
  - The grounds for summary dismissal should be narrowed and the ICANN Board of Directors must make determinations on all requests (rather than a committee handling staff issues).
  - ICANN's Ombudsman should make the initial substantive evaluation of the requests to aid the BGC in its recommendation.
  - Requestors should be provided an opportunity to rebut the BGC's recommendation before a final decision by the entire ICANN Board.
  - More transparency requirements and firm deadlines should be added for issuing of determinations.



## 08 Standing

- 09 The CCWG-Accountability recommends amending "who" has proper standing to file a Request for Reconsideration to widen its scope by including Board/staff actions/inactions that contradict ICANN's Mission, Commitments, and/or Core Values (was only policies before). It is noted that under the existing ICANN Bylaws, paragraph 2 significantly reduces the rights purportedly granted in paragraph 1 of the Request for Reconsideration.
- 10 ICANN's Bylaws could be revised (added text in red below, text to be removed is in strike-through):
1. ICANN shall have in place a process by which any person or entity materially affected by an action **or inaction** of **the ICANN Board or staff** may request the review or reconsideration of that action **or inaction** by the Board.
  2. Any person or entity may submit a Request for Reconsideration or review of an ICANN action or inaction to the extent that he, she, or it has been adversely affected by:
    - a. One or **more ICANN Board or staff** actions or inactions that contradict established ICANN policy/policies, **its Mission, Commitments, and/or Core Values**; or
    - b. One or more actions or inactions of the ICANN Board/staff that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
    - c. One or more actions or inactions of the ICANN Board/staff that are taken as a result of the Board's reliance on false or inaccurate ~~material~~ **relevant** information.
- 11 Note: The language proposed in recommendations for ICANN Bylaw revisions are conceptual in nature at this stage. The CCWG-Accountability's external legal counsel and the ICANN legal team will draft final language for these revisions to the Bylaws.
- 12 In a letter dated 15 April 2015, the CWG-Stewardship request indicated, "As such, any appeal mechanism developed by the CCWG-Accountability should not cover Country Code Top Level Domain (ccTLD) delegation/redelegation issues as these are expected to be developed by the ccTLD community through the appropriate processes." As requested by the CWG-Stewardship, decisions regarding ccTLD delegations or redelegations would be excluded from standing until

relevant appeals mechanisms have been developed by the ccTLD community, in coordination with other interested parties.

- 13 Disputes related to Internet number resources, protocols and parameters are out of scope of the Request for Reconsideration process.

## 14 **Goals**

- 15 The CCWG-Accountability recommendations aim to:

- Broaden the types of decisions that can be re-examined to include Board/staff action/inaction that contradicts ICANN's Mission, Commitments, and/or Core Values (as stated in Bylaws/Articles) and for the purpose of reconciling conflicting/inconsistent expert panel opinions.
- Provide more transparency in the dismissal and reconsideration processes.
- Provide the Board Governance Committee (BGC) with the reasonable right to dismiss frivolous requests, but not solely on the grounds that the complainant failed to participate in a relevant policy development or Public Comment Period or that the request is vexatious or querulous.
- Propose to amend paragraph nine on BGC summary dismissal as follows:
  - The Board Governance Committee shall review each Request for Reconsideration upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Request for Reconsideration if:
    - (i) The requestor fails to meet the requirements for bringing a Reconsideration Request; or
    - (ii) It is frivolous, ~~querulous or vexatious~~(iii) ~~the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable.~~

The Board Governance Committee's summary dismissal of a Request for Reconsideration shall be **documented and promptly** posted on the website.

## 16 **Composition**

- 17 The CCWG-Accountability determined there is a need to rely less on the ICANN legal department (which holds a strong legal obligation to protect the corporation) to guide the BGC on its recommendations. More ICANN Board Director engagement is needed in the overall decision-making process.
- 18 Requests should no longer go to ICANN's lawyers (in-house or external legal counsel) for the first substantive evaluation. Instead, the Requests for Reconsideration should go to ICANN's Ombudsman, who will make the initial recommendation to the BGC because the CCWG-Accountability believes that the Ombudsman may have more of an eye for fairness to the community in reviewing requests. Note that the ICANN Bylaws charge the BGC with these duties, which means the BGC would utilize the Ombudsman instead of its current practice of using ICANN's lawyers to aid the BGC in its initial evaluation.
- 19 All final determinations of Requests for Reconsideration (other than requests that have been summarily dismissed by the BGC as discussed above) are to be made by the ICANN Board (not only requests about Board actions as is the current practice).

20 Amend paragraph 3:

3. The Board has designated the BGC to review and consider any such Request for Reconsideration. The BGC shall have the authority to:

- Evaluate requests for review or reconsideration.
- Summarily dismiss insufficient or frivolous requests.
- Evaluate requests for urgent consideration.
- Conduct whatever factual investigation is deemed appropriate.
- Request additional written submissions from the affected party or from other parties.
- ~~Make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors;~~
- Make a recommendation to the Board of Directors on the merits of the request, as necessary.

21 Delete paragraph 15, because the Board will make all final decisions regarding requests related to staff action/inaction.

## 22 **Decision-Making**

23 Transparency improvements are needed regarding the information that goes into the ICANN Board's decision-making process and the rationale for why decisions are ultimately taken. Recordings and transcripts should be posted of the substantive Board discussions at the option of the requestor.

24 A rebuttal opportunity to the BGC's final recommendation (although requestors cannot raise new issues in a rebuttal) needs to be provided before the full Board finally decides.

25 Hard deadlines to the process are to be added, including an affirmative goal that final determinations of the Board be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.

26 It is proposed that the rules for a Request for Reconsideration be amended as follows:

*The Board Governance Committee (BGC) shall make a final recommendation to the Board with respect to a Request for Reconsideration within 30 days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the BGC's final recommendation to the Board shall be made within 90 days of receipt of the request. The final recommendation shall be promptly posted on ICANN's website and shall address each of the arguments raised in the request. The requestor may file a rebuttal to the recommendation of the BGC within 15 days of receipt of it, which shall also be promptly posted to ICANN's website and provided to the Board for its evaluation.*

*The Board shall not be bound to follow the recommendations of the BGC. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the BGC within 45 days of receipt of the recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this*

*timeframe must be identified and posted on ICANN's website. In any event, the Board's final decision shall be made within 135 days of receipt of the request. The final decision shall be promptly posted on ICANN's website.*

## 27 **Accessibility**

28 The CCWG-Accountability recommends that the time deadline for filing a Request for Reconsideration be extended from 15 to 30 days from when requestor learns of the decision/inaction, except as otherwise described below.

29 Amend paragraph 5 so that it reads:

5. All Requests for Reconsideration must be submitted to an email address designated by the BGC within 30 days after:
  - a) For requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale; or
  - b) For requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
  - c) For requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

## 30 **Due Process**

31 ICANN's DIDP is an important issue to be addressed in Work Stream 2 and should be improved to accommodate the legitimate need for requestors to obtain internal ICANN documents that are relevant to their requests.

32 All briefing materials supplied to the Board should be provided to the requestor so that they may know the arguments against them and have an opportunity to respond (subject to legitimate and documented confidentiality and privilege requirements).

33 Final decisions should be issued sooner. Changes will include an affirmative goal that final determinations of the Board should be issued within 75 days from request filing wherever possible, and in no case more than 135 days from the date of the request.

34 Requestors should be provided more time to learn of action/inaction and to file the request.

35 Transparency improvements throughout the process are called for, including more complete documentation and prompt publication of submissions and decisions including their rationale.

## **4. Changes from the "Third Draft Proposal on Work Stream 1 Recommendations"**

- Conflicts in timing for Board approval addressed by changing 60 days to 75 days and the total of 120 days to 135 days.

## 5. Stress Tests Related to this Recommendation

- N/A

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

### 36 **Support and enhance the multistakeholder model.**

- By enhancing ICANN's appeals mechanisms and binding arbitration processes and further fortifying and expanding their remit, the community is further empowered.
- 

### 37 **Maintain the security, stability and resiliency of the Internet DNS.**

- These accountability measures were designed to contribute to maintaining the operational functioning of the organization.
- 

### 38 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- These accountability measures were designed to contribute to maintaining the operational functioning of the organization.
- 

### 39 **Maintain the openness of the Internet.**

- The accountability measures help to mitigate the likelihood of problematic scenarios by ensuring that robust accountability mechanisms are in place.
- 

### 40 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- N/A

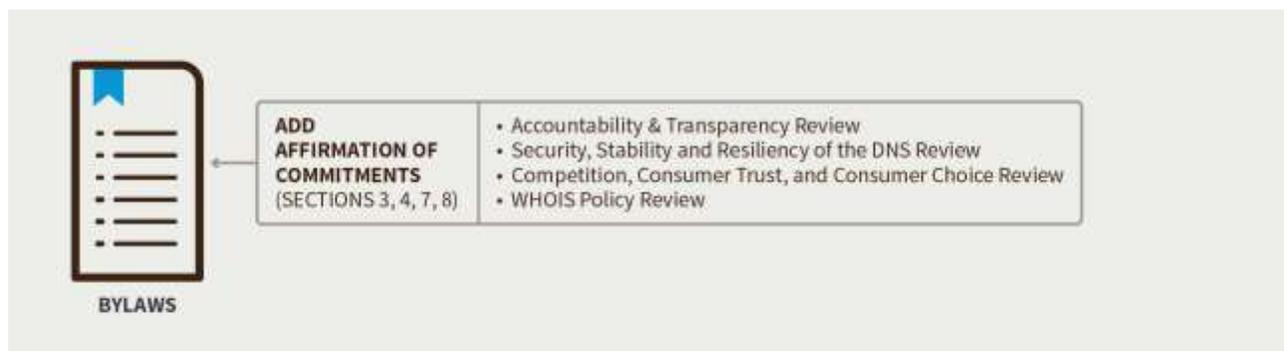


# Annex 09 – Recommendation #9: Incorporating the Affirmation of Commitments in ICANN’s Bylaws

## 1. Summary

- 01 Based on stress test analysis, the CCWG-Accountability recommends incorporating the reviews specified in the Affirmation of Commitments, a 2009 bilateral agreement between ICANN and the U.S. National Telecommunications and Information Administration (NTIA), into the ICANN Bylaws. This will ensure that community reviews remain a central aspect of ICANN’s accountability and transparency framework.
- 02 Specifically, the CCWG-Accountability proposes to:
- Add the relevant ICANN Commitments from the Affirmation of Commitments into the ICANN Bylaws.
  - Add the four review processes specified in the Affirmation of Commitments to the ICANN Bylaws, including:
    - Ensuring accountability, transparency, and the interests of global Internet users.
    - Enforcing ICANN’s existing policy relating to WHOIS, subject to applicable laws.
    - Preserving security, stability, and resiliency of the Domain Name System (DNS).
    - Promoting competition, consumer trust, and consumer choice.
- 03 In addition, to support the common goal of improving the efficiency and effectiveness of reviews, ICANN will publish operational standards to be used as guidance by the community, ICANN staff and the Board in conducting future reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet the community’s needs.

## 2. CCWG-Accountability Recommendations



- 04 The CCWG-Accountability evaluated the contingency of ICANN or NTIA unilaterally withdrawing from the Affirmation of Commitments (see information about Stress Test #14 in the “Detailed Explanation of Recommendations” section, below).
- 05 To ensure continuity of these key commitments, the CCWG-Accountability proposes the following two accountability measures:
- Preserve in the ICANN Bylaws any Relevant ICANN Commitments from the Affirmation of Commitments<sup>1</sup>
    - This includes Sections 3, 4, 7, and 8 of the Affirmation of Commitments. Sections 3, 4, 8a, and 8c would be included in the Core Values section of the ICANN Bylaws.
    - Part of the content of Section 8b of the Affirmation of Commitments (the part relating to the location of ICANN’s principal office), is already covered by ICANN Bylaws Article XVIII. Article XVIII is to be classified as a Standard Bylaw and is not to be moved into the Core Values section with material derived from Affirmation of Commitments Sections 8a and 8c.
    - Section 7 of the Affirmation of Commitments would be inserted as a new Section 8 in Article III, Transparency, of the ICANN Bylaws.
  - Bring the Four Affirmation of Commitments Review Processes into the ICANN Bylaws
    - The following four reviews will be preserved in the reviews section of the Bylaws:
      - Ensuring accountability, transparency, and the interests of global Internet users.
      - Enforcing ICANN’s existing policy relating to WHOIS, subject to applicable laws.
      - Preserving security, stability, and resiliency of the DNS.
      - Promoting competition, consumer trust, and consumer choice.
- 06 After these elements of the Affirmation of Commitments are adopted in the ICANN Bylaws, the following should take place:
- ICANN and NTIA should mutually agree to terminate the Affirmation of Commitments.
  - New review rules will prevail as soon as the Bylaws have been changed, but care should be taken when terminating the Affirmation of Commitments to not disrupt any Affirmation of Commitments reviews that may be in process at that time. Any in-progress reviews will adopt the new rules to the extent practical. Any planned Affirmation of Commitments review should not be deferred simply because the new rules allow up to five years between review cycles. If the community prefers to do a review sooner than five years from the previous review, that is allowed under the new rules.
  - Through its Work Party IRP Implementation Oversight Team (WP-IRP IOT), the CCWG-Accountability will examine the suggestion to include a mid-term review of the Independent Review Process (IRP).
  - To support the common goal of improving the efficiency and effectiveness of reviews, ICANN will publish operational standards to be used as guidance by the community,

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<sup>1</sup> Sections 3, 4, 7, and 8 of the Affirmation of Commitments contain relevant ICANN commitments. The remaining sections in the Affirmation of Commitments are preamble text and commitments of the U.S. Government. As such, they do not contain commitments by ICANN, and cannot usefully be incorporated in the Bylaws.

ICANN staff, and the Board in conducting future reviews. The community will review these operational standards on an ongoing basis to ensure that they continue to meet the community's needs.

- These operational standards should include issues such as: composition of Review Teams, Review Team working methods (meeting protocol, document access, role of observers, budgets, decision making methods, etc.), and methods of access to experts. These standards should be developed with the community and should require community input and review to be changed. The standards are expected to reflect levels of detail that are generally not appropriate for governance documents, and should not require a change to the Bylaws to modify. This is an implementation issue aligned with the need for review of the proposed Bylaws text developed by the CCWG-Accountability that has been provided as guidance to legal counsel.

07 A section related to the IANA Function Review and Special IANA Function Review will fit into these new sections of the Bylaws and will be classified as Fundamental Bylaws. Specifications will be based on the requirements detailed by the CWG-Stewardship. It is anticipated that the Bylaw drafting process will include the CWG-Stewardship.

### 3. Detailed Explanation of Recommendations

#### Background

The Affirmation of Commitments is a 2009 bilateral agreement between the U.S. Government and ICANN. After the IANA agreement is terminated, the Affirmation of Commitments will become the next target for termination since it would be the last remaining aspect of a unique U.S. Government role with ICANN.

Termination of the Affirmation of Commitments as a separate agreement would be a simple matter for a post-transition ICANN, since the Affirmation of Commitments can be terminated by either party with a 120-day notice. The CCWG-Accountability evaluated the contingency of ICANN or NTIA unilaterally withdrawing from the Affirmation of Commitments in Stress Test #14, as described below.

08 <b>Stress Test #14:</b> ICANN or NTIA chooses to terminate the Affirmation of Commitments.	
09 Consequence(s): ICANN would no longer be held to the Affirmation of Commitments, including the conduct of community reviews and required implementation of Review Team recommendations.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
10 The Affirmation of Commitments can be terminated by either ICANN or NTIA with 120 days' notice.	14 One proposed mechanism would give the Empowered Community standing to challenge a Board decision by referral to an IRP with the power to issue a binding decision. If ICANN cancelled the Affirmation
11 As long as NTIA controls the IANA contract,	

<p>ICANN feels pressure to maintain the Affirmation of Commitments.</p> <p>12 But as a result of the IANA Stewardship Transition, ICANN would no longer have the IANA contract as external pressure from NTIA to maintain the Affirmation of Commitments.</p> <p>13 Note: none of the proposed measures could prevent NTIA from canceling the Affirmation of Commitments.</p>	<p>of Commitments, the IRP could enable reversal of that decision.</p> <p>15 Another proposed measure is to import Affirmation of Commitments provisions into the ICANN Bylaws, and dispense with the bilateral Affirmation of Commitments with NTIA. Bylaws would be amended to include Affirmation of Commitments 3, 4, 7, and 8, plus the 4 periodic reviews required in paragraph 9.</p> <p>16 If ICANN's Board proposed to amend the AoC commitments and reviews that were added to the Bylaws, another proposed measure would empower the Empowered Community to veto that proposed Bylaws change.</p> <p>17 If any of the AoC commitments or review processes were classified as Fundamental Bylaws, changes would require approval by the Empowered Community.</p>
<p><b>CONCLUSIONS:</b></p> <p>18 Existing measures are inadequate after NTIA or ICANN terminates the IANA contract.</p>	<p>19 Proposed measures in combination are adequate.</p>

20 If the Affirmation of Commitments were to be terminated without a replacement, ICANN would no longer be held to these important affirmative commitments, including the related requirement to conduct community reviews. If this were allowed to occur, it would significantly diminish ICANN's accountability to the global multistakeholder community. This consequence is avoided by adding the Affirmation of Commitments reviews and commitments to ICANN's Bylaws.

21 **Objectives of the Recommendations**

22 Suggestions gathered during comment periods in 2014 on ICANN accountability and the IANA Stewardship Transition suggested several ways the Affirmation of Commitments reviews should be adjusted as part of incorporating them into the ICANN Bylaws:

- Ability to sunset reviews, amend reviews, and create new reviews.
- Community stakeholder groups should appoint their own representatives to Review Teams. Regarding composition and size of Review Teams, based on composition of prior Review Teams, 21 Review Team members from Supporting Organizations (SOs) and Advisory Committees (ACs) would be more than needed.
- Give Review Teams access to ICANN internal documents.

- Require the ICANN Board to consider approval and begin implementation of Review Team recommendations, including from previous reviews.

23 The CCWG-Accountability concluded that some Review Team recommendations could be rejected or modified by ICANN, for reasons such as feasibility, time, or cost. If the community disagreed with the Board’s decision on implementation, it could invoke a Request for Reconsideration or IRP to challenge that decision, with a binding result in the case of an IRP. In addition, the CCWG-Accountability independent legal counsel advised that the ICANN Bylaws could not require the Board to implement all Review Team recommendations because some could conflict with the Board’s fiduciary duties or other Bylaws obligations.

In Bylaws Article IV, a new section will be added for periodic review of ICANN Execution of Key Commitments, with an overarching framework for the way these reviews are conducted and then one subsection for each of the four current Affirmation of Commitments reviews.

24 **Recommended Changes to the ICANN Bylaws**

*Note: Legal counsel has not reviewed the proposed Bylaw revisions at this stage. The proposed language for Bylaw revisions is conceptual in nature; once there is consensus about direction, legal counsel will need time to draft appropriate proposed language for revisions to the Articles of Incorporation and Bylaws.*

25 There are four areas of change required to the ICANN Bylaws to enshrine the Affirmation of Commitments reviews, as described below.

26 **Principle language to be added to Bylaws:**

ICANN Commitments in the Affirmation of Commitments	As expressed in the ICANN Bylaws
<p>27 3. This document affirms key commitments by the Department of Commerce (DOC) and ICANN, including commitments to:</p> <p>28 (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent;</p> <p>29 (b) preserve the security, stability, and resiliency of the DNS;</p> <p>30 (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and</p> <p>31 (d) facilitate international participation in DNS technical coordination.</p>	<p>32 Proposed revision to ICANN Core Values:</p> <p>33 Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;</p> <p>34 Proposed Bylaw requiring Affirmation of Commitments review of Promoting Competition, Consumer Trust, and Consumer Choice:</p> <p>35 ICANN will ensure that as it expands the Top-Level Domain (TLD) space, it will adequately address issues of competition, consumer protection, security, stability and resiliency,</p>

<p><b>ICANN Commitments in the Affirmation of Commitments</b></p>	<p><b>As expressed in the ICANN Bylaws</b></p>
	<p>malicious abuse issues, sovereignty concerns, and rights protection.</p>
<p>36 4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability, and resiliency of the DNS.</p>	<p>37 Proposed new Section 8 in Bylaws Article III Transparency:</p> <p>38 ICANN shall perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial or non-financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability, and resiliency of the DNS.</p>
<p>39 7. ICANN commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's Bylaws, responsibilities, and Strategic and Operating Plans. In addition, ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.</p>	<p>40 Proposed revision to ICANN Commitments:</p> <p>41 In performing its Mission, ICANN must operate in a manner consistent with its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions, and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets.</p> <p>42 Proposed revision to ICANN Core Values:</p> <p>43 Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is</p>

<b>ICANN Commitments in the Affirmation of Commitments</b>	<b>As expressed in the ICANN Bylaws</b>
	<p>used to ascertain the global public interest and that those processes are accountable and transparent;</p> <p>44 Proposed requirement for annual report, to be included in Bylaws section on required reviews:</p> <p>45 ICANN will produce an annual report on the state of improvements to Accountability and Transparency. ICANN will be responsible for creating an annual report that details the status of implementation on all reviews defined in this section. This annual review implementation report will be opened for a public review and comment period that will be considered by the ICANN Board and serve as input to the continuing process of implementing the recommendations from the Review Teams defined in this section.</p> <p>46 Proposed new Section 9 in Bylaws Article III Transparency:</p> <p>47 ICANN shall adhere to transparent and accountable budgeting processes, providing advance notice to facilitate stakeholder engagement in policy decision-making, fact-based policy development, cross community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN's progress against ICANN's Bylaws, responsibilities, and Strategic and Operating Plans.</p>

<b>ICANN Commitments in the Affirmation of Commitments</b>	<b>As expressed in the ICANN Bylaws</b>
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<b>ICANN Commitments in the Affirmation of Commitments</b>	<b>As expressed in the ICANN Bylaws</b>
<p>48 9. Recognizing that ICANN will evolve and adapt to fulfill its limited, but important technical Mission of coordinating the DNS, ICANN further commits to take the following specific actions together with ongoing commitment reviews specified below:</p>	<p>49 See next section for proposed Bylaws to preserve ICANN commitments to perform the Affirmation of Commitments regular reviews.</p>

50 The Bylaws will provide a framework for all periodic reviews.

51 The left-hand column of the following chart shows proposed Bylaws language for periodic reviews (subject to revision by legal counsel during actual drafting), with comments on the right:

<b>PROPOSED BYLAW TEXT</b>	<b>COMMENT</b>
<p>52 ICANN will produce an annual report on the state of improvements to Accountability and Transparency.</p> <p>53 ICANN will be responsible for creating an annual report that details the status of implementation on all reviews defined in this section. This annual review implementation report will be opened for a public review and comment period that will be considered by the ICANN Board and serve as input to the continuing process of implementing the recommendations from the Review Teams defined in this section.</p>	<p>54 This is a new recommendation based on one in Accountability and Transparency Review Team 2 (ATRT2) and is more important as reviews are spread further apart.</p>
<p>55 Review Teams are established to include both a limited number of members and an open number of observers. Each SO and AC participating in the review may suggest up to seven prospective members for the Review Team. The group of chairs of the participating SOs and ACs will select a group of up to 21 Review Team members, balanced for diversity and skills, allocating at least three members from each participating SO and AC that suggests three or more prospective members. In addition, the ICANN Board may designate one Director as a member of the Review Team.</p>	<p>56 The Affirmation of Commitments has no specific requirements for the number of members from each SO and AC.</p> <p>57 The Affirmation of Commitments lets the Board and GAC Chairs designate Review Team members, and has no diversity requirement.</p>
<p>58 In the event a consensus cannot be found</p>	<p>59 While showing a preference for consensus,</p>

PROPOSED BYLAW TEXT	COMMENT
among the members, a majority vote of the members may be taken. In this case, both a majority recommendation and a minority response should be provided in the final report of the Review Team.	a resolution procedure should be defined. It is important to avoid both tyranny of the majority and capture by a minority.
60 Review Teams may also solicit and select independent experts to render advice as requested by the Review Team, and the Review Team may choose to accept or reject all or part of this advice.	61 This was not stated in the Affirmation of Commitments, but experts have been appointed to advise some Affirmation of Commitments Review Teams.
62 Each Review Team may recommend termination or amendment of its respective review.	63 This is new. A recommendation to amend or terminate an existing review would be subject to public comment, and the Empowered Community would have power to reject a change to Standard Bylaws and approve a change to Fundamental Bylaws.
<p>64 Confidential Disclosure to Review Teams:</p> <p>65 To facilitate transparency and openness regarding ICANN's deliberations and operations, the Review Teams, or a subset thereof, shall have access to ICANN internal information and documents. If ICANN refuses to reveal documents or information requested by the Review Team, ICANN must provide a justification to the Review Team. If the Review Team is not satisfied with ICANN's justification, it can appeal to the Ombudsman and/or the ICANN Board for a ruling on the disclosure request.</p> <p>66 For documents and information that ICANN does disclose to the Review Team, ICANN may designate certain documents and information as not for disclosure by the Review Team, either in its report or otherwise. If the Review Team is not satisfied with ICANN's designation of non-disclosable documents or information, it can appeal to the Ombudsman and/or the ICANN Board for a ruling on the non-disclosure designation.</p> <p>67 A confidential disclosure framework shall be published by ICANN. The confidential disclosure framework shall describe the process by which documents and information are classified, including a description of the levels of classification that</p>	71 New ability to access internal documents, with non-disclosure provisions.

PROPOSED BYLAW TEXT	COMMENT
<p>documents or information may be subject to, and the classes of persons who may access such documents and information.</p> <p>68 The confidential disclosure framework shall describe the process by which a Review Team may request access to documents and information that are designated as classified or restricted access.</p> <p>69 The confidential disclosure framework shall also describe the provisions of any non-disclosure agreement that members of a Review Team may be asked to sign.</p> <p>70 The confidential disclosure framework must provide a mechanism to escalate and/or appeal the refusal to release documents and information to duly recognized Review Teams.</p>	
<p>72 The draft report of the Review Team should describe the degree of consensus reached by the Review Team.</p>	<p>73 From public comments.</p>
<p>74 The Review Team should attempt to assign priorities to its recommendations.</p>	<p>75 Board requested prioritization of recommendations.</p>
<p>76 The draft report of the review will be published for public comment. The Review Team will consider such public comment and amend the review, as it deems appropriate before issuing its final report and forwarding the recommendations to the Board.</p>	
<p>77 The final output of all reviews will be published for public comment. The final report should include an explanation of how public comments were considered. Within six months of receipt of a recommendation, the Board shall consider approval and promptly either begin implementation or publish a written explanation for why the recommendation was not approved.</p>	<p>78 Affirmation of Commitments requires the Board to “take action” within six months. In practice, the Board has considered review recommendations and either approved or explained why it would not approve each recommendation.</p>

79 **Proposed Bylaws text for this Affirmation of Commitments review:**

PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW	NOTES

<p>80 <b>1. Accountability &amp; Transparency Review.</b></p> <p>81 The Board shall cause a periodic review of ICANN’s execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders.</p>	<p>82 The commitment to do a review now becomes part of the ICANN Bylaws.</p> <p>83 The second part of this sentence (“its commitment to maintain...”) clarifies an ICANN commitment that would also become part of the Bylaws.</p>
<p>84 Issues that may merit attention in this review include:</p> <p>85 (a) assessing and improving ICANN Board governance, which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions;</p>	<p>86 Public commenter suggested making this a suggestion instead of a mandated list of topics.</p>
<p>87 (b) assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;</p> <p>88 (c) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof);</p> <p>89 (d) assessing the extent to which ICANN’s decisions are embraced, supported, and accepted by the public and the Internet community;</p> <p>90 (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and</p> <p>91 (f) assessing and improving the Independent Review Process.</p>	<p>92 Rephrased to avoid implying a review of GAC’s effectiveness.</p>
<p>93 The Review Team shall assess the extent to which prior Accountability and Transparency review recommendations have been implemented.</p>	<p>94 Affirmation of Commitments required ATRT to assess all Affirmation of Commitments reviews.</p>

<p>95 The Review Team may recommend termination or amendment of other periodic reviews required by this section, and may recommend additional periodic reviews.</p>	<p>96 This is new. A recommendation to amend or terminate an existing review would be subject to public comment, and the Empowered Community would have power to reject a change to Standard Bylaws and approve a change to Fundamental Bylaws.</p>
<p>97 This Review Team should complete its review within one year of convening its first meeting.</p>	<p>98 New.</p>
<p>99 This periodic review shall be convened no less frequently than every five years, measured from the date the previous review was convened.</p>	<p>100 The Affirmation of Commitments required this review every three years.</p>

<p><b>PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW</b></p>	<p><b>NOTES</b></p>
<p>101 <b>2. Preserving Security, Stability, and Resiliency.</b></p> <p>102 The Board shall cause a periodic review of ICANN's execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS.</p> <p>103 In this review, particular attention will be paid to:</p> <p>104 (a) security, stability, and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS;</p> <p>105 (b) ensuring appropriate contingency planning; and</p> <p>106 (c) maintaining clear processes.</p> <p>107 Each of the reviews conducted under this section will assess the extent to which ICANN has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability, and resiliency of the Internet DNS, consistent with ICANN's limited technical Mission.</p>	<p>108 The new ICANN Mission Statement will include the following revision to reflect the incorporation of this AoC review into the Bylaws:</p> <p>109 <b>In this role, with respect to domain names, ICANN's Mission is to coordinate the development and implementation of policies:</b></p> <p>110 <b>- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS; and</b></p>

111 The Review Team shall assess the extent to which prior review recommendations have been implemented.	112 Make this explicit.
113 This periodic review shall be convened no less frequently than every five years, measured from the date the previous review was convened.	114 Affirmation of Commitments required this review every three years.

<b>PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW</b>	<b>NOTES</b>
<p>115 3. Promoting Competition, Consumer Trust, and Consumer Choice.</p> <p>116 ICANN will ensure that as it expands the Top-Level Domain (TLD) space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.</p>	117 This review includes a commitment that becomes part of the ICANN Bylaws, regarding future expansions of the TLD space.
<p>118 The Board shall cause a review of ICANN's execution of this commitment after any batched round of new gTLDs have been in operation for one year.</p> <p>119 This review will examine the extent to which the expansion of gTLDs has promoted competition, consumer trust, and consumer choice, as well as effectiveness of:</p> <p>120 (a) the gTLD application and evaluation process; and</p> <p>121 (b) safeguards put in place to mitigate issues involved in the expansion.</p>	122 Re-phrased to cover future new gTLD rounds. "Batched" is used to designate a batch of applications, as opposed to continuous applications.
123 The Review Team shall assess the extent to which prior review recommendations have been implemented.	124 Make this explicit.
125 For each of its recommendations, this Review Team should indicate whether the recommendation, if accepted, must be implemented before opening subsequent rounds of gTLD expansion.	126 Board proposal, accepted by CCWG-Accountability as Option B in Dublin.

127 These periodic reviews shall be convened no less frequently than every five years, measured from the date the previous review was convened.	128 AoC also required this review 2 years after the 1st year review.
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<b>PROPOSED BYLAWS TEXT FOR THIS AFFIRMATION OF COMMITMENTS REVIEW</b>	<b>NOTES</b>
129 4. Reviewing effectiveness of WHOIS/future Registration Directory Services policy and the extent to which its implementation meets the legitimate needs of law enforcement and promotes consumer trust.	130 Changed title to reflect likelihood that WHOIS will be replaced by new Registration Directory Services.
131 ICANN commits to enforcing its policy relating to the current WHOIS and any future Generic Top Level Domain (gTLD) Directory Service, subject to applicable laws, and working with the community to explore structural changes to improve accuracy and access to gTLD registration data, as well as consider safeguards for protecting data.  132 This review includes a commitment that becomes part of the ICANN Bylaws, regarding enforcement of the current WHOIS and any future gTLD Directory Service policy requirements.	133 This review includes a commitment that becomes part of the ICANN Bylaws, regarding enforcement of existing policy relating to WHOIS requirements, as proposed by the ICANN Board (1 September 2015).
134 The Board shall cause a periodic review to assess the extent to which WHOIS/Directory Services policy is effective and its implementation meets the legitimate needs of law enforcement, promotes consumer trust, and safeguards data.	135 Per Board proposal (1 September 2015).
136 This review will consider the Organization for Economic Co-operation and Development (OECD) guidelines regarding privacy, as defined by the OECD in 1980 and amended in 2013.	137 New. A public comment submission noted that OECD guidelines do not have the force of law.

138 The Review Team shall assess the extent to which prior review recommendations have been completed, and the extent to which implementation has had the intended effect.	139 Per Board proposal (1 September 2015).
140 This periodic review shall be convened no less frequently than every five years, measured from the date the previous review was convened.	141 The Affirmation of Commitments required this review every three years.

142 **Bylaws to add an IANA Function Review and Special IANA Function Review:**

<b>IANA FUNCTION REVIEW AND SPECIAL IANA FUNCTION REVIEW</b>	
143	The CWG-Stewardship recommends that Post-Transition IANA's (PTI's) performance against the ICANN-PTI contract and the Statement of Work (SOW) be reviewed as part of the IANA Function Review (IFR). The IFR would be obliged to take into account multiple input sources including community comments, IANA Customer Standing Committee (CSC) evaluations, reports submitted by the PTI, and recommendations for technical or process improvements. The outcomes of reports submitted to the CSC, reviews, and comments received on these reports during the relevant time period will be included as input to the IFR. The IFR will also review the SOW to determine if any amendments should be recommended. The IFR mandate is strictly limited to evaluation of PTI performance against the SOW and does not include any evaluation relating to policy or contracting issues that are not part of the IANA Functions Contract between ICANN and PTI or the SOW. In particular, it does not include issues related to policy development and adoption processes, or contract enforcement measures between contracted registries and ICANN.
144	The first IFR is recommended to take place no more than two years after the transition is completed. After the initial review, the periodic IFR should occur at intervals of no more than five years.
145	The IFR should be outlined in the ICANN Bylaws and included as a Fundamental Bylaw as part of the work of the CCWG-Accountability and would operate in a manner analogous to an Affirmation of Commitments review. The members of the IANA Function Review Team (IFRT) would be selected by the SOs and ACs and would include several liaisons from other communities. While the IFRT is intended to be a smaller group, it will be open to participants in much the same way as the CWG-Stewardship is.
146	While the IFR will normally be scheduled based on a regular cycle of no more than five years in line with other ICANN reviews, a Special IANA Function Review (Special IFR) may also be initiated when CSC Remedial Action Procedures (as described in the CWG-Stewardship Proposal) are followed and fail to correct the identified deficiency and the IANA Problem Resolution Process (as described in the CWG-Stewardship Proposal) is followed and fails to correct the identified deficiency. Following the exhaustion of these escalation mechanisms, the ccNSO and GNSO will be responsible for checking and reviewing the outcome of the CSC process, and the IANA Problem Resolution Process and for determining whether or not a Special IFR is necessary. After consideration, which may include a public comment period and must include meaningful consultation with other SOs and ACs, the Special IFR could be triggered. In order to trigger a Special IFR, it would require a vote of both of the ccNSO and GNSO Councils (each by a supermajority vote according to their normal procedures for determining supermajority).

147 The Special IFR will follow the same multistakeholder cross community composition and process structure as the periodic IFR. The scope of the Special IFR will be narrower than a periodic IFR, focused primarily on the identified deficiency or problem, its implications for overall IANA performance, and how that issue is best resolved. As with the periodic IFR, the Special IFR is limited to a review of the performance of the IANA Functions operation, including the CSC, but should not consider policy development and adoption processes or the relationship between ICANN and its contracted TLDs. The results of the IFR or Special IFR will not be prescribed or restricted and could include recommendations to initiate a separation process, which could result in termination or non-renewal of the IANA Functions Contract between ICANN and PTI among other actions.

148 **Composition of Review Teams for various reviews to date:**

149 <b>ATRT1</b> (14 people; 12 from AC & SOs):	157 <b>ATRT2</b> (15 people; 11 from AC & SOs)
150 1 ALAC	158 2 ALAC
151 2 GAC	159 3 GAC
152 1 ASO	160 1 SSAC
153 3 ccNSO	161 1 ASO
154 5 GNSO	162 2 ccNSO
155 ICANN Board Chair or designee	163 2 GNSO
156 Assistant Secretary for NTIA	164 2 Experts
	165 ICANN Board Chairman or designee
	166 Assistant Secretary for NTIA
167 <b>SSR</b> (15 people; 12 from AC & SOs):	177 <b>WHOIS</b> (13 people; 9 from AC & SOs):
168 1 ALAC	178 2 ALAC
169 1 GAC	179 1 GAC
170 2 SSAC	180 1 SSAC
171 1 RSSAC	181 1 ASO
172 2 ASO	182 1 ccNSO
173 3 ccNSO	183 3 GNSO
174 2 GNSO	184 3 Experts/Law Enforcement
175 2 Experts	185 ICANN CEO or designated nominee
176 ICANN CEO or designee	

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- The AoC text for Competition, Consumer Trust & Consumer Choice review is reintroduced.
- All AoC reviews (and the IFR and Special IFR) should be incorporated into the Bylaws.

- The WP-IRP IOT will examine the suggestion to include a mid-term review of the IRP. The ATRT scope will be expanded to suggest a review of the IRP (paragraph 89).
- The representation and number of seats on Review Teams that relate to gTLD reviews will remain unchanged from the Third Draft Proposal (paragraph 54).
- The Board amendment on WHOIS/future Registration Directory Services policy (paragraph 127) should be included.
- The ICANN Articles of Incorporation address ICANN's state of incorporation (or corporate domicile), and the ICANN Bylaws (Article XVIII) address the separate issue of the location of ICANN's principal office. Article XVIII of the ICANN Bylaws will be classified as a Standard Bylaw (see paragraph 5).
- The Board suggestion regarding AoC reviews operational standards to be developed as part of implementation should be included on the understanding that Recommendation #9 would be respected and that this text would address implementation details only (see paragraph 8).
- CCWG-Accountability lawyers advised clarifying "diversity" in paragraph 54 regarding composition of AoC Review Teams. CCWG-Accountability notes that "diversity" considerations could include geography, skills, gender, etc., and that chairs of participating ACs and SOs should have flexibility in their consideration of factors in selecting Review Team members.
- CCWG-Accountability lawyers suggested "the group of chairs can solicit additional nominees or appoint less than 21 members to avoid potential overrepresentation of particular ACs or SOs if some nominate less than 3 members." The CCWG-Accountability proposed "up to 21", so it is not actually proposing a fixed number of Review Team members. "Fixed" has been replaced with "limited" in paragraph 54. CCWG-Accountability purposely allowed AC/SO chairs to select additional Review Team members from ACs/SOs that had offered more than 3 candidates. This is to accommodate ACs/SOs that had greater interest in a review, such as the GNSO, which would be the most concerned with reviews of new gTLDs and WHOIS/Directory Services. Therefore, the representation and number of seats on the Review Team will remain unchanged from the Third Draft Proposal.
- Replaced "participants" with "observers" in paragraph 54.

## 5. Stress Tests Related to this Recommendation

- ST9, 11, 17
- ST3, 4
- ST 14
- ST20, 22

## 6. How does this meet the CWG-Stewardship Requirements?

- The CWG-Stewardship has proposed an IFR and Special IFR that should be added to the ICANN Bylaws as a Fundamental Bylaw. The CCWG-Accountability's recommendations include this as part of the reviews to be added to the ICANN Bylaws.

## 7. How does this address NTIA Criteria?

### 186 **Support and enhance the multistakeholder model.**

- Reinforcing multistakeholder nature of the organization by incorporating into its principles the commitment to remaining a nonprofit, public benefit corporation that operates under transparent and bottom-up, multistakeholder policy development processes; includes business stakeholders, civil society, the technical community, academia, and end users; and seeks input from the public for whose benefit ICANN shall in all events act.
  - Reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process fully addresses this criterion.
- 

### 187 **Maintain the security, stability and resiliency of the Internet DNS.**

- Maintaining nonprofit public benefit corporation status and headquarters in the U.S.
  - Adding Bylaw requirement that ICANN produce an annual report on the state of improvements to Accountability and Transparency.
  - Publishing analyses of the positive and negative effects of its decisions on the public, including any financial or non-financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability, and resiliency of the DNS.
  - Including the commitment to preserve and enhance the neutral and judgment-free operation of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet.
  - Incorporating Affirmation of Commitments reviews into Bylaws and, in particular, the security, stability, and resiliency of the DNS review.
- 

### 188 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- Transferring Affirmation of Commitments that ICANN preserve and enhance the neutral and judgment free operation of the DNS, and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet as well maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet.

- Solidifying commitment to maintain the capacity and ability to coordinate the DNS at the overall level and to work for the maintenance of a single, interoperable Internet. The criteria is also addressed through the Bylaw addition: ICANN will ensure that as it expands the TLD space, it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection.
  - Visibility in finance and accountability reporting.
- 

189 **Maintain the openness of the Internet.**

- Convening a Community Forum where all would be welcome to participate as a potential step.
  - All are welcome to participate in the consultation process that organized to elaborate these key documents.
- 

190 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution.**

- Adding commitment to seek and support broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent.
  - Producing an annual report on the state of improvements to Accountability and Transparency and adhering to transparent and accountable budgeting processes, providing advance notice to facilitate stakeholder engagement in policy decision-making.
-

# Annex 10 – Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees

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## 1. Summary

- 01 The CCWG-Accountability recommends addressing the accountability of Supporting Organizations (SOs) and Advisory Committees (ACs) in a two-stage approach:
- In Work Stream 1: Include the review of SO and AC accountability mechanisms in the independent structural reviews performed on a regular basis.
  - In Work Stream 2: Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.

## 2. CCWG-Accountability Recommendations

- 02 Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that the current mechanisms need to be enhanced in light of the new responsibilities associated with the Work Stream 1 recommendations.
- 03 The CCWG-Accountability recommends the following.

### 04 **Work Stream 1:**

- 05 Include the review of SO and AC accountability mechanisms in the independent periodical structural reviews that are performed on a regular basis.
- These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.
  - This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as:

*The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.*

- The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work

Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws, the Accountability and Transparency Review will include the following among the issues that merit attention in the review:

*assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*

06 **Work Stream 2:**

07 Include the subject of SO and AC accountability as part of the Accountability and Transparency Review process.

- Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and, if viable, undertake the necessary actions to implement it.<sup>1</sup>
- Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.
- Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities.

### 3. Detailed Explanation of Recommendations

08 As the community's power is enhanced, legitimate concerns have arisen regarding the accountability of the community (organized as SOs and ACs) in using those powers. In other words, “Who watches the watchers?”

09 In response to these concerns, the CCWG-Accountability:

- Identified the existing accountability mechanisms in place for SOs and ACs.
- Reviewed existing mechanisms in order to assess whether and how they address the concerns expressed by the community during the First Public Comment Period.
- Built a list of steps to enhance SO and AC accountability that should be addressed in Work Stream 1 and Work Stream 2.

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<sup>1</sup> CCWG-Accountability Advisor Willie Currie introduced a short description of the mutual accountability roundtable: *The idea of mutual accountability is that multiple actors are accountable to each other. How might this work in ICANN? It would be necessary to carve out a space within the various forms of accountability undertaken within ICANN that are of the principal-agent variety. So where the new Community Powers construct the community as a principal who calls the Board as agent to account, a line of mutual accountability would enable all ICANN structures to call one another to account. So one could imagine a Mutual Accountability Roundtable that meets at each ICANN meeting, perhaps replacing the current Public Forum. The form would be a roundtable of the Board, CEO, and all Supporting Organizations and Advisory Committees, represented by their chairpersons. The roundtable would designate a chairperson for the roundtable from year to year who would be responsible for facilitating each Mutual Accountability Roundtable. Each Roundtable may pick one or two key topics to examine. Each participant could give an account of how his or her constituency addressed the issue, indicating what worked and didn't work. This could be followed by a discussion on how to improve matters of performance. The purpose would be to create a space for mutual accountability as well as a learning space for improvement.*

10 A review of existing ICANN documentation shows that the provisions that oblige SOs and ACs to be held accountable to their Constituents or the larger Internet community with regard to their actions, decisions, or advice, are limited in number and scope.

11 The reviewed documents were:

1. [ICANN Bylaws](#)

ICANN Bylaws state that each SO and AC shall establish its own charter and procedural documents. Further research needs to be done at the SO and AC level to verify existing accountability mechanisms put in place for each SO and AC.

It is also important to review whether SOs and ACs should be added to specific sections in the Bylaws as subject to provisions applicable to ICANN as a corporation. For example, it should be reviewed and discussed if Core Values should be applicable not only to the corporation's actions, but also to SO and AC activities.

2. [The Affirmation of Commitments](#)

The Affirmation of Commitments includes some key commitments that while oriented to ICANN as an organization, should also apply to the SOs and ACs that form the wider ICANN organizational structure as defined in ICANN's Bylaws.

The identified mechanisms or criteria in the Affirmation of Commitments by which SOs and ACs should conduct their work in relation to the DNS are: paragraph 3 and paragraph 9.

3. [ATRT 1 Recommendations](#) and [ATRT 2 Recommendations](#)

The Accountability and Transparency Reviews have made no direct recommendations with regard to SO and AC transparency or accountability.

4. [Operational Rules and Procedures of the Various Supporting Organizations and Advisory Committees](#)

Having inventoried the existing mechanisms related to SO and AC accountability in light of the new responsibilities associated with the Work Stream 1 Proposals, it became clear that the current framework for SO and AC accountability needed to be enhanced.

The aim of the enhancements is to ensure that SOs and ACs are accountable not only to their current members but also to the wider communities that these bodies are designed to represent.

12 Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that the current mechanisms need to be enhanced in light of the new responsibilities associated with the Work Stream 1 recommendations.

13 The CCWG-Accountability recommends the following.

14 **Work Stream 1:**

- 15 Include the review of SO and AC accountability mechanisms in the independent periodic structural reviews that are performed on a regular basis.
- These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, Regional At-Large Organizations, etc.
  - This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently describes the goal of these reviews as:  
*The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization has a continuing purpose in the ICANN structure, and (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness.*
  - The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws, the Accountability and Transparency Review will include the following among the issues that merit attention in the review:  
*assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*
- 16 **Work Stream 2:**
- 17 Include the subject of SO and AC accountability as part of the Accountability and Transparency Review process.
- Evaluate the proposed “Mutual Accountability Roundtable” to assess its viability and, if viable, undertake the necessary actions to implement it.<sup>2</sup>
  - Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.
  - Assess whether the Independent Review Process (IRP) would also be applicable to SO and AC activities.

## 4. Changes Made Since the Third Draft Proposal

- Added: The periodic review of ICANN Accountability and Transparency required under the Affirmation of Commitments is being incorporated into the ICANN Bylaws as part of Work Stream 1. In Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws, the Accountability and Transparency Review will include the following

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<sup>2</sup> See the short description of the mutual accountability roundtable provided by CCWG-Accountability Advisor Willie Currie in footnote 1, above.

among the issues that merit attention in the review:

*assessing the role and effectiveness of GAC interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS*

- In Work Stream 2 recommendations, added: Develop a detailed working plan on enhancing SO and AC accountability taking into consideration the comments made during the public comment period on the Third Draft Proposal.

## 5. Stress Tests Related to this Recommendation

- ST12
- ST33
- ST34

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

### 18 Support and enhance the multistakeholder model.

- Enhancements of ICANN's accountability are all enhancements to ICANN's overall multistakeholder model. Greater accountability of SOs and ACs to their members and stakeholders is a part of enhancing the wider multistakeholder model of ICANN.

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### 19 Maintain the security, stability and resiliency of the Internet DNS.

- N/A

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### 20 Meet the needs and expectation of the global customers and partners of the IANA services.

- N/A

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21 **Maintain the openness of the Internet.**

- N/A

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22 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.**

- The proposals for enhanced SO and AC accountability are based on mutual accountability enhancements, instead of accountability towards a government-led or intergovernmental organization. Governments are recognized as key stakeholders, especially in their role with regard to public policy.
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# Annex 11 – Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test #18)

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## 1. Summary

- 1 Currently, Governmental Advisory Committee (GAC) advice to the ICANN Board has special status as described in the ICANN Bylaws Article XI, Section 2:

*j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*

- 2 Stress Test #18 considers a scenario where ICANN's GAC would amend its operating procedures to change from consensus decisions (no objections) to majority voting for advice to the ICANN Board. Since the Board must seek a mutually acceptable solution if it rejects GAC advice, concerns were raised that the ICANN Board could be forced to arbitrate among sovereign governments if they were divided in their support for the GAC advice on public policy matters.
- 3 In addition, if the GAC lowered its decision threshold while also participating in the new Empowered Community (if the GAC chooses to so participate), some stakeholders believe that this could increase government influence over ICANN.
- 4 In order to mitigate these concerns, the CCWG-Accountability is recommending changes be made to the ICANN Bylaws relating to GAC advice.

## 2. CCWG-Accountability Recommendations

- 5 The CCWG-Accountability recommends that the following changes be made to the ICANN Bylaws Article XI, Section 2 (emphasis added):
- 6 *j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. **Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of***

**adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of 60% of the Board**, and the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

- 7 This recommendation is intended only to limit the conditions under which the ICANN Board and GAC must “try to find a mutually acceptable solution,” as required in ICANN’s current Bylaws. This recommendation shall not create any new obligations for the ICANN Board to consider, vote upon, or to implement GAC advice, relative to the Bylaws in effect prior to the IANA Stewardship Transition. This recommendation does not create any presumption or modify the standard applied by the Board in reviewing GAC advice.
- 8 The GAC has the autonomy to refine its operating procedures to specify how objections are raised and considered (for example, disallowing a single country to continue an objection on the same issue if no other countries will join in an objection). When transmitting consensus advice to the ICANN Board for which the GAC seeks to receive special consideration, the GAC has the obligation to confirm the lack of any formal objection.
- 9 The CCWG-Accountability recommends inserting a requirement that all ACs provide a rationale for their advice. A rationale must be provided for formal advice provided by an Advisory Committee to the ICANN Board. The Board shall have the responsibility to determine whether the rationale provided is adequate to enable determination of whether following that advice would be consistent with ICANN’s Bylaws.
- 10 To address concerns regarding GAC advice that is inconsistent with the ICANN Bylaws, the CCWG-Accountability recommends adding this clarification for legal counsel to consider when drafting Bylaws language:

*ICANN cannot take action - based on advice or otherwise – that is inconsistent with its Bylaws. While the GAC is not restricted as to the advice it can offer to ICANN, it is clear that ICANN may not take action that is inconsistent with its Bylaws. Any aggrieved party or the Empowered Community will have standing to bring claims through the IRP that the Board acted (or failed to act) in a manner inconsistent with the ICANN Articles of Incorporation or Bylaws, even if the Board acted on GAC advice.*

- 11 Note: The language proposed in recommendations for ICANN Bylaw revisions are conceptual in nature at this stage. The CCWG-Accountability’s external legal counsel and the ICANN legal team will draft final language for these revisions to the Articles of Incorporation and Bylaws.

## 3. Detailed Explanation of Recommendations

### 12 Background

- 13 Stress Test #18 is related to a scenario where ICANN's GAC would amend its operating procedures to change from consensus decisions to majority voting for advice to the ICANN Board. Since the ICANN Board must seek a mutually acceptable solution if it rejects GAC advice, concerns were raised that the Board could be forced to arbitrate among sovereign governments if they were divided in their support for the GAC advice. In addition, if the GAC lowered its decision threshold while also participating in the Empowered Community (if the GAC chooses to so participate), some stakeholders believe this could inappropriately increase government influence over ICANN.
- 14 The goal of the recommendation is also to reflect the principles, derived from the [GAC Dublin Communiqué](#), and agreed upon by the CCWG-Accountability when investigating further on Stress Test #18:
- The GAC may define its own rules.
  - The GAC is committed to working by consensus.
  - The GAC will not work on the basis of a simple majority for GAC advice.
  - The Board has the ability to disagree with GAC advice, after trying to find a mutually acceptable solution.
  - GAC advice needs to provide clear direction and provide a rationale.

## Process and Considerations Leading Up to the Recommendation

- 15 The Second Draft Proposal drew a significant number of comments, with a majority in support of the proposed Bylaws change and with objections from several governments. After the close of the second round of public comments, other governments expressed their concerns regarding the proposed Bylaws change.
- 16 The CCWG-Accountability also received communication from the GAC after its Dublin meeting, as part of its communiqué, which stated:

*“The discussions on Stress Test #18 have helped the Governmental Advisory Committee to have a better understanding of the different views on the issue. In assessing the different rationales presented so far related to Stress Test #18, the Governmental Advisory Committee considered:*

- The need that each and every AC ensures that the advice provided is clear and reflects the consensus view of the Committee.
- The need that each and every AC should preserve its own autonomy in its definition of consensus.
- The value the Board attributes to receiving consensus advice.
- The recommendation of the Board-GAC Recommendation Implementation Working Group, as reiterated by the Accountability and Transparency Review Team 2 (ATRT2), to set the threshold for the ICANN Board to reject GAC advice to a 2/3 majority voting, consistent with the threshold established for rejection of Country Code Names Supporting Organization and Generic Names Supporting Organization Policy Development Process recommendations.”

- 17 Following the Second Public Comment Period, and the input received from the GAC Communiqué in Dublin, the CCWG-Accountability organized a specific Subgroup to:
- Assess existing options, and areas of agreement/disagreement.
  - Provide the full CCWG-Accountability with a brief summary of views and options.
  - Report to the CCWG-Accountability so that consensus can be assessed around how to respond to Stress Test #18, which identified the risk that GAC could change its decision-making rule and thereby require the ICANN Board to arbitrate among sovereign governments.
- 18 Within this Subgroup, the following conclusions were agreed upon:
- The GAC may define its own rules.
  - The GAC is committed to working by consensus.
  - The GAC will not work on the basis of a simple majority for GAC advice.
  - The Board has the ability to disagree with GAC advice, after trying to find a mutually acceptable solution.
  - GAC advice needs to provide clear direction and provide a rationale.

19 **Alternative options considered and rejected**

20 Within this group, several options were introduced and considered.

21 Brazil introduced a proposal with the following Bylaw changes:

*[...] Where the ICANN Board is obliged to pay due deference to advice from Advisory Committees and where that advice, if not followed, requires finding mutually agreed solutions for implementation of that advice, the Advisory Committee will make every effort to ensure that the advice provided is clear and reflects the consensus view of the committee. In this context, each Advisory Committee has the right to determine its particular definition of consensus.” [...]*

*[...] Any Governmental Advisory Committee Advice approved by a Governmental Advisory Committee consensus may only be rejected by a vote of more than two-thirds (2/3) of the Board. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. [...]*

22 After discussions within the Subgroup, and concerns raised by some stakeholders that the Brazil proposal would create stronger obligations for the ICANN Board while not providing enough guarantees that the GAC decision-making would remain strongly focused on consensus, a proposal based on initial drafting by Denmark and enhanced by a group of European GAC members, was considered (emphasis added):

*“The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.*

*In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.*

*Any Governmental Advisory Committee advice approved by a **full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of two-thirds of the Board.***

*Any advice approved by the Governmental Advisory Committee by consensus with objections only from a very small minority of Governmental Advisory Committee members, may be rejected by a majority vote of the Board.*

*In both instances, the Governmental Advisory Committee and the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.”*

- 23 Several stakeholders supported an amendment to this proposal to remove the words “Any advice approved by the Governmental Advisory Committee by consensus with objections only from a very small minority of Governmental Advisory Committee members, may be rejected by a majority vote of the ICANN Board.” It was met with support as well as resistance, with the argument that this would not address the concerns expressed during the Second Public Comment Period about the lack of flexibility regarding GAC decision-making procedures.
- 24 As some participants remained concerned about the introduction of the 2/3 decision-making threshold for the ICANN Board, a compromise proposal was introduced as such (emphasis added):

*“j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies.*

*In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.*

*Governmental Advisory Committee **advice which enjoys broad support of Governmental Advisory Committee members in the absence of significant objection** may be rejected by a majority vote of the Board.*

*In this case, the Governmental Advisory Committee and the ICANN Board will try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution”.*

- 25 This compromise proposal was submitted to the CCWG-Accountability on 24 November 2015. After thorough discussion, while some stakeholders expressed their willingness to accept the proposal as a compromise, significant objections remained. The co-Chairs assessed that the level of support was insufficient to call rough consensus on this proposal.
- 26 When discussing the way forward within the CCWG-Accountability on 26 November 2015, the group took stock of the past discussions and noted the [statement by Larry Strickling of NTIA](#) from 25 November about Stress Test #18. A proposal was introduced jointly by Denmark and Keith Drazek (ICG Liaison).
- 27 After being unable to reach consensus on the two-thirds proposal, in January 2016 the CCWG-Accountability re-launched the discussions to identify a consensus position for Recommendation #11. In early February, the CCWG-Accountability concluded that the consensus position should include the clarifications made to the version of Recommendation #11 in the Third Draft Proposal (no new obligations, rationale and conformity with ICANN Bylaws) and change the 2/3 threshold to 60%. Additionally, as part of the compromise, an exception was added in

Recommendations #1 and #2 that the GAC, should it decide to be a Decisional Participant in the Empowered Community, would not be able to participate as a decision-maker in the Empowered Community’s exercise of a Community Power to challenge the ICANN Board’s implementation of GAC consensus advice; however, the GAC would be able to participate in an advisory capacity in all other aspects of the escalation process.

28 **The Stress Test which encompasses this is now:**

29	<b>Stress Test #18:</b> Governments in ICANN’s Governmental Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN’s Board	
30	<b>Consequence(s):</b> Under current Bylaws, ICANN must consider and respond to Governmental Advisory Committee advice, even if that advice were not supported by consensus. A majority of governments could thereby approve Governmental Advisory Committee advice.	
	<b>EXISTING ACCOUNTABILITY MEASURES</b>	<b>PROPOSED ACCOUNTABILITY MEASURES</b>
31	Current ICANN Bylaws (Article XI) require ICANN to try to find a mutually acceptable solution for Governmental Advisory Committee advice.	35 The proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to require trying to find a mutually acceptable solution only where
32	Today, Governmental Advisory Committee adopts formal advice according to its Operating Principle 47: <i>“consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.”</i>	Governmental Advisory Committee advice was supported by full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.
33	The Governmental Advisory Committee may at any time change its procedures instead of its present consensus rule.	36 The proposed accountability measure recognizes that the decision not to follow GAC consensus advice would require a 60% majority of the ICANN Board.
34	The requirement to try to find a mutually acceptable solution in the current Bylaws would then apply, not just for Governmental Advisory Committee consensus advice.	37 The Governmental Advisory Committee can still give ICANN advice at any time, with or without full consensus.
		38 Recognizing the general principle that an AC should have the autonomy to refine its Operating Procedures, the Governmental Advisory Committee could specify how objections are raised and considered.

39 **Why is the CCWG-Accountability Recommending This?**

40 Stress Test #18 was among the plausible scenarios that could test how and whether the ICANN community could challenge actions taken by the ICANN Board. The rationale to develop this stress test involves two factors:

1. ICANN community members were aware that some GAC members had expressed a desire to change the GAC's historical method of using consensus for its decision-making, where "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection." Moreover, it would take only a simple majority of GAC members to change its decision-making methods to a lesser standard.
  2. The CCWG-Accountability realized that ICANN's present Bylaws obligate the ICANN Board to try to find "a mutually acceptable solution" if it decided not to follow GAC advice. That level of required deference is unique to the GAC and not required for advice from other SOs and ACs. Importantly, the ICANN Board's obligation to seek a mutually acceptable solution applies to all GAC advice, even if that advice was not supported by GAC consensus or was opposed by a significant minority of GAC members.
- 41 For these reasons, the CCWG-Accountability added Stress Test #18 to the First Draft Proposal, and the Stress Test Working Party concluded that existing accountability measures were not adequate to let the community hold the ICANN Board accountable for its actions if the Board were obliged to seek a negotiated solution with the GAC.
- 42 In order to address Stress Test #18, the CCWG-Accountability proposed an amendment to the ICANN Bylaws regarding the ICANN Board's obligations with respect to GAC advice. The amendment would preserve the requirement for the ICANN Board to seek a mutually acceptable solution, but only for GAC advice that was supported by consensus among GAC members.
- 43 The GAC advice that is opposed by a significant minority of governments should not trigger the ICANN Board's obligation to enter bi-lateral negotiations with the GAC on a matter that affects the global Internet community. A negotiation between the ICANN Board and the GAC should be mandatory only for resolving differences between ICANN and governments, not to resolve differences among governments themselves.
- 44 As a corollary to the importance of consensus GAC advice, the proposal includes a requirement that the Board would need a 60% majority to decide not to follow consensus GAC advice.
- 45 To avoid any ambiguity, when transmitting consensus advice to the ICANN Board for which the GAC seeks to receive special consideration, the GAC has the obligation to confirm the lack of any formal objection among GAC members.
- 46 The proposed Bylaws change is aligned with the practice presently used by the GAC, which uses the following consensus rule for its decisions:
- "Consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."*
- 47 The proposed Bylaws change recognizes that the GAC may, at its discretion, amend its [Operating Principle 47](#) regarding "Provision of Advice to the ICANN Board." Similar rules for consensus policy and advice are already present in the ICANN Bylaws, which require supermajority support for policy recommendations coming from GNSO and ccNSO.
- 48 The proposed Bylaws change for Stress Test #18 does not interfere with the GAC's method of decision-making. The GAC has the autonomy to refine its operating procedures to specify how objections are raised and considered (for example, disallowing a single country to continue an objection on the same issue if no other countries will join in an objection).
- 49 If the GAC decided to adopt advice by methods other than a consensus process, ICANN would still be obligated to give GAC advice due consideration: "advice shall be duly taken into account, both in the formulation and adoption of policies."

- 50 Moreover, ICANN would still have to explain why it chose not to follow GAC advice: “In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice”.
- 51 The only effect of this Bylaws change is to limit the kind of advice where ICANN is obligated to “try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.” That delicate and sometimes difficult consultation requirement would only apply for GAC advice that was approved by consensus among GAC members.
- 52 It is important to note that although this was the only proposal that would allow the CCWG-Accountability to achieve consensus on this topic, it was not unanimously supported. A number of dissenters amongst members and participants thought this proposal was overly restrictive and discriminatory toward the GAC, while others thought that if the GAC wanted to keep its privileged AC status, then it should not be allowed to be a Decisional Participant.

## 4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”

- Changed the 2/3rds threshold for the Board rejecting GAC consensus advice to 60%. As part of the compromise, this required changes in Recommendations #1 and #2 to implement a GAC “carve out”.

## 5. Stress Tests Related to this Recommendation

- Stress Test #18: Governments in ICANN’s GAC can amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN’s Board.

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

- NTIA gave specific requirements for this transition, including advice that Stress Test #18 is a direct test of the requirement to avoid significant expansion of the role of governments in ICANN decision-making. The proposed Bylaws change is therefore an important part of the Proposal.

- 
- By ensuring that the provision of GAC advice remains a consensus-driven decision, the Proposal provides a safeguard against the possibility of a large group of governments trying to overly influence the ICANN Board.
- 

- At the same time, the Proposal would enable the GAC, if it ever came to a point where a single government would abuse its ability to formally object to veto public policy advice, to amend its operating principles to address this contingency. The principles adopted would however be required to fit with the consensus requirement stated in the Bylaws.
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# Annex 12 – Recommendation #12: Committing to Further Accountability Work in Work Stream 2

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## 1. Summary

- 01 The CCWG-Accountability Work Stream 2 is focused on addressing those accountability topics for which a timeline for developing solutions may extend beyond the IANA Stewardship Transition.
- 02 As part of Work Stream 2, the CCWG-Accountability proposes that further enhancements be made to a number of designated mechanisms:
  - Considering improvements to ICANN’s standards for diversity at all levels.
  - Staff accountability.
  - Supporting Organizations and Advisory Committee accountability.
  - Improving ICANN’s transparency with a focus on:
    - Enhancements to ICANN’s existing Documentary Information Disclosure Policy (DIDP).
    - Transparency of ICANN’s interactions with governments.
    - Improvements to the existing whistleblower policy.
    - Transparency of Board deliberations.
  - Developing and clarifying a Framework of Interpretation for ICANN’s Human Rights commitment and proposed Draft Bylaw.
  - Addressing jurisdiction-related questions, namely: “Can ICANN’s accountability be enhanced depending on the laws applicable to its actions?” The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements.
  - Considering enhancements to the Ombudsman’s role and function.
- 03 The CCWG-Accountability expects to begin refining the scope of Work Stream 2 during the upcoming [ICANN55 Meeting](#) in March 2016. It is intended that Work Stream 2 recommendations will be published for comments by the end of 2016.
- 04 The community raised concerns that after the IANA Stewardship Transition, there may be a lack of incentive for ICANN to implement the proposal arising out of Work Stream 2. To prevent this scenario, the CCWG-Accountability recommends that the ICANN Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability Work Stream 2 recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. In a [letter](#) dated 13 November 2015, the ICANN

Board confirmed its intent to work with the ICANN community and to provide adequate support for work on these issues.

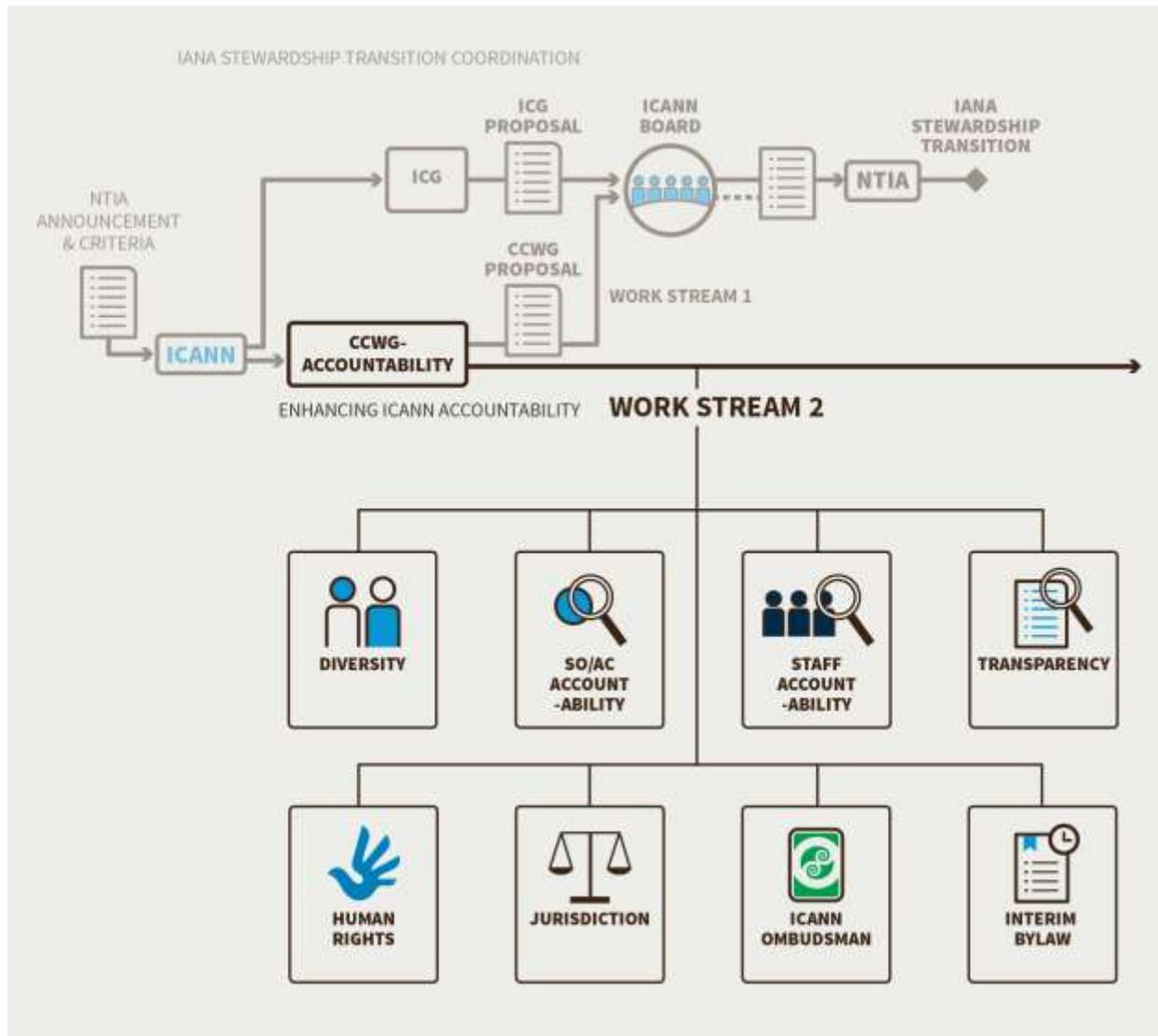
## 2. CCWG-Accountability Recommendations

05 The CCWG-Accountability recommends that the Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability consensus recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. The Bylaw would task the group with creating further enhancements to ICANN's accountability limited to the Work Stream 2 list of issues:

- Considering improvements to ICANN's standards for diversity at all levels.
- Staff accountability.
- Supporting Organizations and Advisory Committee accountability.
  - Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.
  - Evaluate the proposed "Mutual Accountability Roundtable" to assess viability.
  - Propose a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2.
  - Assess whether the IRP would also be applicable to SO and AC activities.
- Improving ICANN's transparency with a focus on:
  - Enhancements to ICANN's existing DIDP.
  - Transparency of ICANN's interactions with governments.
  - Improvements to the existing whistleblower policy.
  - Transparency of Board deliberations.
- Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment and proposed Draft Bylaw.
- Addressing jurisdiction-related questions, namely: "Can ICANN's accountability be enhanced depending on the laws applicable to its actions?" The CCWG-Accountability anticipates focusing on the question of applicable law for contracts and dispute settlements.
- Considering enhancements to the Ombudsman's role and function.

The CCWG-Accountability notes that further enhancements to ICANN accountability can be accommodated through the accountability review process (see Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees) or through specific, ad hoc, cross community working group initiatives.

### 3. Detailed Explanation of Recommendations



06 Commenters made the observation that general accountability requirements, such as diversity and Supporting Organization (SO) and Advisory Committee (AC) accountability, were not fully addressed. Specific criteria were developed for these two key parameters, as described below.

#### 07 Diversity

08 Comments received on prior drafts asked that concrete steps to ensure the diversity of the views, origins, and interests of the global Internet community be adequately represented through a multidimensional approach, specifically as the community becomes more empowered. While acknowledging the importance of diversity in the accountability mechanisms, commenters have

also expressed the view that any diversity requirement should not prevail over skills or experience requirements.

- 09 The CCWG-Accountability acknowledges the specific advice received from the Public Expert Group Advisors which stresses the importance of such diversity enhancements. Maximum participation and transparent deliberations by all affected stakeholders are necessary in order to capture the diversity of views that constitute the (global) public interest in a given instance.
- 10 In assessing diversity, the CCWG-Accountability identified that existing mechanisms were in place for entities constituting the ICANN ecosystem. Requirements stemming from the following initiatives and governance documents were evaluated:
- [ICANN Bylaws.](#)
  - [The Affirmation of Commitments.](#)
  - [ATRT 1 Recommendations.](#)
  - [ATRT 2 Recommendations.](#)
  - Documents from each of ICANN's SOs and ACs.
- 11 Analysis of the above documents determined that improvements are needed. During its discussions, the CCWG-Accountability considered a non-exhaustive list of criteria and sought input on the following suggestions:
- Expanding ATRT reviews into Accountability, Transparency, and Diversity reviews.
  - Establishing threshold regarding composition of each body.
  - Incorporating the Structural Reviews into Structural Accountability, Transparency, and Diversity Reviews of SOs and ACs, under the Board's supervision.
- 12 Comments received on the Second Draft Proposal revealed that incorporating the diversity component into Accountability and Transparency Reviews may overburden Review Teams. Therefore, the CCWG-Accountability recommends the following actions with the view to further enhancing ICANN's effectiveness in promoting diversity:
- Including diversity as an important element for the creation of any new structure, such as the Independent Review Process (IRP) – for diversity requirements for the panel – and the ICANN Community Forum.
  - Adding Accountability, Transparency, and Diversity reviews of SOs and ACs to structural reviews as part of Work Stream 2.
  - Performing, as part of Work Stream 2, a more detailed review to establish a full inventory of the existing mechanisms related to diversity for each and every ICANN group (including Stakeholder Groups, Constituencies, Regional At-Large Organizations, the Fellowship program, and other ICANN outreach programs). After an initial review of the current documents, it became clear that they do not address the full concerns raised by the wider community on the issue of diversity.
  - Identifying the possible structures that could follow, promote and support the strengthening of diversity within ICANN.
  - Carrying out a detailed working plan on enhancing ICANN diversity as part of Work Stream 2.

- Strengthening commitments to outreach and engagement in order to create a more diverse pool of ICANN participants, so that diversity is better reflected in the overall community and thus more naturally reflected in ICANN structures and leadership positions.

### 13 **Staff Accountability**

14 In general, management and staff work for the benefit of the community and in line with ICANN's purpose and Mission. While it is obvious that they report to and are held accountable by the ICANN Board and the President and CEO, the purpose of their accountability is the same as that of the organization:

- Complying with ICANN's rules and processes.
- Complying with applicable Bylaws.
- Achieving certain levels of performance, as well as security.
- Making their decisions for the benefit of the community and not in the interest of a particular stakeholder or set of stakeholders or ICANN the organization alone.

15 Having reviewed and inventoried the existing mechanisms related to staff accountability, areas for improvement include clarifying expectations from staff, as well as establishing appropriate redress mechanisms. The CCWG-Accountability recommends as part of its Work Stream 2:

- The CCWG-Accountability work with ICANN to develop a document that clearly describes the role of ICANN staff vis-à-vis the ICANN Board and the ICANN community. This document should include a general description of the powers vested in ICANN staff by the ICANN Board of Directors that need, and do not need, approval of the ICANN Board of Directors.
- The CCWG-Accountability work with ICANN to consider a Code of Conduct, transparency criteria, training, and key performance indicators to be followed by staff in relation to their interactions with all stakeholders, establish regular independent (internal and community) surveys and audits to track progress and identify areas that need improvement, and establish appropriate processes to escalate issues that enable both community and staff members to raise issues. This work should be linked closely with the Ombudsman enhancement item of Work Stream 2.

### 16 **Supporting Organizations and Advisory Committee Accountability**

17 As the community's power is enhanced, legitimate concerns have arisen regarding the accountability of the community (organized as SOs and ACs) in using new Community Powers, i.e., "who watches the watcher."

18 The CCWG-Accountability reviewed existing accountability mechanisms for SOs and ACs as well as governance documents (see above). Analysis revealed that mechanisms are limited in quantity and scope. Having reviewed and inventoried the existing mechanisms related to SO and AC accountability, it is clear that current mechanisms need to be enhanced in light of the new responsibilities associated with the Empowered Community.

19 The CCWG-Accountability recommends the following.

20 **As part of Work Stream 1:**

- Include the review of SO and AC accountability mechanisms in the independent periodical structural reviews performed on a regular basis. These reviews should include consideration of the mechanisms that each SO and AC has in place to be accountable to their respective Constituencies, Stakeholder Groups, and Regional At-Large Organizations, etc.
- This recommendation can be implemented through an amendment of Section 4 of Article IV of the ICANN Bylaws, which currently states: “The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (1) whether that organization has a continuing purpose in the ICANN structure, and (2) if so, whether any change in structure or operations is desirable to improve its effectiveness.”

21 **As part of Work Stream 2:**

- Include the subject of SO and AC accountability as part of the work on the Accountability and Transparency Review process.
- Evaluate the proposed “Mutual Accountability Roundtable” to assess viability and, if viable, undertake the necessary actions to implement it.
- Propose a detailed working plan on enhancing SO and AC accountability as part of Work Stream 2.
- Assess whether the IRP would also be applicable to SO and AC activities.

22 **Transparency**

23 Transparency is considered quintessential to the viability of community empowerment and its associated legal framework. As such, the CCWG-Accountability recommends reviewing the following to ensure appropriate safeguards are in place:

- Improving ICANN’s transparency with a focus on:
  - Enhancements to ICANN’s existing DIDP: The CCWG-Accountability sets an objective to review and update ICANN’s DIDP within two years, with the goal of justifying denials with a specific harm and limiting the scope of non-disclosure.
  - ICANN’s interactions with governments: The CCWG-Accountability is considering if ICANN should be required to compile and publicly post a quarterly report providing: the names of individuals acting on ICANN’s behalf who have been in contact with a government official; the names and titles of such government officials; and the date, nature, and purpose of those government contacts. In addition, it considers that a line item accounting of the amount ICANN spent on government engagement activities should be reported.
  - Improvements to the existing whistleblower policy.
  - Transparency of Board deliberations.

## Human Rights

24 To ensure that adding the proposed Human Rights Bylaw provision into the ICANN Bylaws does not lead to an expansion of ICANN's Mission or scope, the CCWG-Accountability will develop a Framework of Interpretation for Human Rights (FOI-HR) as a consensus recommendation in Work Stream 2 to be approved by the ICANN Board using the same process and criteria as for Work Stream 1 recommendations, and the Bylaw provision will not enter into force before the FOI-HR is in place. The CCWG-Accountability will consider the following as it develops the FOI-HR:

- Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.
- Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights.
- Consistent with ICANN's existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process.
- Consider what effect, if any, this Bylaw would have on ICANN's consideration of advice given by the Governmental Advisory Committee (GAC).
- Consider how, if at all, this Bylaw will affect how ICANN's operations are carried out.
- Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

## 25 **Jurisdiction**

26 Jurisdiction directly influences the way ICANN's accountability processes are structured and operationalized. The fact that ICANN is incorporated under the laws of the U.S. State of California grants the corporation certain rights and implies the existence of certain accountability mechanisms. It also imposes some limits with respect to the accountability mechanisms it can adopt.

27 The topic of jurisdiction is, as a consequence, very relevant for the CCWG-Accountability. ICANN is a nonprofit public benefit corporation incorporated in California and subject to applicable California state laws, applicable U.S. federal laws and both state and federal court jurisdiction. ICANN is subject to a provision in paragraph eight<sup>1</sup> of the Affirmation of Commitments, signed in 2009 between ICANN and the U.S. Government.

28 ICANN's Bylaws (Article XVIII) also state that its principal offices shall be in California.

29 The CCWG-Accountability has acknowledged that jurisdiction is a multi-layered issue and has identified the following "layers":

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<sup>1</sup> 8. ICANN affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS at the overall level and to work for the maintenance of a single, interoperable Internet; (b) **remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community**; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN shall in all events act.

- Place and jurisdiction of incorporation and operations, including governance of internal affairs, tax system, human resources, etc.
- Jurisdiction of places of physical presence.
- Governing law for contracts with registrars and registries and the ability to sue and be sued in a specific jurisdiction about contractual relationships.
- Ability to sue and be sued in a specific jurisdiction for action or inaction of staff and for redress and review of Board action or inaction, including as relates to IRP outcomes and other accountability and transparency issues, including the Affirmation of Commitments.
- Relationships with the national jurisdictions for particular domestic issues (ccTLDs managers, protected names either for international institutions or country and other geographic names, national security, etc.), privacy, freedom of expression.
- Meeting NTIA requirements.

30 At this point in the CCWG-Accountability's work, the main issues that need to be investigated within Work Stream 2 relate to the influence that ICANN's existing jurisdiction may have on the actual operation of policies and accountability mechanisms. This refers primarily to the process for the settlement of disputes within ICANN, involving the choice of jurisdiction and of the applicable laws, but not necessarily the location where ICANN is incorporated:

- Consideration of jurisdiction in Work Stream 2 will focus on the settlement of dispute jurisdiction issues and include:
  - Confirming and assessing the gap analysis, clarifying all concerns regarding the multi-layer jurisdiction issue.
  - Identifying potential alternatives and benchmarking their ability to match all CCWG-Accountability requirements using the current framework.
  - Consider potential Work Stream 2 recommendations based on the conclusions of this analysis.

31 A specific Subgroup of the CCWG-Accountability will be formed to undertake this work.

## 32 **Considering Enhancements to the Ombudsman's Role and Function**

33 Through the enhanced Request for Reconsideration process (see Recommendation #8: Improving ICANN's Request for Reconsideration Process), the CCWG-Accountability has given increased responsibility to the Ombudsman.

34 The Ombudsman can perform a critical role in ensuring that ICANN is transparent and accountable, preventing and resolving disputes, supporting consensus-development, and protecting bottom-up, multistakeholder decision-making at ICANN. ICANN's Office of Ombudsman must have a clear charter that reflects, supports, and respects ICANN's Mission, Commitments and Core Values, and must have sufficient authority and independence to ensure that it can perform these important roles effectively. As part of Work Stream 2, the CCWG-Accountability will evaluate the current Ombudsman charter and operations against industry best practices and recommend any changes necessary to ensure that the ICANN Ombudsman has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders.

## 35 **Interim Bylaw**

- 36 The CCWG-Accountability recommends that the ICANN Board adopt an Interim Bylaw that would commit ICANN to consider the CCWG-Accountability consensus recommendations according to the same process and criteria it has committed to use to consider the Work Stream 1 recommendations. The Interim Bylaw would task the group with creating further enhancements to ICANN's accountability related to the Work Stream 2 list of issues, according to process and procedures similar to those of Work Stream 1: openness to all participants, transparency of deliberations, public comment inputs.
- 37 This Interim Bylaw must be incorporated in the ICANN Bylaws as part of Work Stream 1, prior to the IANA Stewardship Transition. This Interim Bylaw has been proposed to address concerns that after the IANA Stewardship Transition, an absence of incentives may lead to the ICANN Board dismissing the CCWG-Accountability's proposed Work Stream 2 recommendations. However, in a [letter](#) dated 13 November 2015, the ICANN Board confirmed its intent to work with the ICANN community and to provide adequate support for work on these issues.
- 38 Enshrining the commitment to Work Stream 2 as an Interim (transitional) Bylaw provides stronger guarantees compared to an approach that would rely on a Board resolution. A Board resolution could indeed be changed by the Board itself at any time, and the composition of the Board changes over time. Also, enshrining the process and conditions within a Bylaw (even if it is a transitional provision) triggers the ability for IRP challenge if the CCWG-Accountability or the Board did not comply with the process or conditions described in the Bylaw.
- 39 The language of this Interim Bylaw provision should provide that the CCWG-Accountability Work Stream 2 recommendations, when supported by full consensus or consensus as described in the CCWG-Accountability Charter, and endorsed by the Chartering Organizations, be considered in a similar status to Work Stream 1 recommendations. The ICANN Board's actions or inaction would be subject to challenge through enhanced Request for Reconsideration and Independent Review Processes.
- 40 The Interim Bylaw would be consistent with the language described in the CCWG-Accountability Charter, and explicitly mention the NTIA criteria as a reference for the recommendations, as well as the requirement that recommendations are based on consensus.
- 41 The Bylaw would also describe the process outlined in the ICANN Board's resolution of 16 October 2014 (see <https://www.ICANN.org/resources/board-material/resolutions-2014-10-16-en#2.d>), such as:
- The requirement for Work Stream 2 recommendations to be consensus recommendations, endorsed by the Chartering Organizations.
  - The requirement to initiate a specific dialogue in case the Board believes it is not in the global public interest to implement a recommendation, as well as the description of the steps of this dialogue.
  - The requirement of a 2/3 majority of the Board to determine that implementing a recommendation is not in the global public interest.

## 42 **Timeline**

- 43 The initial plan includes the following key milestones:
- March 2016 (ICANN55): Definition of scope of work and organization into subgroups.

- March 2016 to end of June 2016: Drafting of Proposals by Subgroup, under supervision by CCWG-Accountability.
- June 2016 till early October 2016: 40-day Public Comment Period, including discussions during ICANN56 and/or ICANN57.
- October – mid-January 2017: Refinement of Proposals by Subgroups, under supervision of the CCWG-Accountability or other CCWG as appropriate.
- Mid-January – March 2017: Second 40-day Public Comment Period, including discussions during ICANN58.
- By end of June 2017: Finalize Proposals and deliver to Chartering Organizations.
- Obtain approval and deliver Proposals to ICANN Board at ICANN59.

#### **4. Changes from the “Third Draft Proposal on Work Stream 1 Recommendations”**

- Interim Bylaws clarifications to address Board’s concerns by highlighting that Work Stream 2 will be following similar rules as Work Stream 1: consensus recommendations, endorsement by Chartering Organizations, ability for the Board to engage in special dialogue, 2/3 threshold for such Board decision, etc.
- Edits to the documents will include focus on fact that Work Stream 2 deliberations will be open to all (similar to Work Stream 1).
- List of Work Stream 2 items is “limited to” instead of “related to.” A note is added that clarifies that further items beyond this list can be accommodated through regular review cycles, or specific CCWG-Accountability.
- Timeframe discussion: target dates are needed, but hard deadlines would not be appropriate or helpful.
- Agreed to incorporate Public Experts Group (PEG) Advisor input to strengthen the diversity requirement.
- Enhancing the Ombudsman role and function is confirmed as a Work Stream 2 item.
- Re-inserted staff accountability requirement.

#### **5. Stress Tests Related to this Recommendation**

- ST1
- ST2
- ST11

## 6. How does this meet the CWG-Stewardship Requirements?

- N/A

## 7. How does this address NTIA Criteria?

### 44 **Support and enhance the multistakeholder model.**

- In-depth review of diversity and SO and AC accountability is planned for Work Stream 2.
  - Addition of an Interim Bylaw will secure Work Stream 2 towards enhancing the general accountability framework.
- 

### 45 **Maintain the security, stability and resiliency of the Internet DNS.**

- Accountability of SO and AC structures and their components will help ensure that one entity cannot singlehandedly change or block a process.
  - Addressing the question of applicable law for contracts and dispute settlements.
- 

### 46 **Meet the needs and expectation of the global customers and partners of the IANA services.**

- Analysis of transparency will help contribute to ensuring that visibility is given into operations of ICANN.
  - Development of a Framework of Interpretation for Human Rights Bylaw will help maintain limited scope of ICANN's Mission.
- 

### 47 **Maintain the openness of the Internet.**

- Consolidating, enhancing diversity and SO and AC accountability.
- 

### 48 **NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution**

- Transparency of interactions with governments is flagged as a topic to explore further.
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# Annex 13 – CWG-Stewardship Requirements of the CCWG-Accountability

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## 1. Summary and References to the CCWG-Accountability Proposal

- 01 The CCWG-Accountability Work Stream 1 recommendations address each of the CWG-Stewardship dependencies as follows:
- 02 The ability for the community to approve or veto the ICANN or IANA budget after it has been approved by the ICANN Board but before it comes into effect.  
See Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers.
- 03 The ability for the community to appoint and remove ICANN Board Directors and to recall the entire ICANN Board.  
See Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers.
- 04 The ability for the community to review and approve ICANN Board decisions with respect to recommendations resulting from an IANA Function Review (IFR) or Special IANA Function Review (Special IFR).  
See Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers.
- 05 The ability for the community to approve amendments to ICANN's Fundamental Bylaws.  
See Recommendation #4: Ensuring Community Involvement in ICANN Decision-making: Seven New Community Powers.
- 06 The creation of an IFR that is empowered to conduct periodic and special reviews of the IANA functions. IFR and Special IFR Reviews will be incorporated into the Affirmation of Commitments-mandated reviews set forth in the ICANN Bylaws.
- 07 See Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws.
- 08 The creation of a Customer Standing Committee (CSC) that is empowered to monitor the performance of the IANA functions and escalate non-remediated issues to the

Country Code Names Supporting Organization (ccNSO) and Generic Names Supporting Organization (GNSO). The ccNSO and GNSO should be empowered to address matters escalated by the CSC.

See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.

- 09 The empowerment of the Special IFR Review to determine that a separation process is necessary and, if so, to recommend that a Separation Cross-Community Working Group (SCCWG) be established to review the identified issues and make recommendations.

See Recommendation #9: Incorporating the Affirmation of Commitments in ICANN's Bylaws.

- 10 An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions.

See Recommendation #7: Strengthening ICANN's Independent Review Process.

- 11 All of the foregoing mechanisms are to be provided for in the ICANN Bylaws as Fundamental Bylaws.

See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.

- 12 Governance provisions related to PTI are to be incorporated into the ICANN Bylaws as Fundamental Bylaws.

See Recommendation #3: Standard Bylaws, Fundamental Bylaws and Articles of Incorporation.

## 2. Recommendations from the CWG-Stewardship Final Report

- 13 The CWG-Stewardship Final Proposal can be found at: <https://community.icann.org/x/aJ00Aw> (Section III.A.i. Proposed Post-Transition Structure).

- 14 The CWG-Stewardship proposal is significantly dependent and expressly conditioned on the implementation of ICANN-level accountability mechanisms by the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) as described below. The co-chairs of the CWG-Stewardship and the CCWG-Accountability have coordinated their efforts and the CWG-Stewardship is confident that the CCWG-Accountability recommendations, if implemented as envisaged, will meet the requirements that the CWG-Stewardship has previously communicated to the CCWG-Accountability.

- 15 If any element of these ICANN level accountability mechanisms is not implemented as contemplated by the CWG-Stewardship proposal, this CWG-Stewardship proposal will require revision. Specifically, the proposed legal structure and overall CWG-Stewardship proposal requires ICANN accountability in the following respects:

- 16 1. ICANN Budget and IANA Budget.

17 The ability for the community to approve or veto the ICANN budget after it has been approved by the ICANN Board but before it comes into effect. The community may reject the ICANN Budget based on perceived inconsistency with the purpose, mission and role set forth in ICANN's Articles and Bylaws, the global public interest, the needs of ICANN stakeholders, financial stability or other matters of concern to the community. The CWG-Stewardship recommends that the IFO's comprehensive costs should be transparent and ICANN's operating plans and budget should include itemization of all IANA operations costs to the project level and below as needed. An itemization of IANA costs would include "Direct Costs for the IANA department", "Direct Costs for Shared resources" and "Support functions allocation". Furthermore, these costs should be itemized into more specific costs related to each specific function to the project level and below as needed. PTI should also have a yearly budget that is reviewed and approved by the ICANN community on an annual basis. PTI should submit a budget to ICANN at least nine months in advance of the fiscal year to ensure the stability of the IANA services. It is the view of the CWG-Stewardship that the IANA budget should be approved by the ICANN Board in a much earlier timeframe than the overall ICANN budget. The CWG (or a successor implementation group) will need to develop a proposed process for the IANA-specific budget review, which may become a component of the overall budget review.

## 18 2. Community Empowerment Mechanisms

19 The empowerment of the multistakeholder community to have the following rights with respect to the ICANN Board, the exercise of which should be ensured by the related creation of a stakeholder community / member group:

- a. The ability to appoint and remove members of the ICANN Board and to recall the entire ICANN Board;
- b. The ability to exercise oversight with respect to key ICANN Board decisions (including with respect to the ICANN Board's oversight of the IANA functions) by reviewing and approving (i) ICANN Board decisions with respect to recommendations resulting from an IANA Function Review or Special IANA Function Review and (ii) the ICANN budget; and
- c. The ability to approve amendments to ICANN's "Fundamental Bylaws," as described below.

## 20 3. IANA Function Review

21 The creation of an IANA Function Review that is empowered to conduct periodic and special reviews of the IANA functions. IANA Function Reviews and Special IANA Function Reviews will be incorporated into the Affirmation of Commitments mandated reviews set forth in the ICANN Bylaws.

## 22 4. Customer Standing Committee

23 The creation of a Customer Standing Committee that is empowered to monitor the performance of the IANA functions and escalate non-remediated issues to the Country Code Names Supporting Organization and Generic Names Supporting Organization. The Country Code Names Supporting Organization and Generic Names Supporting Organization should be empowered to address matters escalated by the Customer Standing Committee.

## 24 5. Separation Process

- 25 The empowerment of the Special IANA Function Review to determine that a separation process is necessary and, if so, to recommend that a Separation Cross-Community Working Group be established to review the identified issues and make recommendations.
- 26 **6. Appeals mechanism**
- 27 An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions. For example, direct customers with non-remediated issues or matters referred by Country Code Names Supporting Organization or Generic Names Supporting Organization after escalation by the Customer Standing Committee will have access to an Independent Review Panel. The appeal mechanism will not cover issues relating to country code top-level domains delegation and re-delegation, which mechanism is to be developed by the country code top-level domains community post-transition.
- 28 **7. Fundamental Bylaws**
- 29 All of the foregoing mechanisms are to be provided for in the ICANN bylaws as “Fundamental Bylaws.” A “Fundamental Bylaw” may only be amended with the prior approval of the community and may require a higher approval threshold than typical bylaw amendments (for example, a supermajority vote).
- 30 **8. Post-Transition IANA (PTI)**
- 31 The CWG-Stewardship Final Proposal contemplates the formation of a PTI as a new legal entity. PTI will have ICANN as its sole member and PTI will therefore be a controlled affiliate of ICANN. As a result, the ICANN Bylaws will need to include governance provisions related to PTI, in particular as it relates to ICANN’s role as the sole member of PTI.

# Annex 14 – Meeting NTIA’s Criteria for the IANA Stewardship Transition

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- 1 On March 14, 2014, the U.S. National Telecommunications and Information Administration (NTIA) announced its intent to transition stewardship of key Internet Domain Name System functions to the global multistakeholder community. NTIA also asked ICANN to convene an inclusive, global discussion that involved the full range of stakeholders to collectively develop a proposal for the transition.
- 2 To guide this global discussion, NTIA provided ICANN with a clear framework for the transition proposal. The CCWG-Accountability has outlined how its Work Stream 1 Recommendations to enhance ICANN’s accountability meet these requirements below:
- 3 **Support and enhance the multistakeholder model**
  - Decentralizing power within ICANN through an Empowered Community.
  - Solidifying consultation processes between the ICANN Board and Empowered Community into the ICANN Bylaws.
  - Establishing a Community Forum, in which all are welcome to participate, to ensure that all voices and perspectives are heard before execution of a Community Power.
  - Decision-making based on consensus.
  - Enhancing ICANN’s appeals mechanisms and binding arbitration processes to be more accessible and transparent.
  - Protecting representation of global public interest by engraving it into ICANN’s Mission, Commitments and Core Values; now considered a “Fundamental Bylaw.”
  - Ensuring that ICANN Board Directors can be held accountable to the Empowered Community through recall mechanisms.

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- 4 **Maintain the security, stability, and resiliency of the Internet DNS**
  - Accountability measures do not affect any operational activities of ICANN which could directly or indirectly affect the security, stability, and resiliency of the Internet DNS.
  - Maintain ICANN’s Bylaws commitment to the security, stability, and resiliency of the Internet DNS.
  - Binding IRP that allows users or the Empowered Community to challenge ICANN if it is not operating as per its Mission and Bylaws.
  - Revising ICANN’s Mission, Commitments and Core Values to prevent “mission creep” or expansion of the Mission beyond its original goals.
  - Implementing Fundamental Bylaws that require a higher threshold for approval by the Board.

- Accountability measures that require Empowered Community approval of changes to Fundamental Bylaws.
  - Accountability measures that allow the Empowered Community to reject Standard Bylaws changes that could affect security, stability, and resiliency of the Internet DNS.
  - Accountability measures which allow the Empowered Community to reject budgets and strategic/operating plans which could affect security, stability, and resiliency of the Internet while ensuring the protection of the Post-Transition IANA Functions Budget and the availability of a caretaker budget for ICANN activities.
  - Accountability measures which allow the Empowered Community to remove the Board if its actions threaten the security, stability, and resiliency of the Internet.
  - Bylaws changes which can require the review of Post-Transition IANA operations.
  - Bylaws changes which provide for the separation of Post-Transition IANA and the reallocation of IANA functions if the actions or inactions of Post-Transition IANA are threatening the security, stability, and resiliency of the Internet.
  - Accountability measures that allow the Empowered Community to force ICANN to accept IANA Function Review recommendations and the separation of Post-Transition IANA.
  - Reviews which will ensure the components of the community effectively represent the views of their stakeholders.
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5 **Meet the needs and expectation of the global customers and partners of the IANA services**

- Accountability recommendations implement all the requirements of the CWG-Stewardship.
  - Accountability recommendations do not affect ICANN’s day-to-day operational or policy development processes.
  - Accountability requirements allow for multiple paths to resolve issues before using Community Powers.
  - Legally enforceable powers.
  - Revising ICANN’s Mission, Commitments and Core Values to prevent “mission creep” or expansion of the mission beyond its original goals.
  - Adoption of stronger commitments to respect Human Rights by ICANN.
  - Effective accountability powers which are open to all parts of the community and require action by the Empowered Community.
  - Appeals mechanisms to be reviewed and improved. The Independent Review Process is strengthened by binding ICANN to IRP outcomes and by being more accessible to the community. The CCWG-Accountability also makes recommendations to have a more effective and transparent Reconsideration process.
  - Maintaining Bylaw Article XVIII, which states that ICANN has its principal office in Los Angeles, California, USA.
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6 Maintain the openness of the Internet

- Executing “stress tests” to assess the sufficiency of existing and proposed accountability mechanisms available to the ICANN community against plausible and problematic scenarios.
- Establishing a public Community Forum to ensure that all voices and perspectives are heard before execution of a Community Power.
- Establishing later commitments to:
  - Improving the accountability of ICANN’s Supporting Organizations and Advisory Committees.
  - Reviewing and updating ICANN’s Documentary Information Disclosure and Whistleblower policies.
  - Enhancing ICANN’s diversity standards.
  - Improving staff accountability.
- Reinforcing ICANN’s commitment to respect Human Rights in the ICANN Bylaws.
- Preserving policies of open participation in ICANN’s Supporting Organizations and Advisory Committees.

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7 NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution

- To the extent the Government Advisory Committee (GAC) wishes to participate in decision-making by the Empowered Community, which the GAC has the flexibility to determine, it would be one of five Decisional Participants. In addition, the GAC will not participate as a decision-maker in community deliberations involving a challenge to the Board’s implementation of GAC consensus advice. This “carve out”, combined with the safeguards in Recommendation #11: Board Obligations with Regard to Governmental Advisory Committee Advice (Stress Test 18), leads the CCWG-Accountability to believe that this NTIA requirement is met, even when considering the increased threshold from 50 to 60% for the Board to reject GAC consensus advice.
- Enabling all interested stakeholders to join consultations through SOs and ACs or through the Community Forum.
- Establishing a later commitment to investigating options for increasing the transparency of ICANN’s relationships with governments.

# Annex 15 – Stress Testing

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## 1. Overview

- 1 An essential part of the CCWG-Accountability Charter calls for stress testing to evaluate proposed accountability enhancements.
- 2 ‘Stress Testing’ is a simulation exercise where a set of plausible, but not necessarily probable, hypothetical scenarios are used to gauge how certain events will affect a system, product, company or industry. In the financial industry for example ‘stress testing’ is routinely run to evaluate the strength of institutions.
- 3 The CCWG-Accountability Charter calls for stress testing of accountability enhancements in Work Streams 1 and 2. Among the deliverables listed in the charter is the following:

*Identification of contingencies to be considered in the stress tests: Review of possible solutions for each Work Stream including stress tests against identified contingencies.*

- 4 The purpose of the stress tests was to determine the stability of ICANN in the event of consequences and/or vulnerabilities, and to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community.
- 5 **The CCWG-Accountability ran a total of 37 Stress Test scenarios.**

## 2. Purpose and Methodology

### 6 **Methodology**

- 7 The CCWG-Accountability considered the following methodology for stress tests:
  - Analyze potential weaknesses and risks.
  - Analyze existing accountability mechanisms and their robustness.
  - Analyze additions and modifications to accountability mechanisms.
  - Describe how the proposed accountability measures would mitigate the risk of contingencies and enable the community to challenge ICANN actions taken in response to the contingencies.
- 8 The CCWG-Accountability Stress Test Work Party documented contingencies identified in prior public comment rounds. The Stress Test Work Party then prepared a draft document showing how these stress tests are useful in evaluating existing and proposed accountability measures.
- 9 The exercise of applying stress tests identified changes to the current ICANN Articles of Incorporation and Bylaws that might be necessary to enable the CCWG-Accountability to evaluate proposed accountability mechanisms as adequate to meet the challenges identified.

### 10 **Purpose**

- 11 The purpose of the stress tests was to determine the stability of ICANN in the event of consequences and/or vulnerabilities, and to assess the adequacy of existing and proposed accountability mechanisms available to the ICANN community.
- 12 The CCWG-Accountability Charter does not ask that probability estimates be assigned for contingencies. Probabilities are not needed to determine whether the community has adequate means to challenge ICANN's reactions to the contingency.
- 13 In its initial phases of work, the CCWG-Accountability gathered an [inventory](#) of contingencies identified in prior public comments. The Work Team responsible for this then consolidated the inventory into five 'stress test categories' as listed below, and prepared draft documents showing how these stress tests are useful to evaluate ICANN's existing, and CCWG-Accountability's proposed, accountability measures.

### 3. Stress Test Categories

#### 14 **I. Financial Crisis or Insolvency (Stress Tests #5, 6, 7, 8 and 9)**

- 15 **Scenario:** ICANN becomes fiscally insolvent, and lacks the resources to adequately meet its obligations. This could result from a variety of causes, including financial crisis specific to the Domain Name industry, or the general global economy. It could also result from a legal judgment against ICANN, fraud or theft of funds, or technical evolution that makes Domain Name registrations obsolete.

#### 16 **II. Failure To Meet Operational Expectations (#1, 2, 11, 17, and 21)**

- 17 **Scenario:** ICANN fails to process change or delegation requests to the IANA Root Zone, or executes a change or delegation despite objections of stakeholders, such as those defined as '[Significantly Interested Parties](#)'.

#### 18 **III. Legal/Legislative Action (#3, 4, 19 and 20)**

- 19 **Scenario:** ICANN is the subject of litigation under existing or future policies, legislation, or regulation. ICANN attempts to delegate a new TLD, or re-delegate a non-compliant existing TLD, but is blocked by legal action.

#### 20 **IV. Failure Of Accountability (#10, 12, 13, 16, 18, 22, 23, 24 and 26)**

- 21 **Scenario:** Actions (or expenditure of resources) by one or more ICANN Board Directors, the President and CEO, or other Staff, are contrary to ICANN's Mission or Bylaws. ICANN is "captured" by one stakeholder segment, including governments via the GAC, which either is able to drive its agenda on all other stakeholders, or abuse accountability mechanisms to prevent all other stakeholders from advancing their interests (veto).

#### 22 **V. Failure Of Accountability To External Stakeholders (#14, 15 and 25)**

- 23 **Scenario:** ICANN modifies its structure to avoid obligations to external stakeholders, such as terminating the Affirmation of Commitments, terminating its presence in a jurisdiction where it faces legal action, or moving contracts or contracting entities to a favorable jurisdiction. ICANN delegates, subcontracts or otherwise, abdicates its obligations to a third party in a manner that is

inconsistent with its Bylaws or otherwise not subject to accountability. ICANN merges with or is acquired by an unaccountable third party.

#### 24 **Stress Tests Suggested by NTIA**

25 The CCWG-Accountability added four stress test items that were suggested by NTIA in Secretary Larry Strickling’s [statement](#) issued on 16 June 2015:

- **NTIA-1:** Test preservation of the multistakeholder model if individual ICANN Supporting Organizations and/or Advisory Committees choose not to be Decisional Participants in the Empowered Community.
- **NTIA-2:** Address the potential risk of internal capture. ST 12 and 13 partly address capture by external parties, but not for capture by internal parties in a Supporting Organization and/or Advisory Committee.
- **NTIA-3:** Barriers to entry for new participants.
- **NTIA-4:** Unintended consequences of “operationalizing” groups that to date have been advisory in nature (e.g. Governmental Advisory Committee).

#### 26 **Stress Tests Related to Transition of the IANA Naming Functions Contract**

27 Note that several stress tests can specifically apply to the work of the CWG-Stewardship regarding transition of the IANA naming functions contract (see Stress Tests #1 & 2, 11, 17, 19, 20, 21, 25).

28 Across all of the Stress Test categories, this exercise demonstrates that CCWG-Accountability’s Work Stream 1 recommendations significantly enhance the community’s ability to hold the ICANN’s Board and management accountable, relative to present accountability measures. For Stress Tests that explore risks of “capture” of an Advisory Committee or Supporting Organization, the proposed Community Powers preserve the ability for aggrieved parties to challenge and block ICANN actions based on inappropriate Advisory Committee or Supporting Organization behavior.

#### 29 **Stress Test #21 to be addressed by ccNSO**

30 Stress Test #21, regarding appeals of country code top-level domains revocations and assignments, has not been adequately addressed in either the CWG-Stewardship or CCWG-Accountability proposals. Instead, the Country Code Naming Related Functions is undertaking policy development work pursuant to the Framework of Interpretation approved in 2014.

## 4. Outcomes of Stress Testing

31 The following section gives a short overview of the stress test scenarios and outlines whether existing accountability measures and proposed accountability measures are adequate to mitigate the potential risks and enable the community to challenge ICANN actions taken in response to the scenarios.



## Stress test category I: Financial Crisis or Insolvency

32	<b>Stress Test #5:</b> Domain industry financial crisis.		
33	<b>Stress Test #6:</b> General financial crisis.		
34	<b>Stress Test #7:</b> Litigation arising from private contract, e.g., breach of contract.		
35	<b>Stress Test #8:</b> Technology competing with DNS.		
36	<b>Consequence(s):</b> Significant reduction in domain sales generated revenues and significant increase in registrar and registry costs, threatening ICANN's ability to operate; loss affecting reserves sufficient to threaten business continuity.		
	<b>EXISTING ACCOUNTABILITY MEASURES</b>	<b>PROPOSED ACCOUNTABILITY MEASURES</b>	
37	ICANN could propose revenue increases or spending cuts, but these decisions are not subject to challenge by the ICANN community.	41	One proposed measure would empower the community to veto ICANN's proposed operating plan and annual budget. This measure enables the community to block a proposal by ICANN to increase its revenues by adding fees on registrars, registries, and/or registrants.
38	The community has input in ICANN's budgeting and the Strategic Plan.		
39	Registrars must approve ICANN's variable registrar fees. If not, registry operators pay the fees.	42	Another proposed measure is community challenge to a Board decision using a reconsideration request and/or referral to an Independent Review Panel (IRP) with the power to issue a binding decision. If ICANN made a revenue or expenditure decision, the new IRP could reverse that decision.
40	ICANN's reserve fund could support operations in a period of reduced revenue. The reserve fund is independently reviewed periodically.		
	<b>CONCLUSIONS:</b>		
43	Existing measures would be adequate, unless the revenue loss was extreme and sustained.	44	Proposed measures are helpful, but might not be adequate if revenue loss was extreme and sustained.

45 <b>Stress Test #9:</b> Major corruption or fraud.	
46 <b>Consequence(s):</b> Major impact on corporate reputation, significant litigation and loss of reserves.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>47 ICANN has an annual independent audit that includes testing of internal controls designed to prevent fraud and corruption.</p> <p>48 ICANN maintains an anonymous hotline for employees to report suspected fraud.</p> <p>49 ICANN Board can dismiss the CEO and/or executives responsible.</p> <p>50 The community has no ability to force the Board to report or take action against suspected corruption or fraud.</p>	<p>51 One proposed measure is to empower the community to force ICANN's Board to consider a recommendation from an Accountability and Transparency Review Team (ATRT). An ATRT could make recommendations to avoid conflicts of interest. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>52 Another proposed measure would empower the community to veto ICANN's proposed annual budget. This measure enables blocking a budget proposal that is tainted by corruption or fraud.</p> <p>53 If ICANN's Board were involved, or if the Board did not act decisively in preventing corruption or fraud (e.g., by enforcing internal controls or policies), a proposed measure empowers the community to remove individual directors or recall the entire Board.</p>
<p><b>CONCLUSIONS:</b></p> <p>54 Existing measures would not be adequate if litigation costs or losses were extreme and sustained.</p>	<p>55 Proposed measures are helpful, but might not be adequate if litigation costs and losses were extreme and sustained.</p>

## 7.6 Stress test category II: Failure to Meet Operational Expectations

56	<b>Stress Test #1:</b> Change authority for the root zone ceases to function, in part or in whole.		
57	<b>Stress Test #2:</b> Delegation authority for the root zone ceases to function, in part or in whole.		
58	<b>Consequence(s):</b> Interference with existing policy relating to Root Zone and/or prejudice to the security and stability of one or several TLDs.		
EXISTING ACCOUNTABILITY MEASURES		PROPOSED ACCOUNTABILITY MEASURES	
59	Under the present IANA functions contract, NTIA can revoke ICANN's authority to perform IANA functions and re-assign this role to different entity/entities.	61	The CWG-Stewardship proposal includes various escalation procedures to prevent degradation of service, as well as a framework (operational) for the transition of the IANA function.
60	After NTIA relinquishes the IANA functions contract, this measure will no longer be available.	62	The CWG-Stewardship proposes that IANA naming functions be legally transferred to a new Post-Transition IANA entity (PTI) that would be an affiliate controlled by ICANN.
		63	The CWG-Stewardship proposes a multistakeholder IANA Function Review (IFR) to conduct reviews of PTI. Results of IFR are not prescribed or restricted and could include recommendations to initiate a separation process which could result in termination or non-renewal of the IANA Functions Contract with PTI, among other actions.
		64	The CWG-Stewardship proposes the ability for the multistakeholder community to require, if necessary and after other escalation mechanisms and methods have been exhausted, the selection of a new operator for the IANA functions.
		65	Suggestions for Work Stream 2: Require annual external security audits and publication of results, and require certification per international standards (ISO 27001) and publication of results.

<p><b>CONCLUSIONS:</b></p> <p>66 Existing measures would be inadequate after NTIA terminates the IANA contract.</p>	<p>67 Proposed measures are, in combination, adequate to mitigate this contingency.</p>
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68 <b>Stress Test #11:</b> Compromise of credentials.	
69 <b>Consequence(s):</b> Major impact on corporate reputation, significant loss of authentication and/or authorization capacities.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>70 Regarding compromise of internal systems:</p> <p>71 Based upon experience of the recent security breach, it is not apparent how the community holds ICANN management accountable for implementation of adopted security procedures.</p> <p>72 It also appears that the community cannot force ICANN to conduct an after-action report on a security incident and reveal that report.</p> <p>73 Regarding DNS security:</p> <p>74 Beyond operating procedures, there are credentials employed in DNSSEC.</p> <p>75 ICANN annually seeks SysTrust Certification for its role as the Root Zone KSK manager.</p> <p>76 The IANA Department has achieved EFQM Committed to Excellence certification for its Business Excellence activities.</p> <p>77 Under C.5.3 of the IANA Functions Contract, ICANN has undergone annual independent audits of its security provisions for the IANA functions.</p>	<p>78 Regarding compromise of internal systems:</p> <p>79 The proposed IRP measure could challenge ICANN’s Board or management for any action or inaction that conflicts with Bylaws. An IRP challenge might therefore be able to force ICANN to conduct an after-action report and disclose it to the community.</p> <p>80 Through the IRP measure, the community might also be able to force ICANN management to execute its stated security procedures for employees and contractors.</p> <p>81 Regarding DNS security:</p> <p>82 One proposed measure empowers the community to force ICANN’s Board to consider a recommendation arising from an Affirmation of Commitments Review such as Security Stability and Resiliency. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>83 A proposed Bylaws change would require ICANN’s Board to respond to formal advice from advisory committees such as SSAC and RSSAC. If the Board took a decision to reject or only partially accept formal AC advice, the community could challenge that Board decision with an IRP.</p> <p>84 Suggestions for Work Stream 2:</p> <p>85     · Require annual external security audits and publication of results.</p> <p>86     · Require certification per standards (ISO 27001) and publication of results.</p>
CONCLUSIONS:	
87 Existing measures would not be adequate.	88 Proposed measures, in combination, would

	be helpful to mitigate effects of this scenario. Work Stream 2 suggestions could add risk prevention measures.
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89 **Stress Test #17:** ICANN attempts to add a new top-level domain in spite of security and stability concerns expressed by the technical community or other stakeholder groups.

90 **Consequence(s):** DNS security and stability could be undermined, and ICANN actions could impose costs and risks upon external parties.

EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
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<p>91 In 2013-14, the community demonstrated that it could eventually prod ICANN management to attend to risks identified by SSAC. For example: dotless domains (SAC 053); security certificates and name collisions such as .mail and .home (SAC 057)</p> <p>92 NTIA presently gives clerical approval for each delegation to indicate that ICANN has followed its processes. NTIA could delay a delegation if it finds that ICANN has not followed its processes. It is not clear if that would/could have been a finding if ICANN attempted to delegate a new TLD such as .mail or .home.</p>	<p>93 One proposed measure is to empower the community to force ICANN’s Board to consider recommendations from an Affirmation of Commitments Review such as a Review of Security, Stability, and Resiliency. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>94 A proposed Bylaws change would require ICANN Board to respond to formal advice from advisory committees such as SSAC and RSSAC. If the Board took a decision to reject or only partially accept formal AC advice, the community could challenge that Board decision with an IRP.</p>
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<p><b>CONCLUSIONS:</b></p> <p>95 Existing measures were adequate to mitigate the risks of this scenario.</p>	<p>96 Proposed measures enhance community’s power to mitigate the risks of this scenario.</p>
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<p>97 <b>Stress Test #21:</b> A government official demands ICANN rescind responsibility for management of a ccTLD from an incumbent ccTLD manager.</p> <p>98 However, the IANA functions manager is unable to document voluntary and specific consent for the revocation from the incumbent ccTLD manager. Also, the government official demands that ICANN assign management responsibility for a ccTLD to a designated manager.</p> <p>99 But the IANA functions manager does not document that: significantly interested parties agree; that other stakeholders had a voice in selection; the designated manager has demonstrated required capabilities; there are not objections of many significantly interested parties.</p> <p>100 This stress test examines the community’s ability to hold ICANN accountable to follow established policies. It does not deal with the adequacy of policies in place.</p>	
<p>101 <b>Consequence(s):</b> Faced with this re-delegation request, ICANN lacks measures to resist re-delegation while awaiting the bottom-up consensus decision of affected stakeholders.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>102 Under the present IANA contract with NTIA, the IANA Department issues a boiler-plate report to the ICANN Board, which approves this on the Consent Agenda and forwards to NTIA, which relies on the Board’s certification and approves the revocation, delegation or transfer.</p> <p>103 There is presently no mechanism for the incumbent ccTLD Manager or the community to challenge ICANN’s certification that process was followed properly.</p> <p>104 See GAC Principles for delegation and administration of ccTLDs. GAC Advice published in 2000 and updated in 2005 specifically referenced to Sections 1.2 &amp; 7.1.</p> <p>105 See Framework of Interpretation, 20-Oct-2014.</p>	<p>106 From the CWG-Stewardship final proposal: “CWG-Stewardship recommends not including any appeal mechanism that would apply to ccTLD delegations and re-delegations in the IANA Stewardship Transition proposal.”</p> <p>107 From CWG-Stewardship co-chair correspondence on 15-Apr-2015: “As such, any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation / re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes.”</p> <p>108 Regarding CCWG-Accountability proposed measures:</p> <p>109 One proposed CCWG-Accountability measure could give the community standing to request Reconsideration of management’s decision to certify the ccTLD change. Would require a standard of review that is more specific than amended ICANN Mission, Commitments and Core Values.</p> <p>110 Another proposed CCWG-Accountability mechanism is community challenge to a Board decision, referring it to an Independent Review Panel (IRP) with the</p>

	<p>power to issue a binding decision. If ICANN took action to revoke or assign management responsibility for a ccTLD, the IRP mechanism might be enabled to review that decision. Would require a standard of review.</p>
<p><b>CONCLUSIONS:</b>          111 Existing measures would not be adequate.</p>	<p>112 Proposed measures do not adequately empower the community to address this scenario. ccNSO is developing policy pursuant to the Framework of Interpretation.</p>

## 7.7 Stress test category III: Legal/Legislative Action

113 <b>Stress Test #3:</b> Litigation arising from existing public policy, e.g., antitrust suit. In response, ICANN Board would decide whether to litigate, concede, settle, etc.	
114 <b>Consequence(s):</b> Significant interference with existing policies and/or policy development relating to relevant activities.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>115 The community could develop new policies that respond to litigation challenges.</p> <p>116 An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use the IRP.</p> <p>117 Reconsideration looks at process but not the substance of a decision.</p> <p>118 ICANN must follow orders from courts of competent jurisdiction.</p>	<p>119 After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options:</p> <p>120 The community could develop new policies that respond to litigation challenges.</p> <p>121 Another measure would give the community standing to file for Reconsideration or file an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws (including Mission, Commitments and Core Values) and ICANN's established policies.</p> <p>122 However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator.</p> <p>123 Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board.</p> <p>124 An Advisory Committee or Affirmation of Commitments review team could develop recommendations to address this scenario. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p>
CONCLUSIONS:	
125 Existing measures are inadequate.	126 Proposed measures would help the community hold ICANN accountable, but might not be adequate to stop interference with ICANN policies.



<p>127 <b>Stress Test #4:</b> New regulations or legislation.</p> <p>128 For example, a government could cite anti-trust or consumer protection laws and find unlawful some rules that ICANN imposes on TLDs. That government could impose fines on ICANN, withdraw from the GAC, and/or force ISPS to use a different root, thereby fragmenting the Internet.</p> <p>129 In response, ICANN’s Board would decide whether to litigate, concede, settle, etc.</p>	
<p>130 <b>Consequence(s):</b> Significant interference with existing policies and/or policy development relating to relevant activities.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>131 The community could develop new policies that respond to new regulations.</p> <p>132 An ICANN Board decision on how to respond to the regulation (litigate or change policy/implementation) could not be challenged by the community at-large, which lacks standing to use the IRP.</p> <p>133 Reconsideration looks at the process but not the substance of a decision.</p> <p>134 ICANN must follow orders from courts of competent jurisdiction.</p>	<p>135 After ICANN’s Board responded to the regulation (litigate or change policy/implementation), the community would have several response options:</p> <p>136 The community could develop new policies that respond to the regulation.</p> <p>137 Another measure would give the community standing to file for Reconsideration or file an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws, and ICANN’s established policies. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board.</p> <p>138 An Advisory Committee or Affirmation of Commitments review team could develop recommendations to address this scenario. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p>
CONCLUSIONS:	
<p>139 Existing measures are inadequate.</p>	<p>140 Proposed measures would be an improvement but might still be inadequate.</p>

<p>141 <b>Stress Test #19:</b> ICANN attempts to re-delegate a gTLD because the registry operator is determined to be in breach of its contract, but the registry operator challenges the action and obtains an injunction from a national court.</p> <p>142 In response, the ICANN Board would decide whether to litigate, concede, settle, etc.</p>	
<p>143 <b>Consequence(s):</b> The entity charged with root zone maintenance could face the question of whether to follow ICANN's re-delegation request or to follow the court order.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>144 Under the present agreement with NTIA, the entity performing root zone maintenance is protected from lawsuits since it is publishing the root per a contract with the US Government.</p> <p>145 However, the IANA Stewardship Transition might result in root zone maintainer not operating under USG contract, so would not be protected from lawsuits.</p> <p>146 A separate consideration:</p> <p>147 An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use IRP.</p> <p>148 Reconsideration looks at the process but not the substance of a decision.</p> <p>149 ICANN must follow orders from courts of competent jurisdiction.</p>	<p>150 ICANN could indemnify the root zone maintainer against liability, so long as the RZM was performing under the scope of contract and not in breach.</p> <p>151 While it would not protect the root zone maintainer from lawsuits, one proposed mechanism is community challenge of ICANN decision to re-delegate. This challenge would take the form of a Reconsideration or IRP. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board.</p> <p>152 After ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the decision could be challenged via Reconsideration or IRP, based on the standard of review in the Bylaws. However, it is highly unlikely that the community could cause ICANN to reopen a settlement reached with a third party, or act contrary to a court decision.</p>
CONCLUSIONS:	
<p>153 Existing measures are not adequate.</p>	<p>154 Proposed measures are adequate to allow the community to challenge and reject</p>

	certain decisions of ICANN Board and management.
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<p>155 <b>Stress Test #20:</b> A court order is issued to block ICANN’s delegation of a new TLD, because of a complaint by existing TLD operators or other aggrieved parties.</p> <p>156 For example, an existing gTLD operator might sue to block delegation of a plural version of the existing string.</p> <p>157 In response, the ICANN Board would decide whether to litigate, concede, settle, etc.</p>	
<p>158 <b>Consequence(s):</b> ICANN’s decision about how to respond to court order could bring liability to ICANN and its contract parties.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>159 Before delegation, the community lacked standing to object to string similarity decisions. Reconsideration requests look at the process but not at substance of the decision.</p> <p>160 An ICANN Board decision (litigate or settle) could not be challenged by the community at-large, which lacks standing to use an IRP.</p> <p>161 Reconsideration looks at the process but not the substance of a decision.</p> <p>162 ICANN must follow orders from courts of competent jurisdiction, and may consider such factors as the as cost of litigation and insurance.</p>	<p>163 Preventive: At the conclusion of policy development, the community would have standing to challenge ICANN Board decisions about policy implementation.</p> <p>164 A future new gTLD Guidebook could give the community standing to file objections.</p> <p>165 Remedial: After the ICANN Board responded to the lawsuit (litigating, changing policies or enforcement, etc.) the community would have several response options:</p> <p>166 One measure would give the community standing to file for Reconsideration or an IRP challenging ICANN action or inaction that is inconsistent with the Articles, Bylaws, and ICANN’s established policies. However, it is highly unlikely that Reconsideration or an IRP could be used by the community to reopen a settlement reached with a third party or cause ICANN to act contrary to the decision of a court or regulator. Note also that generally the community will not be able to use an IRP to reopen matters that are within the core powers and fiduciary judgment of the ICANN Board. The IRP could assess ICANN’s response to the court decision, although it would not alter the court’s decision.</p> <p>167 One proposed measure empowers the community to force ICANN’s Board to consider a recommendation arising from an Affirmation of Commitments Review – namely, Consumer Trust, Choice, and Competition. An ICANN Board decision</p>

	against those recommendations could be challenged with a Reconsideration and/or IRP.
<b>CONCLUSIONS:</b> 168 Existing measures would be inadequate.	169 Proposed measures would be an improvement but might still be inadequate.

## 7.8 Stress test category IV: Failure of Accountability

<p>170 <b>Stress Test #10:</b> Chairman, CEO, or Officer acting in a manner inconsistent with the organization’s mission.</p> <p>171 <b>Stress Test #24:</b> An incoming Chief Executive institutes a “strategic review” that arrives at a new, extended mission for ICANN. Having just hired the new CEO, the Board approves the new mission / strategy without community consensus.</p>	
<p>172 Consequence(s): The community ceases to see ICANN as the community’s mechanism for limited technical functions, and views ICANN as an independent, sui generis entity with its own agenda, not necessarily supported by the community. Ultimately, the community questions why ICANN’s original functions should remain controlled by a body that has acquired a much broader and less widely supported Mission. This creates reputational problems for ICANN that could contribute to capture risks.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>173 As long as NTIA controls the IANA functions contract, ICANN risks losing IANA functions if it were to expand its scope too broadly.</p> <p>174 The Community has some input in ICANN budgeting and the Strategic Plan, and could register objections to plans and spending on extending ICANN’s Mission.</p> <p>175 California’s Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California’s Attorney General could intervene where misuse or misspending of substantial charitable assets is alleged.</p>	<p>176 One proposed measure empowers the community to veto ICANN’s proposed strategic plan or annual budget. This measure could block a proposal by ICANN to increase its expenditure on extending its Mission beyond what the community supported.</p> <p>177 Another proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision, consistent with the fiduciary duties of the directors. The IRP decision would be based on a standard of review in the amended Mission Statement, including “ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission”.</p>
CONCLUSIONS:	
<p>178 Existing measures are inadequate after NTIA terminates the IANA contract.</p>	<p>179 Proposed measures in combination are adequate.</p>

180 <b>Stress Test #12:</b> Capture of ICANN processes by one or several groups of stakeholders.	
181 <b>Consequence(s):</b> Major impact on trust in multistakeholder model, prejudice to other stakeholders.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>182 Regarding capture by governments, the GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN Bylaws (Article XI, Section 2, item 1j) nonetheless require the Board to try “to find a mutually acceptable solution”.</p> <p>183 The community has no standing to challenge a Board decision to accept GAC advice, thereby allowing GAC to capture some aspects of ICANN policy implementation.</p> <p>184 Regarding internal capture by stakeholders within an AC or SO, see Stress Test 33.</p>	<p>185 CCWG-Accountability proposals for community empowerment rely upon consensus among ACs/SOs, requiring a minimum threshold of support and no more than one AC/SO objecting. These consensus requirements are an effective prevention of capture by one or a few groups.</p> <p>186 Each AC/SO/SG may need improved processes for accountability, transparency, and participation that are helpful to prevent capture from those outside that community. These improvements may be explored in WS2.</p>
CONCLUSIONS:	
187 Existing measures would be inadequate.	188 Proposed measures would be adequate.

189 <b>Stress Test #13:</b> One or several stakeholders excessively rely on accountability mechanism to “paralyze” ICANN.	
190 <b>Consequence(s):</b> Major impact on corporate reputation, inability to take decisions, instability of governance bodies, loss of key staff.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>191 Current redress mechanisms might enable one stakeholder to block implementation of policies. But these mechanisms (IRP, Reconsideration, Ombudsman) are expensive and limited in scope of what can be reviewed.</p> <p>192 There are no present mechanisms for a ccTLD operator to challenge a revocation decision.</p>	<p>193 CCWG-Accountability proposals for community empowerment rely upon consensus among ACs/SOs participating in the Empowered Community as Decisional Participants, requiring a minimum threshold of support and no more than one AC/SO objecting. These consensus requirements are an effective prevention of paralysis by one AC/SO.</p> <p>194 Proposed CCWG-Accountability redress mechanisms (Reconsideration and IRP) are more accessible and affordable to individual stakeholders, increasing their ability to block implementation of policies and decisions. However, proposed Reconsideration and IRP enhancements include the ability to dismiss frivolous or abusive claims and to limit the duration of proceedings.</p>
CONCLUSIONS:	
195 Existing measures seem to be adequate.	196 Improved access to Reconsideration and IRP could allow individuals to impede ICANN processes, although this risk is mitigated by dismissal of frivolous or abusive claims.

<p>197 <b>Stress Test #16:</b> ICANN engages in programs not necessary to achieve its limited technical Mission. For example, ICANN uses fee revenue or reserve funds to expand its scope beyond its technical Mission, giving grants for external causes.</p>	
<p>198 <b>Consequence(s):</b> ICANN has the power to determine fees charged to TLD applicants, registries, registrars, and registrants, so it presents a large target for any Internet-related cause seeking funding sources.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>199 As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to expand scope without community support. But as a result of the IANA stewardship transition, ICANN would no longer need to limit its scope in order to retain the IANA contract with NTIA.</p> <p>200 The community was not aware of the ICANN Board’s secret resolution to initiate negotiations to create NetMundial. There was no apparent way for the community to challenge/reverse this decision.</p> <p>201 The community has input in ICANN budgeting and the Strategic Plan.</p> <p>202 Registrars must approve ICANN’s variable registrar fees, though Registrars do not view this as an accountability measure.</p> <p>203 California’s Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California’s Attorney General could intervene where misuse or mispending of substantial charitable assets is alleged.</p>	<p>204 One proposed measure is empowering the community to veto ICANN’s proposed strategic plan and budget. This measure could block a proposal by ICANN to increase its expenditure on initiatives the community believed were beyond ICANN’s limited Mission. However, the entire ICANN budget would have to be rejected since there is no proposal for line-item veto.</p> <p>205 Another proposed mechanism is a challenge to a Board decision, made by an aggrieved party or the community as a whole. This would refer the matter to an IRP with the power to issue a binding decision. If ICANN made a commitment or expenditure outside the annual budget process, the IRP mechanism enables reversal of that decision.</p> <p>206 Another proposal is to amend ICANN Bylaws to prevent the organization from expanding its scope beyond ICANN’s amended Mission, Commitments and Core Values.</p> <p>207 If ICANN’s Board proposed to amend/remove these Bylaws provisions, another measure would empower the community to veto a proposed Standard Bylaws change. For Fundamental Bylaws or the Articles of Incorporation, the Board would need to adopt changes by a 3/4 supermajority, and the community must approve the changes adopted by the Board before they could become legally effective.</p>
<p><b>CONCLUSIONS:</b></p>	

208 Existing measures are inadequate.	209 Proposed measures in combination may be adequate.
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210 <b>Stress Test #18:</b> Governments in ICANN’s Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN’s Board.	
211 <b>Consequence(s):</b> Under current Bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus. A majority of governments could thereby approve Governmental Advisory Committee advice.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>212 Current ICANN Bylaws (Article XI) require ICANN to try to find a mutually acceptable solution for Governmental Advisory Committee advice.</p> <p>213 Today, GAC adopts formal advice according to its Operating Principle 47: “<i>consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.</i>”<sup>[1]</sup></p> <p>214 The Governmental Advisory Committee may at any time change its procedures instead of its present consensus rule.</p> <p>215 The requirement to try to find a mutually acceptable solution in the current Bylaws would then apply, not just for Governmental Advisory Committee consensus advice.</p>	<p>216 The proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to require trying to find a mutually acceptable solution only where Governmental Advisory Committee advice was supported by full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.</p> <p>217 The proposed accountability measure recognizes that the decision not to follow GAC consensus advice would require a 60% majority of the ICANN Board.</p> <p>218 The Governmental Advisory Committee can still give ICANN advice at any time, with or without full consensus.</p> <p>219 Recognizing the general principle that an AC should have the autonomy to refine its Operating Procedures, the Governmental Advisory Committee could specify how objections are raised and considered.</p>
CONCLUSIONS:	
220 Existing measures are inadequate.	221 Proposed measures are adequate.

222 **Stress Test #22:** ICANN Board fails to comply with Bylaws and/or refuses to accept the

<sup>1</sup> ICANN Government Advisory Committee (GAC) - Operating Principles, October, 2011, at <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>

decision of a redress mechanism constituted under the Bylaws.	
223 <b>Consequence(s):</b> Community loses confidence in multistakeholder structures to govern ICANN.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>224 As long as NTIA controls the IANA contract, ICANN would risk losing IANA functions if it were to ignore Bylaws or an IRP decision. But as a result of the IANA Stewardship Transition, ICANN would no longer need to follow its Bylaws in order to retain the IANA contract with NTIA.</p> <p>225 Aggrieved parties can ask for Reconsideration of Board decisions, but this is currently limited to questions of whether process was followed.</p> <p>226 Aggrieved parties can file an IRP, but decisions of the panel are not binding on ICANN.</p> <p>227 California’s Attorney General has jurisdiction over non-profit entities acting outside Bylaws or Articles of Incorporation. California’s Attorney General could intervene where misuse or mispending of substantial charitable assets is alleged.</p>	<p>228 One proposed measure is to change the standard for Reconsideration Requests, so that substantive matters may also be challenged.</p> <p>229 Another proposed measure empowers the community to force ICANN’s Board to consider a recommendation arising from an Affirmation of Commitments Review such as an Accountability and Transparency Review. An ICANN Board decision against those recommendations could be challenged with a Reconsideration and/or IRP.</p> <p>230 One proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision. If ICANN failed to comply with its Articles of Incorporation, Bylaws or policies, the proposed IRP enables a reversal of that decision.</p> <p>231 If the ICANN Board were to ignore binding IRP decisions, the Empowered Community could seek enforcement in any court respecting international arbitration results.</p> <p>232 Another proposed measure empowers the community to recall the entire ICANN Board.</p>
<p><b>CONCLUSIONS:</b></p> <p>233 Existing measures are inadequate.</p>	<p>234 Proposed measures in combination are adequate because the community has power to recall the Board.</p>

<p>235 <b>Stress Test #23:</b> ICANN uses RAA or Registry contracts to impose requirements on third parties, outside the scope of ICANN Mission. (e.g. registrant obligations.)</p> <p>236 Affected third parties, not being contracted to ICANN, have no effective recourse.</p> <p>237 Contracted parties, not affected by the requirements, may choose not to use their ability to</p>
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<p>challenge ICANN’s decision.</p> <p>238 This issue occurs in policy development, implementation, and compliance enforcement.</p>	
<p>239 <b>Consequence(s):</b> ICANN may be seen as a monopoly leveraging power in one market (domain names) into adjacent markets.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>240 During policy development, affected third parties may participate and file comments.</p> <p>241 Affected third parties may file comments on proposed changes to registry and registrar contracts.</p> <p>242 Affected third parties (e.g. registrants and users) have no standing to challenge ICANN on its approved policies.</p> <p>243 Affected third parties (e.g. registrants and users) have no standing to challenge ICANN’s management and Board on how it has implemented approved policies.</p> <p>244 If ICANN changes its legal jurisdiction, that might reduce the ability of third parties to sue ICANN.</p>	<p>245 A proposed measure to empower an aggrieved party (e.g. registrants and users) to challenge a Board decision, referring it to an IRP with the power to issue a binding decision, based on standard for review in the amended Mission, Commitments and Core Values, or in established policies.</p> <p>246 Another proposed measure is empowering the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision.</p> <p>247 That IRP decision would be based on a standard of review in the amended Mission statement, including “ICANN shall act strictly in accordance with, and only as reasonably appropriate to achieve its Mission. ”</p>
<b>CONCLUSIONS:</b>	
<p>248 Existing measures are inadequate.</p>	<p>249 Proposed measures would be adequate.</p>

<p>250 <b>Stress Test #26:</b> During implementation of a properly approved policy, ICANN staff substitutes their preferences and creates processes that effectively change or negate the policy developed. Whether staff does so intentionally or unintentionally, the result is the same.</p>	
<p>251 Consequence(s): Staff capture of policy implementation undermines the legitimacy conferred upon ICANN by established community based policy development processes.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>252 The reconsideration review mechanism allows for appeal to the Board of staff actions that contradict established ICANN policies. However, reconsideration looks at the process but not the substance of a decision.</p> <p>253 An ICANN Board decision could not be challenged by the community at-large, which lacks standing to use the IRP.</p>	<p>254 A proposed measure would allow the Empowered Community to challenge a Board decision by reconsideration or referral to an IRP with the power to issue a binding decision. The standard of review would look at the revised ICANN Bylaws, including Core Values requiring "open, transparent and bottom-up, multistakeholder policy development processes".</p>
CONCLUSIONS:	
<p>255 Existing measures are inadequate.</p>	<p>256 Proposed measures would be adequate.</p>

## Stress test category V: Failure of Accountability to External Stakeholders

257 <b>Stress Test #14:</b> ICANN or NTIA chooses to terminate the Affirmation of Commitments.	
258 Consequence(s): ICANN would no longer be held to the Affirmation of Commitments, including the conduct of community reviews and required implementation of review team recommendations.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>259 The Affirmation of Commitments can be terminated by either ICANN or NTIA with 120 days notice.</p> <p>260 As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments.</p> <p>261 But as a result of the IANA Stewardship Transition, ICANN would no longer have the IANA contract as external pressure from NTIA to maintain the Affirmation of Commitments.</p> <p>262 Note: none of the proposed measures could prevent NTIA from canceling the Affirmation of Commitments.</p>	<p>263 One proposed mechanism would give the Empowered Community standing to challenge a Board decision by referral to an IRP with the power to issue a binding decision. If ICANN cancelled the Affirmation of Commitments, the IRP could enable reversal of that decision.</p> <p>264 Another proposed measure is to import Affirmation of Commitments provisions into the ICANN Bylaws, and dispense with the bilateral Affirmation of Commitments with NTIA. Bylaws would be amended to include Affirmation of Commitments 3, 4, 7, and 8, plus the 4 periodic reviews required in paragraph 9.</p> <p>265 If ICANN’s Board proposed to amend the AoC commitments and reviews that were added to the Bylaws, another proposed measure would empower the community to veto that proposed Bylaws change.</p> <p>266 If any of the AoC commitments were designated as Fundamental Bylaws, changes would require approval by the Empowered Community.</p> <p>267</p>
CONCLUSIONS:	
268 Existing measures are inadequate after NTIA or ICANN terminates the IANA contract.	269 Proposed measures in combination are adequate.

<p>270 <b>Stress Test #15:</b> ICANN terminates its legal presence in a nation where Internet users or domain registrants are seeking legal remedies for ICANN’s failure to enforce contracts, or other actions.</p>	
<p>271 <b>Consequence(s):</b> Affected parties might be prevented from seeking legal redress for commissions or omissions by ICANN.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>272 As long as NTIA controls the IANA contract, ICANN could risk losing IANA functions if it were to move in order to avoid legal jurisdiction.</p> <p>273 Paragraph 8 of the Affirmation of Commitments requires ICANN to remain headquartered in the US, but the Affirmation of Commitments can be terminated by ICANN at any time.</p> <p>274 As long as NTIA controls the IANA contract, ICANN feels pressure to maintain the Affirmation of Commitments.</p> <p>275 ICANN is incorporated as a California nonprofit public benefit corporation, and Article XVIII of ICANN Bylaws provides that ICANN’s “principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America.”. But the ICANN Board alone can change the Articles and the Bylaws, and can approve a dissolution or merger of the corporation, and the community has no binding power to block the changes.</p>	<p>276 Under the Articles of Incorporation, ICANN has been formed as a California nonprofit public benefit corporation. Unless dissolved or merged into another entity, it will remain as such and will be subject to California law and regulatory oversight, regardless of where it maintains a physical presence.</p> <p>277 Article XVIII of ICANN Bylaws provides that ICANN’s “principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America.”</p> <p>278 If ICANN’s Board proposed to amend the Articles of Incorporation or sell or otherwise dispose of all or substantially all of ICANN’s assets, the action would require supermajority Board approval (3/4) as well as approval by the Empowered Community.</p> <p>279 If Bylaws Article XVIII were designated as a Fundamental Bylaw, changes to ICANN’s principal office would similarly require supermajority Board approval (3/4) as well as approval by the Empowered Community.</p> <p>280 Any change to the Standard Bylaws could be vetoed by the Empowered Community.</p>
CONCLUSIONS:	
<p>281 Existing measures are inadequate once NTIA terminates IANA contract.</p>	<p>282 Proposed measures improve upon existing measures, and may be adequate.</p>

<p>283 <b>Stress Test #25:</b> ICANN delegates or subcontracts its obligations under a future IANA functions operator agreement to a third party. Would also include ICANN merging with or allowing itself to be acquired by another organization.</p>	
<p>284 <b>Consequence(s):</b> Responsibility for fulfilling the IANA functions could go to a third party that was subject to national laws that interfered with its ability to execute IANA functions.</p>	
<p><b>EXISTING ACCOUNTABILITY MEASURES</b></p>	<p><b>PROPOSED ACCOUNTABILITY MEASURES</b></p>
<p>285 The present IANA contract (link) at C.2.1 does not allow ICANN to sub-contract or outsource its responsibilities to a 3rd party without NTIA’s consent.</p> <p>286 NTIA could exert its control over ICANN’s decision as long as it held the IANA contract but would not be able to do so after it relinquishes the IANA contract.</p> <p>287 Nor would NTIA’s required principles for transition be relevant after transition occurred.</p>	<p>288 The CWG-Stewardship “recommends that an ICANN Fundamental Bylaw be created to define a separation process that can be triggered by a Special IFR if needed.” There is no allowance in the CWG-Stewardship proposal to allow ICANN to sub-contract or outsource its IANA responsibilities to a 3rd party other than to PTI. If a separation process were initiated a new IANA functions operator could be selected only with involvement of the empowered community.</p> <p>289 The CCWG-Accountability is proposing to empower the community to challenge a Board decision, referring it to an IRP with the power to issue a binding decision. If ICANN failed to follow Bylaws requirements to have the community define public interest, the IRP enables a reversal of that decision. The standard of review would look at the revised ICANN Bylaws, including Core Values requiring “open, transparent and bottom-up, multistakeholder policy development processes”.</p> <p>290 Note: This would not cover re-assignment of the Root Zone Maintainer role, which NTIA is addressing in a parallel process.</p>
<p><b>CONCLUSIONS:</b></p>	
<p>291 Existing measures would not be adequate after NTIA relinquishes the IANA contract.</p>	<p>292 Proposed measures are adequate to allow the community to challenge ICANN decisions in this scenario.</p>

- 293 After publication of the CCWG-Accountability first draft proposal, new stress tests were suggested in the CCWG-Accountability discussion list and in the public comments received. Below are new stress tests added for publication in the CCWG-Accountability's second draft proposal.
- 294 Stress Tests were suggested by a scenario that might give ultimate authority to a state-based American court and allow it to make binding and precedent setting decisions about the interpretation of ICANN's mission. Two stress tests (27 and 28) were designed for this scenario.

295	<b>Stress Test #27:</b> Board refuses to follow community recommendation, triggering a “member” to sue ICANN in the California courts.	
296	For example, an ATRT (Accountability and Transparency Review Team) recommends a new policy for implementation but the ICANN Board decides to reject the recommendation.	
297	<b>Consequence(s):</b> Gives ultimate authority to an American court, allowing it to make binding and precedent setting decisions about the interpretation of ICANN’s mission.	
	<b>EXISTING ACCOUNTABILITY MEASURES</b>	<b>PROPOSED ACCOUNTABILITY MEASURES</b>
298	This scenario assumes that ICANN converts to a model where members acquire statutory rights to pursue relief in California courts.	300 CCWG’s proposal does not create member status for the Empowered Community. The CCWG-Accountability proposal does not give any of the ACs or SOs the power to force ICANN’s Board to accept and implement the ATRT recommendation. This is intentional, since the ICANN Board could cite cost or feasibility in deciding not to implement part of a Review Team recommendation.
299	Member access to court relief is not available under ICANN’s present structure.	301 If the ICANN Board refused to implement the ATRT recommendation, the Empowered Community could challenge the Board decision with an IRP. An IRP panel of 3 international arbitrators (not a Court) could hold that the ATRT recommendation does not conflict with “substantive limitations on the permissible scope of ICANN’s actions”. The IRP decision cancels the Board decision to reject the ATRT recommendation. Any court recognizing arbitration results could enforce the IRP decision.
		302 If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, the community has 2 more options:
		303 The Empowered Community could recall the Board.
		304 The Empowered Community could block the very next budget or operating plan if it did not include the ATRT recommendation.
	<b>CONCLUSIONS:</b>	
305	Not applicable to ICANN’s existing	306 If a court were asked to enforce an IRP

<p>accountability measures.</p>	<p>ruling, it would examine whether IRP procedures were properly followed and whether those procedures comply with fundamental notions of due process, but the court would not interpret ICANN's mission. Proposed measures are therefore adequate.</p>
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<p>307 <b>Stress Test #28:</b> Board follows community recommendation, but is reversed by IRP decision, triggering a “member” to sue ICANN in California courts.</p> <p>308 For example, an ATRT (Accountability and Transparency Review Team) recommends a new policy for implementation. ICANN Board decides to accept the recommendation, believing that it does not conflict with ICANN’s limited Mission Statement in the amended Bylaws</p>	
<p>309 <b>Consequence(s):</b> Gives ultimate authority to an American court, allowing it to make binding and precedent setting decisions about the interpretation of ICANN’s mission.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>310 This scenario assumes that ICANN converts to a model where members acquire statutory rights to pursue relief in California courts.</p> <p>311 Member access to court relief is not available under ICANN’s present structure.</p>	<p>312 CCWG’s proposal does not create member status for the Empowered Community. An aggrieved party or the Empowered Community could challenge Board’s decision with an IRP. An IRP panel (not a court) could determine that the ATRT recommendation does conflict with “substantive limitations on the permissible scope of ICANN’s actions”. The IRP panel could thereby cancel the Board decision to accept and implement the ATRT recommendation.</p> <p>313 If the Board ignored the IRP ruling and continued to implement its earlier decision, parties to the IRP could ask courts to enforce the IRP decision. Judgments of the IRP Panel would be enforceable in any court that accepts international arbitration results.</p> <p>314 If the ICANN Board continued to ignore the IRP decision and court orders to enforce it, the community has 2 more options:</p> <p>315 The Empowered Community could recall the Board.</p> <p>316 The Empowered Community could block the very next budget or operating plan if it did not include the ATRT recommendation.</p>
CONCLUSIONS:	
<p>317 Not applicable to ICANN’s existing accountability measures.</p>	<p>318 If a court were asked to enforce an IRP ruling, it would examine whether IRP procedures were properly followed and whether those procedures comply with fundamental notions of due process, but the</p>

	court would not interpret ICANN's mission. Proposed measures are therefore adequate.
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319 Public commenters requested two additional stress tests regarding enforcement of contract provisions that exceed the limited mission of ICANN.

<p>320 <b>Stress Test #29:</b> (Similar to #23) ICANN strongly enforces the new gTLD registrar contract provision to investigate and respond to reports of abuse, resulting in terminations of some name registrations.</p> <p>321 ICANN also insists that legacy gTLD operators adopt the new gTLD contract on renewal.</p>	
<p>322 <b>Consequence(s):</b> ICANN’s enforcement of registry and registrar contract terms might be blocked by an IRP ruling citing Mission and Core Values.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>323 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>324 Affected registrants may file comments on the proposed gTLD contract renewals.</p> <p>325 Affected registrants could challenge ICANN’s termination decisions with Reconsideration or IRP, but could not cite Mission and Core Values, because the current IRP only considers whether ICANN followed process.</p>	<p>326 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>327 The proposed IRP allows any aggrieved party to challenge ICANN’s enforcement actions, resulting in a binding decision. An IRP challenge could assert that an RAA provision was not the result of consensus policy and/or violates ICANN’s Mission Statement, Commitments and Core Values in amended Bylaws.</p> <p>328 The new IRP standard of review would look at revised ICANN Bylaws, including Core Values requiring “open, transparent and bottom-up, multistakeholder policy development processes”.</p>
<p><b>CONCLUSIONS:</b></p> <p>329 Existing measures would not be adequate to challenge ICANN enforcement decision.</p>	<p>330 Proposed measures would be adequate to challenge ICANN enforcement actions, but it is unlikely that IRP panels would block enforcement of contract terms and consensus policies</p>

331 <b>Stress Test #30:</b> (Similar to #23 and #29) ICANN terminates registrars for insufficient response to reports of copyright abuse on registered domains.	
332 <b>Consequence(s):</b> ICANN’s enforcement of registry and registrar contract terms might be blocked by an IRP ruling citing Mission and Core Values.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>333 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>334 Affected registrars could challenge ICANN’s termination decisions with Reconsideration or IRP, but could not cite Mission and Core Values, because the current IRP only considers whether ICANN followed process.</p> <p>335 Affected registrants and users have no standing to use IRP to challenge ICANN decision.</p>	<p>336 The GNSO could initiate a policy development process to define registrar obligations. A new Consensus Policy would apply to all Registry contracts and RAA.</p> <p>337 The proposed IRP allows any aggrieved party to challenge ICANN’s enforcement actions, resulting in a binding decision. An IRP challenge could assert that RAA provision was not the result of consensus policy and/or violates the Mission, Commitments and Core Values in amended Bylaws.</p> <p>338 The IRP standard of review would look at revised ICANN Bylaws, including Core Values requiring “open, transparent and bottom-up, multistakeholder policy development processes”.</p>
CONCLUSIONS:	
339 Existing measures might be adequate for a registrar, but would not be adequate for a registrant to challenge ICANN enforcement decision.	340 Proposed measures would be adequate to challenge ICANN enforcement actions, but it is unlikely that IRP panels would block enforcement of contract terms and consensus policies

341 Several individuals requested evaluation of a stress test scenario where the individual designated by an AC/SO failed to follow their AC/SO instructions when communicating AC/SO decisions for any of the Community Powers proposed by CCWG-Accountability.

342 <b>Stress Test #31:</b> “Rogue” voting, where an AC/SO vote on a community power is not exercised in accord with the express position of the AC/SO.	
343 <b>Consequence(s):</b> Decisions on exercising a community power would be challenged as invalid, and the integrity of decisions could be questioned more broadly.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
344 AC/SO community powers are not available under ICANN’s Bylaws.	<p>345 An AC/SO could develop internal processes to ensure that any vote communicated would match the AC/SO decision instructions.</p> <p>346 If an AC/SO vote communicator voted against the instructions of their AC/SO, the decision rules for Empowered Community could specify procedures to invalidate a vote:</p> <p>347 If any elected AC/SO officer is aware that the person designated to communicate the AC/SO vote did not follow AC/SO instructions, an AC/SO officer could publicize this issue to ICANN staff and to all other AC/SO communities.</p> <p>348 After notice, the results of the Empowered Community’s exercise of a Community Power would be set aside, pending correction of the problem by the AC/SO. Correction might involve giving more explicit instructions to the vote communicator, or replacing the person in that role.</p> <p>349 After the problem has been remedied, another round of decision would occur.</p>
<b>CONCLUSIONS:</b>	
350 Not applicable to ICANN’s existing accountability measures.	351 Proposed measures would be adequate to avoid “rogue voting” problems.

352 There are four stress test items suggested in NTIA Secretary Larry Strickling’s statement of 16-Jun-2015 ([link](#)):

353 **NTIA-1:** Test preservation of the multistakeholder model if individual ICANN ACs/SOs choose not to be Decisional Participants in the Empowered Community.

354 **NTIA-2:** Address the potential risk of internal capture. ST 12 and 13 partly address capture by external parties, but not for capture by internal parties in an AC/SO.

355 **NTIA-3:** Barriers to entry for new participants.

356 **NTIA-4:** Unintended consequences of “operationalizing” groups that to date have been advisory in nature (e.g. GAC)

Each of these NTIA stress tests is shown below.

<p>357 <b>Stress Test #32:</b> (NTIA-1) Several ACs/SOs choose not to be Decisional Participants in the Empowered Community that is responsible for exercising Community Powers (e.g., blocking budget, blocking strategic/operating plan, blocking changes to Bylaws, approving changes to Fundamental Bylaws, recalling Board members)</p>	
<p>358 <b>Consequence(s):</b> ICANN’s multistakeholder model would be in question if multiple stakeholders did not participate in Community Powers.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>359 AC/SO community powers are not available under ICANN’s Bylaws.</p>	<p>360 In the true spirit of ICANN’s multistakeholder model, CCWG proposes inviting all ACs/SOs to exercise Community Powers. The only restriction would be if the GAC decided to be a Decisional Participant in the Empowered Community, in which case it would not be able to participate as a decision-maker in the Empowered Community’s exercise of a Community Power to challenge the ICANN Board’s implementation of GAC consensus advice. The GAC would, however, be able to participate in an advisory capacity in all other aspects of the escalation process.</p> <p>361 The SSAC and RSSAC said they don’t intend to be Decisional Participants in the Empowered Community. That does not remove these ACs from ICANN’s multistakeholder process. The SSAC and RSSAC would continue advising the Board and community on matters relevant to them. Other ACs/SOs can ask for SSAC/RSSAC</p>

	<p>advice before they exercise Community Powers.</p> <p>362 The SSAC and RSSAC could later decide to become Decisional Participants in the Empowered Community as set forth in the Bylaws, or request Bylaws amendments to enable this.</p> <p>363 If fewer than 3 ACs/SOs participate as Decisional Participants in an Empowered Community decision process, the minimum thresholds for consensus would not be reached.</p> <p>364</p>
<p><b>CONCLUSIONS:</b></p> <p>365 Not applicable to ICANN's existing accountability measures.</p>	<p>366 ICANN's multistakeholder model would be preserved, even if multiple ACs/SOs decided not to exercise the new community powers.</p>

<p>367 <b>Stress Test #33:</b> (NTIA-2) Participants in an AC/SO could attempt to capture an AC/SO, by arranging over-representation in a working group, in electing officers, or making a decision.</p>	
<p>368 <b>Consequence(s):</b> Internal capture, whether actual or perceived, would call into question ICANN’s credibility in applying the multistakeholder model.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>369 ICANN’s Bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption.</p> <p>370 ACs/SOs can revise their charters and operating procedures if they see the need to protect against internal capture. However, capture might inhibit adoption of AC/SO charter amendments.</p> <p>371 If a ‘captured’ AC/SO sent advice /policy to the Board, it is not clear how disenfranchised AC/SO members could challenge the Board decision to follow that advice/policy.</p>	<p>372 ICANN’s Bylaws require periodic reviews of each AC/SO, where protections against internal capture could be recommended for adoption.</p> <p>373 ACs/SOs can revise their charters and operating procedures if they see a need to protect against internal capture. However, capture might inhibit adoption of AC/SO charter amendments.</p> <p>374 If a ‘captured’ AC/SO sent advice /policy to the Board, a disenfranchised AC/SO could challenge the Board decision to follow that advice/policy, using reconsideration or IRP. The standard of review would be ICANN’s Articles of Incorporation and amended Bylaws, including Core Values requiring “open, transparent and bottom-up, multistakeholder policy development processes”.</p>
CONCLUSIONS:	
<p>375 Existing accountability measures are not likely to be adequate.</p>	<p>376 Proposed accountability measures would be adequate, provided that the Bylaws requirement for open, transparent, bottom-up, multistakeholder process is interpreted by the Board and IRP panelists to include assessment of how decisions were reached in an AC or SO.</p>

<p>377 <b>Stress Test #34:</b> (NTIA-3) Stakeholders who attempt to join an ICANN AC/SO encounter barriers that discourage them from participating.</p>	
<p>378 <b>Consequence(s):</b> Barriers to entry, whether actual or perceived, would call into question ICANN’s credibility in applying the multistakeholder model.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>379 ICANN’s Bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes.</p> <p>380 Affirmation of Commitments requires period reviews of Accountability and Transparency, including “(d) assessing the extent to which ICANN’s decisions are embraced, supported and accepted by the public and the Internet community;”</p> <p>381 ICANN’s Ombudsman might help new entrants to join ACs/SOs.</p>	<p>382 ICANN’s Bylaws require periodic reviews of each AC/SO, where barriers to entry could be assessed and could generate recommended changes.</p> <p>383 Affirmation of Commitments requires periodic reviews of Accountability and Transparency, including “(d) assessing the extent to which ICANN’s decisions are embraced, supported and accepted by the public and the Internet community;”</p> <p>384 ICANN’s Ombudsman might help new entrants to join ACs/SOs.</p> <p>385 CCWG proposes a new Core Value in ICANN’s Bylaws requiring “open, transparent and bottom-up, multistakeholder policy development processes”.</p> <p>386 This would be the standard of review for IRPs that could be brought by anyone encountering barriers to entry to an AC/SO.</p>
CONCLUSIONS:	
<p>387 Existing accountability reviews can help erode barriers to entry, though not in real-time.</p>	<p>388 Proposed changes to Core Values and IRP could provide faster solutions to barriers encountered by new entrants.</p>

<p>389 <b>Stress Test #35:</b> (NTIA-4) Unintended consequences of “operationalizing” groups that formerly only gave advice to the ICANN Board (for example, the GAC).</p>	
<p>390 <b>Consequence(s):</b> An AC that previously gave only advice on a narrow scope of issues could affect decisions on Community Powers that extend beyond that narrow scope.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>391 Advisory Committees (ACs) have no community powers or decisional rights under ICANN’s Bylaws.</p> <p>392 That said, ICANN has given significant deference to GAC advice in the new gTLD program, resulting in significant effects on operations for new gTLD registries and registrars.</p>	<p>393 In the true spirit of ICANN’s multistakeholder model, CCWG proposes inviting all ACs/SOs to participate in decisions about exercising community powers.</p> <p>394 All ACs can thereby expand beyond their present advisory roles. To address concerns that the GAC could gain undue influence over ICANN, CCWG notes proposed changes that reduce GAC’s ability to affect ICANN operations:</p> <p>395 Per Stress Test 18 and the proposed Bylaws change, the Board would be obligated to try to “find a mutually acceptable solution” for GAC consensus advice (i.e., approved “by general agreement in the absence of any formal objection”). Moreover, should the GAC decide to be a Decisional Participant in the Empowered Community, it would not be able to participate as a decision-maker in the Empowered Community’s exercise of a Community Power to challenge the ICANN Board’s implementation of GAC consensus advice, although the GAC would be able to participate in an advisory capacity in all other aspects of the escalation process.</p> <p>396 Proposed Core Values require “open, transparent and bottom-up, multistakeholder policy development processes”. This would allow the community to challenge an ICANN decision to implement any GAC advice that was not supported by the bottom-up process.</p> <p>397 In Core Value #5, CCWG proposes adding that policy development must be “led by the private sector”.</p> <p>398 In Core Values, CCWG restricts ICANN’s</p>

	<p>scope of activities.</p> <p>399 The new IRP gives the community ability to overturn a Board decision to implement GAC advice that goes against the Mission and Core Values in the amended Bylaws. A carve-out is proposed for community decision-making, to avoid having the GAC block a community challenge to Board action based upon GAC advice.</p> <p>400 For the Affirmation of Commitments reviews, the GAC Chair would no longer approve/appoint review team members.</p>
<p><b>CONCLUSIONS:</b></p> <p>401 Existing accountability measures have already given Advisory Committees significant influence over ICANN operations.</p>	<p>402 Proposed accountability measures would treat ACs as multi-equal stakeholders in exercising Community Powers, while also reducing the GAC’s ability to affect ICANN operations.</p>

- 403 The ICANN Board sent a letter on 20-Jun-2015 with 156 questions regarding impact and implementation testing of CCWG proposals. ([link](#)) Two questions included requests for stress testing the CCWG proposal for a membership-based model:
- 404 What unintended consequences may arise from empowering (e.g., approval rights, etc.) entities/individuals who are not required to act in the best interest of ICANN (and who may have their own business, financial or personal interests), other members or the community as a whole and have stress tests been conducted for each of these consequences?
- 405 What are the risks associated with empowering members to bring lawsuits against ICANN, each other and other parties and have stress tests been conducted for reach of these situations?
- 406 Both scenarios are addressed in Stress Test 36:

<p>407 <b>Stress Test #36:</b> Unintended consequences arising from empowering entities/individuals who are not required to act in the best interest of ICANN (and who may have their own business, financial or personal interests), other members, or the community as a whole.</p>	
<p>408 <b>Consequence(s):</b> An entity could exercise statutory powers accorded to members under California law, and pursue legal actions that would harm interests of the ICANN community.</p>	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>409 ACs and SOs have no joint community powers or decisional rights under ICANN's Bylaws.</p> <p>410 ICANN's Bylaws do not recognize any members as defined under California Nonprofit Public Benefit Corporation law.</p>	<p>411 CCWG proposes that each AC and SO may participate in the decision process on whether to exercise an enumerated Community Power (except for the GAC, with respect to the exercise of a Community Power to challenge the ICANN Board's implementation of GAC consensus advice). No other individuals or entities could exercise these powers. Exercise of these powers requires consensus, which prevents any one AC/SO from advancing its interests against the interests of the broader community.</p> <p>412 CCWG proposes to have the Empowered Community be given the role of sole designator of ICANN's Directors and will have the ability to enforce directly or indirectly the Community Powers. A designator does not acquire all of the statutory powers of a member under California law.</p> <p>413 Only the Empowered Community would have legal status and statutory right of a designator and would be given rights under the Bylaws to exercise Community Powers. Consequently, legal action would only be brought if supported by the ACs and SOs participating in the Empowered Community, and a high threshold of consensus is required.</p> <p>414 Individuals and entities – including ACs and SOs – would not become designators and would not be directly given any rights under the Bylaws to exercise Community Powers. They could not acquire statutory rights given to members or designators under California</p>

	law.
<b>CONCLUSIONS:</b> 415 Not applicable to ICANN's existing accountability measures.	416 Proposed Empowered Community measures are adequate to avoid this scenario.

417 After publication of the CCWG-Accountability second draft proposal, one new stress test was suggested in public comments received. ELIG (a law firm) suggested stress testing on a “deadlock” over approving changes to Fundamental Bylaws, and blocking changes to regular Bylaws: “We believe that it would be helpful to also explain the details of the legislation procedures in case of a deadlock during the amendment/enactment of a Bylaw.” See Stress Test 37 below.

418 <b>Stress Test #37:</b> The Empowered Community blocks a Board-proposed change to a regular Bylaw, or withholds its approval of a Board-proposed change to a Fundamental Bylaw.	
419 <b>Consequence(s):</b> A “deadlock” between the ICANN Board and the Empowered Community, where the Board-proposed Bylaws change is not enacted.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>420 ICANN’s present Bylaws allow the Board alone to amend Bylaws: “the Articles of Incorporation or Bylaws of ICANN may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board.”</p> <p>421 There is no requirement for community consultation or public comment for Bylaws changes.</p> <p>422 There is no present power for the community to block or approve Bylaws changes.</p>	<p>423 The Empowered Community is intentionally given the power to block a Board-adopted change to a Standard Bylaw.</p> <p>424 In addition, the Empowered Community is intentionally given the power to withhold its approval of a Board-adopted change to a Fundamental Bylaw.</p> <p>425 Such outcomes might be characterized as “deadlock” by advocates of the Bylaws change. But this would reflect the consensus decision of ACs/SOs representing the community that ICANN is designed to serve.</p> <p>426 This outcome would motivate the Board to understand the concerns of the community over proposed Bylaws changes. The Board could then persuade the community that its concerns were unfounded, or modify its proposed Bylaws change to accommodate concerns expressed.</p>
CONCLUSIONS:	
427 Existing accountability mechanisms prevent “deadlock” because the community has no power to affect Board-proposed Bylaws changes.	428 Proposed community powers enable “deadlock” over Board-proposed Bylaws changes, but only if that is the consensus decision of the community.

# Appendix A – Documenting Process of Building Consensus

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- 01 The Supplemental Final Proposal on Work Stream 1 Recommendations was developed in a bottom-up, multistakeholder approach, which included multiple “readings” of each recommendation. Each draft was posted publicly and open to comment by CCWG-Accountability members and participants.
- 02 To finalize its report, the CCWG-Accountability established a structured process to ensure input was being accurately discussed and reflected, as appropriate. Step 1 consisted in circulating key discussion items to the list based on public comment received. Following a first reading held on a call, the CCWG-Accountability leadership would circulate conclusions of the first reading along with edits to prepare for the second reading. This process would conclude with the distribution of second reading conclusions. Additional readings and discussions were scheduled and continued on the list depending on difficulties in reaching consensus. Documents prepared for readings can be found [here](#).
- 03 Following the final reading and legal review, finalized recommendations were sent to the CCWG-Accountability for a 48-hour period to note any errors, comments, or statements for the record.
- 04 [The CCWG-Accountability is pleased to provide its Chartering Organizations with the enhancements to ICANN's accountability framework it has identified as essential to happen or be committed to before the IANA Stewardship Transition takes place \(Work Stream 1\) for consideration and approval as per its Charter.](#)
- 05 The Supplemental Proposal on Work Stream 1 Recommendations is the result of extensive work by the CCWG-Accountability’s 28 members, 172 participants and a team of highly qualified legal advisors over the past year, which included over 221 calls or meetings, three public consultations and more than 13,900 email messages. It represents a carefully crafted balance between key requirements, specific legal advice and significant compromises by all who participated. It also includes diligent attention to the input received through the public comment proceedings.
- 06 The final proposal has received the consensus support of the CCWG-Accountability. Minority viewpoints were recorded through 17:00 UTC on 25 February 2016<sup>1</sup>. These viewpoints are provided below for Chartering Organization consideration.
- 07 **Minority statements are published in the order in which they were received.**

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<sup>1</sup> The co-Chairs of the CCWG-Accountability gave members a final opportunity to revise, retract or add minority statements to the Supplemental Final Report based on a compromise reached on the morning of 23 February 2016. A revised Appendix A was published and distributed to Chartering Organizations on 25 February 2016.

## Minority Statements

08 **Minority Statement by Eberhard W Lisse**

09 **CCWG-Accountability Member, ccNSO**

10 Dear Co-Chairs

11 I am Managing Director of Namibian Network Information Center (Pty) Ltd, the country code Top Level Domain (“ccTLD”) Manager of .NA. I created .NA and have 24 years uninterrupted service and corresponding experience as the ccTLD Manager for .NA.

12 I am appointed by ICANN’s country code Names Supporting Organization (“ccNSO”) as a Member to the Cross Community Working Group on Enhancing ICANN Accountability (“CCWG Accountability”).

13 The CCWG Accountability submits a “Final Proposal on Work Stream 1 Recommendations” (“Final Proposal”) which in terms of its Charter (“Charter”) must focus on

*[...] mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition.*

14 The Final Proposal does **not** do so.

15 Accordingly I do not agree with and hereby formally record my Objection to the Final Proposal:

1. I still have serious concerns regarding the proposed increase to the powers of Advisory Committees (“AC”) and their proposed elevation to similar status and powers as Supporting Organizations (“SO”).
2. The Final Proposal is entirely silent on accountability measures for ICANN relating to its dealing with ccTLD managers.  
This omission is fatal.
3. I still have very strong concerns about the way the CCWG Accountability has dealt with ICANN’s Accountability to Human Rights.

The Final Report must state, at a minimum, that:

*Within its mission and in its operations, ICANN will respect fundamental human rights, inter alia the exercise of free expression, free flow of information, due process and the right to property*

without **any** qualifications.

4. The questions
  - under what statutory powers this transfer will occur,
  - what in fact it is that is transferred, and
  - what is not transferred

remain unanswered.

And they **must** be answered in order for any transfer of the functions and/or the root zone<sup>2</sup> to occur.

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<sup>2</sup> see also [http://www.grassley.senate.gov/sites/default/files/judiciary/upload/2015-09-22 CEG Cruz Goodlatte Issa to GAO \(Report on ICANN Oversight Transfer\).pdf](http://www.grassley.senate.gov/sites/default/files/judiciary/upload/2015-09-22%20CEG%20Cruz%20Goodlatte%20Issa%20to%20GAO%20(Report%20on%20ICANN%20Oversight%20Transfer).pdf), last accessed 2016-02-24

5. I have previously placed on record my observations regarding the legitimacy of the way in which the CCWG has conducted itself during its deliberations which has been, more often than not, in violation of its own Charter.

The latest example, occasioning this revision of this Minority report, previously submitted 2016-02-16, is so egregious that it requires some detail:

- (a) The ICANN Board voiced objections against a provision (74) in Recommendation #2 (on which Consensus had been reached), **after** the Final Proposal had been completed.
- (b) Two of the Co-Chairs (in the absence of the third) then re-opened the deliberations culminating in a teleconference on 2016-02-23 where they put the issue to a vote when no Consensus was reached either way.
- (c) Besides that the Charter is **not** silent on voting it is noteworthy that the Co-Chairs permitted the ICANN Staff Liaison, and 11 ICANN Board Members (two of which were not even registered<sup>3</sup> as Participants to the CCWG Accountability (Ms Hemrajani and Mr Chehadé) to vote on the issue.
- (d) The Co-Chairs then sent out an email stating that, as a broad majority had been in favor of removing the contentious provision, the provision was removed from the Final Proposal.
- (e) I have been unable to find “*Broad Majority*” in the Charter, only “*Full Consensus*” and “*Consensus*”, from which follows anything else is “*No Consensus*”.
- (f) The now Really Final Proposal was then transmitted to the Charting Organizations, without any period of Public Comment, nor waiting for updates to the existing Minority Statements or new Minority Statements being submitted, which was to be done within 48 hours.

I renew my Objection against this exclusionary process.<sup>4</sup>

6. The entire proposal has been cobbled together in extreme haste.

We (the representative Members of the CCWG) have been subjected to an arbitrary, self-imposed and entirely unrealistic timetable and deadline.

7. Regrettably, the Final Proposal bears the fruit of this extreme haste.

It is overly complex, hard to understand even by many of the members and participants of the CCWG Accountability themselves. During the telephone conference on 2016-02-23<sup>5</sup> it took 22 minutes just to give a summary of the issue at hand.

8. The **drastic** shortening of public comment periods is another example of the apparently intentional exclusivity of the process.

Even if the previous fatal flaws did not exist, this would, in itself, be fatal to the legitimacy of the CCWG process and the Final Proposal.

Fortunately the Final Proposal, if any, can still be subjected to a proper public comment period.

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<sup>3</sup> <https://community.icann.org/pages/viewpage.action?pageId=50823968>, last accessed 2016-02-24

<sup>4</sup> I renew my Objection to the previous “Draft Recommendations” from 2015-06-03, the “Draft Proposal” from 2015-07-30 and the “Third Draft Proposal” from 2015-12-02 and incorporate them by reference herein.

<sup>5</sup> 5a to 5f on this page

9. I submit that the Final Proposal simply adds additional layers of bureaucracy without achieving much, if anything.
10. The IANA transition involves novel and unsettled questions that may impact the interests of a wide array of entities. This includes both the public and private sector and engages both domestic US and international interests.

The CCWG Accountability should be result driven and provide its considered views on the important issues presented by the transition in a more reasoned and full discussion instead of rushing to produce something to meet a self-imposed deadline for which there is simply no justification.

11. Repeatedly the NTIA found it necessary to advise, and did so in no uncertain terms, that the CCWG was not meeting the terms of reference set by the NTIA.

I submit that the Final Proposal still does not meet these.

12. I note Minority Statements by the Appointed Members Olga Cavalli (GAC), Tijani Ben Jemaa (ALAC), Izumi Okutani (ASO), and Robin Gross (GNSO) and join Ms Gross' Minority Statement.

I need to point out that the Charter foresees Minority Statements only in cases of disagreement. One Appointed Member of each Chartering Organization disagreeing is **not** a small minority.

It follows that the Final Proposal does **not** have Consensus.

- 16 I **strongly** urge ccTLD Managers to reject this Final Proposal and the NTIA not to accept it as is.
- 17 I submit this Minority Statement to be added to the Final Proposal as required by the Charter.



- 18 Eberhard W Lisse

19 **Minority Statement by Olga Cavalli**

20 **CCWG-Accountability Member, GAC**

21 Dear co-chairs,

22 After many months of hard work, CCWG has delivered a final proposal to be accepted by the community and then submitted to the ICANN board and NTIA. The negotiations leading to the delivery of this proposal have been very intense, and sometimes disappointing. More specifically, the attempts of some stakeholders to take advantage of the IANA transition in order to reduce the ability of governments to be part of the – to be enhanced – community, have jeopardized the success of the overall process, and more broadly, have put at risk our trust in what has brought us all here in the first place: the multi-stakeholder approach.

23 **The role of governments in the multi-stakeholder community**

24 The idea that governments threaten the multi-stakeholder community or benefit from a “special status” in the current ICANN structure is a misconception:

- Governments only have an advisory role in ICANN, through the Governmental Advisory Committee (GAC), whereas other constituencies exercise a decisional role, for instance through the drafting of policy recommendations.
- Governments do not participate in the ICANN Nominating Committee (NomCom) for the selection of ICANN’s leadership positions in the Board, ccNSO, GNSO and ALAC, unlike other AC/SOs within ICANN.
- Governments do not participate to the ICANN board, whereas all other AC/SOs can elect members of the board, directly and through the Nominating Committee. GAC can only appoint a non-voting liaison to the board.
- The ICANN board can easily reject GAC advice, even if the advice was approved without any formal objection. If “the ICANN board determines to take an action that is not consistent with the Governmental Advisory Committee advice” and fails to “find a mutually acceptable solution” (an obligation which does not only apply to GAC advice<sup>6</sup>), then the only obligation of the board is to “state in its final decision the reasons why the Governmental Advisory Committee advice was not followed”<sup>7</sup>. On the other hand, a PDP approved by 66% of GNSO can only be rejected by a 2/3 majority of the board<sup>8</sup>.

25 On the contrary, we believe that governments are an essential part of the community:

- GAC is the most geographically diverse entity in the community. This element should not be underestimated, given that the internationalization of ICANN has been a recurring issue since its inception in 1998.
- Governments bring a unique perspective on public policy issues and remain the most legitimate stakeholders when it comes to protecting public interest.

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<sup>6</sup> *ICANN Bylaws, Annex B, Section 15.b*: “The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN. (...)The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.”

<sup>7</sup> *ICANN Bylaws, Article XI, Section 2*.

<sup>8</sup> *ICANN Bylaws, Annex A, Section 9*: “Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN.”

- An ICANN with no or very little governmental involvement would be even more subject to a risk of capture by special interests or narrow corporate interests.

26 Proposed solutions to the so-called Stress-Test 18 leading to changes in Recommendation 1, 2 and 11

27 In particular, we are extremely disappointed by and object to the latest “compromise” solution regarding Stress Test 18-related issues, which led to changes in Recommendations 1, 2 and 11.

28 According to the “CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations”, Stress Test 18 “considers a scenario where ICANN’s GAC would amend its operating procedures to change from consensus decisions (no objections) to majority voting for advice to the ICANN Board”. In this scenario, GAC would therefore align its decision-making process to what is already the rule for ALAC, GNSO and CCNSO. However, some CCWG participants seem to believe that preventing GAC from adopting the decision making process used by other stakeholders is necessary to make ICANN more accountable.

29 Many rationales were circulated to justify Stress Test 18-related measures, including ones that involved NTIA. However, the proposed solutions to the issues raised by Stress Test 18 were never part of the initial conditions required for the acceptance of the IANA transition by NTIA. In March 2014, when NTIA announced the transition, four principles were singled out:

- Support and enhance the multi-stakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services;
- Maintain the openness of the Internet.

30 In its press release, NTIA also stated it would “not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution”. To our knowledge, the current ICANN structure does not qualify as a government-led organization, especially since the governments only have an advisory role, through the Governmental Advisory Committee. Therefore, status quo would meet the NTIA requirements.

31 Despite the strong concerns of many governments regarding the proposed solutions to Stress Test 18, and their doubts about the impact of such solutions on ICANN’s accountability, **GAC has agreed to a consensus package** during the Dublin meeting, as reflected in the Dublin GAC Communiqué, **showing its willingness to reach a compromise** in order to achieve the IANA transition. This compromise was based, inter alia, on a 2/3 threshold for the ICANN board to reject GAC advice and on the preservation of GAC’s autonomy in defining consensus.

32 Recommendation 11 of the 3rd CCWG report proposed a very narrow definition of consensus, as “general agreement in the absence of any formal objection”, which represented a major shift from the principles agreed in the GAC Dublin communiqué, therefore triggering the rejection of Recommendation 11 by some GAC members. However, the 3rd draft report proposed a 2/3 threshold for the board to reject GAC consensus advice, aligned with the GAC Dublin Communiqué.

33 The “compromise” solution proposed in the “CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations” published in February is as follows:

- Maintain a very narrow definition of consensus as “the absence of any formal objection”;
- Set the threshold for board rejection of GAC full consensus advice at 60% instead of 2/3;

- Limit the ability of GAC to participate in the empowered community mechanisms if they aim at challenging the board’s implementation of GAC advice – this proposal has never been discussed in CCWG before, and hardly relates to the initial issues raised by Stress Test 18.
- 34 We fail to understand how these new proposals address the concerns expressed by many GAC members in the public comment period, for instance relatively to the ability of one government to block a draft advice approved by an overwhelming majority of governments. Even though consensus should remain the GAC’s ultimate objective, the requirement to reach full consensus for each and every issue considered might lead, in some cases, to paralysis. Any hypothetical advice reflecting less than full consensus (including 100% minus one - which in our view would be basically as representative as full consensus) could indeed be dismissed by a simple majority vote of the board. As a result, the ability of GAC to participate to a discussion considered as relevant by most of its members would be very limited and decisions could theoretically be made without any significant GAC input. To prevent this, we believe governments shall not be bound by one single rule of decision-making, particularly if potentially controversial topics are to be considered
- 35 We note that GAC is once again asked to lower its ability to be involved in the post-IANA transition ICANN. Regarding the ability of GAC to participate in the empowered community mechanisms, we believe such a decision should be carefully reviewed and should not be imposed under pressure in a very short timeframe. More specifically:
- We do not understand why the “two bites at the apple” problem should only apply to GAC, and not to all SO/ACs which could participate in a community power challenging the board’s implementation of their advice or policy recommendation.
  - It is GAC’s sole responsibility to determine if it wishes to participate in a decisional capacity to the community mechanisms.
  - It would be contradictory to limit GAC’s ability to participate to the community powers only to those cases involving public policy / legal aspects, while preventing GAC to participate to community powers involving the board’s implementation of its advice.
- 36 Governments have shown impressive flexibility and tried to reach a compromise in many ways, as reflected in the Dublin GAC communiqué. However, only the demands of part of the community representatives were met, at the expense of GAC; therefore, rather than “compromise”, “winner takes all” would actually be a more accurate description of what is proposed in the CCWG-Accountability Supplemental Final Proposal on Work Stream 1 Recommendations.
- 37 Olga Cavalli
- 38 This statement is supported by the governments of Argentina, Benin, Brazil, Chile, Commonwealth of Dominica, France, Guinea, Mali, Nigeria, Paraguay, Peru, Portugal, Russian Federation, The Democratic Republic of Congo, Uruguay, Venezuela

39 **Minority Statement by Tijani BEN JEMAA**

40 **CCWG-Accountability Member, ALAC**

41 As a CCWG-Accountability member, I would like to make this minority statement regarding Recommendation 2 (Adjusting the threshold of support to exercise the community powers) and Recommendation 6 (Human Rights):

42 **Rec 2, Para 73:**

43 With 5 SO/ACs composing the empowered community, we are told that we don't represent the whole Internet community. With less, our representativeness will be seriously affected. So, reducing the threshold in case of the community becomes composed of less than 5 SO/ACs is not acceptable, not only because of the representativeness, but also because we will exercise the community powers with only 2 SO/ACs supporting the decision for most of them. Less than 5 SO/ACs will make the whole accountability process to be reviewed.

44 **Rec 6:**

45 I express my concern that in the proposed text, it is not made clear that the ICANN obligation to respect Human Rights covers the issues included in the ICANN mission only and not be expended to cover other aspects such as the content.

46 Tijani BEN JEMAA

47 **Minority Statement by Izumi Okutani**

48 **CCWG-Accountability Member, ASO**

49 The ASO notes that the Internet Numbering Community is not relying on the CCWG-ACCT WS1 proposal to fulfill our expectations of ICANN accountability. Instead we will rely primarily on a contractual agreement (or “SLA”) between the RIRs and ICANN, as defined within the CRISP and ICG proposals, to provide the required accountability mechanisms.

50 In order to serve this purpose, the proposed SLA must be in place at the time of the IANA Transition. However, the agreement contains “condition precedent” language such that, even if it is signed immediately, it will only come into effect when ICANN is actually released from its related duties under the NTIA contract.

51 Negotiation of the Numbers Community SLA is nearly complete, and we expect to reach agreement in the near future. We propose to then promptly sign the agreed SLA with ICANN, in the same timeframe as implementation of the CCWG recommendations. By having both components in place at that time, we will be satisfied that all ICANN accountability matters are properly resolved.

52 Best Regards,

53 Izumi on behalf of the ASO

54 **Minority Statement by Robin Gross**

55 **CCWG-Accountability Member, GNSO**

56 **Dissenting Opinion of Individual Member Robin Gross on the Issue of GAC Over-Empowerment, Marginalization of Supporting Organizations**

57 While the majority of recommendations included in the CCWG-Accountability Report for Work Stream 1 mark significant and laudable improvements for ICANN's accountability processes, the proposal remains flawed in one important respect: it would allow for fundamental changes to the nature of ICANN's Governmental Advisory Committee (GAC) by endorsing its inclusion in the Empowered Community as a Decisional Participant. If the GAC chooses to become a Decisional Participant, it would transform its traditional function in ICANN from an "advisory" role to a "decisional" role over ICANN's policies, operations, and corporate governance matters. Additionally, the proposal raises the threshold in ICANN's bylaws for its Board to refuse to follow GAC consensus advice, in a separate concession to the GAC that has enhanced its power in ICANN's corporate structure relative to the other Advisory Committees and Supporting Organizations.

58 The proposal to elevate the GAC is a mistake for a number of different reasons.

59 The first concern is the opaque nature of the GAC. GAC is under no obligation to be transparent or bottom-up in its deliberations nor its operation. It has no obligation nor practice of upholding ICANN's legal duty under its bylaws and articles to act openly, transparently, and in a bottom-up multi-stakeholder manner. Empowering a nontransparent constituent body in such a way risks conflicting with other provisions in ICANN's articles and bylaws which promise open, transparent, equitable, and bottom-up decision making and operations as ICANN carries out its duty and mission.

60 The second concern is that empowering the GAC goes against the express wishes of the majority of the ICANN community. Specifically, when previously proposed in 2014, the community overwhelmingly rejected increasing the Board threshold required to reject GAC advice, yet that is exactly what this proposal does.<sup>9</sup> Similar objections were voiced in public comments to the various CCWG-Accountability proposals, which raised significant concerns about the threshold for Board rejection of GAC advice. For many concerned commentators, the distinction between a Board threshold of 50%-60%-66% is a "distinction without a difference", because it is the underlying principle at stake of limiting governmental control over the Internet via ICANN. A positive element of the CCWG-Accountability proposal is that it provides greater certainty and clarity regarding the definition of GAC's deferential "consensus advice". However the community should not be forced to concede greater power to GAC over ICANN's governance in exchange for that needed clarity and certainty over the kind of GAC advice requiring deferential Board treatment. It is a "trade-off" the community should not have to make for ICANN accountability improvements and a timely IANA transition to be able to go forward.

61 Third, GAC participation in the Empowered Community is controversial in the ICANN community and within the GAC itself. Providing the GAC an equal vote to the Supporting Organizations and the At Large Advisory Committee over ICANN's governance would grant the GAC new, greatly enhanced authority in ICANN's decision-making process and governance structure. While the "GAC carve-out" which disallows GAC from voting on board decisions taken as a result of GAC consensus advice, is an improvement in a narrow and specific instance, it does not address the underlying problem of providing national governments with a decisional role over ICANN's governance. Nor would it limit the ability of GAC to participate in decisions to remove board

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<sup>9</sup> <https://www.icann.org/public-comments/bylaws-amend-gac-advice-2014-08-15-en>

- members, reject budgets and strategic plans, decide IANA separation questions, or any of the other new community powers granted to the Empowered Community under this proposal.
- 62 Importantly, GAC has not stated that it wants this fundamental change in its role or that it wants this increase in power over ICANN's Board. On the contrary, GAC stated it could not come to consensus on those controversial recommendations in the CCWG proposal. Unfortunately, a small minority of vocal GAC representatives participating in the CCWG-Accountability discussions took advantage of the community's desire for a speedy IANA transition and were able to hold the accountability reform process hostage in order to obtain greater power over ICANN's governance than what GAC has under ICANN's existing corporate structure.
- 63 Finally, enhancing the power of governments in ICANN puts U.S. support for the transition in jeopardy. If the U.S. Congress or NTIA objects to this proposal, it is dead on arrival. The U.S. Congress and NTIA have sent a number of clear signals that governmental influence should not be expanded in the IANA transition process.<sup>10</sup> By proposing to increase the influence of governments over ICANN as CCWG-Accountability has done, it invites rejection from precisely the parties who must sign-off on it and places the entire transition at risk.
- 64 The CCWG-Accountability proposal includes a number of important and long over-due accountability reforms including improvements to ICANN's Independent Review Process (IRP), Reconsideration Request process, board removal rights, and a noteworthy bylaws commitment to respect human rights in ICANN's operation, among other truly laudable accountability reform measures. However, the long-term harm to a free and open Internet from the proposal's shifting the traditional balance of power over ICANN in favor of governments and away from the Supporting Organizations and the private sector is a monumental mistake.

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<sup>10</sup> At ICANN #51 in Los Angeles 2014, U.S. Secretary of Commerce Penny Pritzker stated that the U.S. would oppose at every turn "proposals to put governments in charge of Internet governance". Also, U.S. Senator John Thune and U.S. Senator Marco Rubio, letter to Dr. Stephen Crocker, Chairman ICANN Board of Directors, July 31, 2014, <https://www.icann.org/en/system/files/correspondence/thune-rubio-to-crocker-31jul14-en.pdf> (emphasis added):

"First, ICANN must prevent governments from exercising undue influence over Internet governance. In April we led 33 Senators in a letter to NTIA regarding the IANA transition. We wrote that "[r]eplacing NTIA's role with another governmental organization would be disastrous and we would vigorously oppose such a plan. ICANN should reduce the chances of governments inappropriately inserting themselves into apolitical governance matters. Some ideas to accomplish this include: not permitting representatives of governments to sit on ICANN's Board, limiting government participation to advisory roles, such as through the Government Advisory Committee (GAC), and amending ICANN's bylaws to only allow receipt of GAC advice if that advice is proffered by consensus. *The IANA transition should not provide an opportunity for governments to increase their influence.*"

# Appendix B: Charter

To download a PDF version of the Charter document, see [here](#).

## Cross Community Working Group (CCWG) Charter

<b>WG NAME:</b>	<b>CROSS COMMUNITY WORKING GROUP ON ENHANCING ICANN ACCOUNTABILITY</b>	
<b>Section I: Cross Community Working Group Identification</b>		
<b>Chartering Organizations:</b>	ASO, GAC, ccNSO, ALAC, GNSO, SSAC	
<b>Charter Approval Date:</b>	The CCWG charter was circulated for adoption on 3 November. Since then, the following organizations have adopted the charter: <ul style="list-style-type: none"><li>• GNSO on 13 November 2014</li><li>• ALAC on 18 November 2014</li><li>• ccNSO on 20 November 2014</li><li>• GAC on 8 December 2014</li><li>• ASO on 9 December 2014</li><li>• SSAC on 9 July 2015</li></ul>	
<b>Name of WG Chair(s):</b>	Mathieu Weill, Thomas Rickert, León Sanchez	
<b>CCWG Workspace URL:</b>	<a href="https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability">https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability</a>	
<b>CCWG Mailing List:</b>	accountability-cross-community@icann.org	
<b>Resolutions adopting the charter:</b>	Title:	
	Ref # & Link:	
<b>Section II: Problem Statement, Goals &amp; Objectives and Scope</b>		
<i>Problem Statement</i>		
The National Telecommunications and Information Administration (NTIA) has requested		

that ICANN “convene a multistakeholder process to develop a plan to transition the U.S. government stewardship role” with regard to the IANA Functions and related root zone management. In making its announcement, the NTIA specified that the transition proposal must have broad community support and meet the following principles:

- Support and enhance the multistakeholder model
- Maintain the security, stability, and resiliency of the Internet DNS
- Meet the needs and expectation of the global customers and partners of the IANA services
- Maintain the openness of the Internet.

NTIA also specified that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.

During discussions around the transition process, the community raised the broader topic of the impact of the change on ICANN's accountability given its historical contractual relationship with the United States and NTIA. Accountability in this context is defined, according to the [NETmundial multistakeholder statement](#), as the existence of mechanisms for independent checks and balances as well as for review and redress.

The concerns raised during these discussions around the transition process indicate that the existing ICANN accountability mechanisms do not yet meet stakeholder expectations. Recent statements made by various stakeholders suggest that current accountability mechanisms need to be reviewed and, if need be, improved, amended, replaced, or supplemented with new mechanisms (see for instance ATRT recommendations) in light of the changing historic contractual relationship with the U.S. Government. Considering that the NTIA has stressed that it is expecting community consensus regarding the transition, a failure to meet stakeholder expectations with regards to accountability may create a situation where NTIA does not accept the IANA transition proposal as meeting its conditions. Thus reviewing ICANN's accountability mechanisms was considered to be crucial for the transition process.

### *Goals and Objectives*

The CCWG-Accountability is expected to deliver proposals that would enhance ICANN's accountability towards all stakeholders.

The term stakeholder should be considered for the CCWG-Accountability in its wider acceptance, for instance by relying on the definition provided by the [European Framework for Quality Management \(EFQM\)](#): a person, group or organization that has a direct or indirect stake or interest in the organization because it can either affect the organization or be affected by it. This includes but is not limited to all ICANN SOs and ACs.

The goal is for the transition proposal regarding the IANA functions to be communicated to NTIA in a timeframe which is consistent with the expiration date of the current IANA Functions Contract, which is set at 30th September 2015. The CCWG-Accountability will therefore work as expeditiously as possible to identify those mechanisms that must be in place or committed to before the IANA Stewardship Transition in light of the changing historical contractual relationship with the U.S. Government (Work Stream 1) and those mechanisms for which a timeline for implementation may extend beyond the IANA

## Stewardship Transition (Work Stream 2).

In order to facilitate evaluation and adoption of its proposals, the CCWG-Accountability is expected to provide a detailed description on how its proposals would provide an adequate level of resistance to contingencies (“stress tests”), within the scope of each Work Stream.

Further, Work Stream 1 may identify issues that are important and relevant to the IANA stewardship transition but cannot be addressed within this time frame, in which case, there must be mechanisms or other guarantees that can ensure that the work would be completed in a timely manner as soon as possible after the transition.

## *Scope*

The CCWG-Accountability will investigate accountability mechanisms regarding all of the functions provided by ICANN.

In the discussions around the accountability process, the CCWG-Accountability will proceed with two Work Streams:

- **Work Stream 1:** focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition;
- **Work Stream 2:** focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

The CCWG-Accountability will allocate issues to Work Stream 1 and Work Stream 2. Some issues may span both Work Streams.

Suggested questions to be considered as part of Work Stream 1 include, but are not limited to:

- What would be the impact of NTIA’s transition of the IANA Functions Contract in ensuring ICANN’s accountability and what potential accountability concerns could this cause?
- What enhancements or reforms are required to be implemented or committed to before the NTIA Stewardship Transition?
- If the implementation of enhancements or reforms are to be deferred, how can the community be assured they will be implemented?
- How will these enhancements or reforms be stress-tested?
- What enhancements or reforms must be committed to before the NTIA Stewardship Transition, but could be implemented after.
- How will these enhancements or reforms be stress-tested?
- Suggested questions to be considered as part of Work Stream 2 include, but are not limited to:
- What enhancements or reforms can be addressed after the NTIA Stewardship Transition?
- If there are enhancements or reforms that can be addressed after NTIA disengages, what new or existing processes ensure they will be addressed and implemented?

- How will these enhancement or reforms be stress-tested?
- Suggested questions to be considered as part of both Work Stream 1 and 2 include, but are not limited to:
- What mechanisms are needed to ensure ICANN’s accountability to the multi-stakeholder community once NTIA has disengaged from its stewardship role?
- What enhancements or reforms are needed to ICANN’s existing accountability mechanisms?
- What new accountability reforms or mechanisms are needed?
- If accountability enhancements and reforms are made through changes to ICANN’s Articles of Incorporation or By-Laws, how can the community be assured that those changes will be permanent, or not subject to unilateral amendment by the ICANN Board at a later date?

Other topics within scope of the work of the CCWG-Accountability include, but are not limited to [ATRT2 Recommendation 9, and more specifically 9.2.](#)

**Link with scope of Cross Community Working Group (CWG) to Develop an IANA Stewardship Transition Proposal on Naming Related Functions, and other groups developing the IANA Stewardship Transition proposal:**

This process on Enhancing ICANN Accountability is taking place alongside a parallel and related process on the transition of the stewardship of the IANA functions through the CWG to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (hereinafter CWG-Stewardship). The CWG-Stewardship’s scope is focused on the arrangements required for the continuance of IANA functions in an accountable and widely accepted manner after the expiry of the IANA Functions Contract. Accountability for the administration of the IANA functions (i.e., implementation and operational accountability) is not within the scope of the CCWG-Accountability as it is being dealt with by the CWG-Stewardship. Nevertheless, the two processes are interrelated and interdependent and should appropriately coordinate their work.

Other groups’ (i.e. the numbers and protocol parameters communities, as outlined in the ICG Request for Proposals) proposals are intended to cover accountability issues related to the IANA Stewardship Transition, as well as issues already being considered by RIRs and IETF communities related in their respective areas in their engagement with ICANN. These issues are outside of scope of the CCWG-Accountability. The CCWG-Accountability will communicate with these groups to ensure that the CCWG-Accountability does not cover issues going beyond its scope.

**Section III: Deliverables, Timeframes, and Reporting**

***Deliverables***

In working towards its deliverables, the CCWG-Accountability will, as a first step, establish and adopt a high-level work plan and tentative associated schedule, which should be publicly available. Both work plan and associated schedule, should take into account and be on activities under Work Stream 1 and Work Stream 2, and align the timelines for Work Stream 1 with the CWG-Stewardship and ICG timelines. In addition, the work plan and schedule should include time frames and methods for public

consultation and expected date for submission of Draft Proposal(s) and Final Proposal(s) and revisions thereof for Work Stream 1 and 2, and should establish an expected date for submission of a Board Reports. In those cases where there are incompatibilities, these should be informed to the CWG-Stewardship and/or ICG and discuss ways to address the incompatibilities.

In the course of its work the CCWG-Accountability should update and refine its work plan and schedule regularly, and make the amended work plan and associated schedule publicly available.

The following non-exhaustive list of areas of work shall guide the working group in establishing a work plan. The CCWG-Accountability may add additional tasks at its sole discretion:

- Review of the guidelines given in this charter
- A definition/description of what differentiates a Work Stream 1 issue from a Work Stream 2 issue
- Identify which issues to go into Work Stream 1 and which issue to go into Work Stream 2
- Provide timeline of key dates and target date of proposal(s) for each Work Stream
- Review of existing accountability mechanisms, including a review of their efficiency based on prior work such as ATRT reviews and proposals for changes, enhancements, and additional mechanisms
- Identification of contingencies to be considered in the stress tests
- Analysis of core issues based on the current situation analysis, in relation to the CCWG-Accountability's goal and the IANA Stewardship Transition
- Identification of priorities to focus work on such issues with highest potential to enhance ICANN's accountability
- Review and analyze statements, responses and questions provided by the U.S. Department of Commerce
- Review of possible solutions for each Work Stream including stress tests against identified contingencies. The CCWG-Accountability should consider the following methodology for stress tests
  - Analysis of potential weaknesses and risks
  - Analysis existing remedies and their robustness
  - Definition of additional remedies or modification of existing remedies
  - Description how the proposed solutions would mitigate the risk of contingencies or protect the organization against such contingencies
  - CCWG-Accountability must structure its work to ensure that stress tests can be (i) designed (ii) carried out and (iii) its results being analyzed timely before the transition.

Examples of individual items to be looked at may include:

- Affirmation of Commitments (see <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>)
- Expert Panel (ASEP) as one basis for its discussions
- 2013 Report of the Accountability & Transparency Review Team (see <https://www.icann.org/en/about/aoc-review/atrt/final-recommendations-31dec13->

[en.pdf](#))

- Operation and Viability of current Reconsiderations process
- Operation and Viability of the CEP (cooperative engagement process) within the Independent Review
- Independent Review Process (IRP) criteria
- Possible solutions including
- Input received in relation to solutions as part of earlier public comment periods (see <https://www.icann.org/en/system/files/files/proposed-solutions-25aug14-en.pdf>)
- Input received in CCWG-Accountability comment periods

### ***Reporting***

The co-chairs of the CCWG-Accountability will brief the chartering organizations on a regular basis as well as their representatives on the ICG (particularly in relation to Work Stream 1).

## **Section IV: Membership, Staffing and Organization**

### ***Membership Criteria***

Membership in the CCWG-Accountability, and in sub-working groups should these be created, is open to members appointed by the chartering organizations. To facilitate scheduling meetings and to minimize workloads for individual members, it is highly recommended that individual members participate in only one sub-working group, should sub-working groups be created. Each of the chartering organizations shall appoint a minimum of 2 and a maximum of 5 members to the working group in accordance with their own rules and procedures. Best efforts should be made to ensure that individual members:

- Have sufficient expertise to participate in the applicable subject matter (see for example <https://www.icann.org/resources/pages/enhancing-accountability-faqs-2014-08-22-en#12> for areas identified for expertise);
- Commit to actively participate in the activities of the CCWG-Accountability on an ongoing and long-term basis; and
- Where appropriate, solicit and communicate the views and concerns of individuals in the organization that appoints them.

In appointing their members, the chartering organizations should note that the CCWG-Accountability's decision-making methodologies require that CCWG-Accountability members act by consensus, and that polling will only be used in rare instances and with the recognition that such polls do not constitute votes.

Chartering organizations are encouraged to use open and inclusive processes when selecting their members for this CCWG-Accountability. Best efforts should also be made to ensure that the CCWG-Accountability and any sub-working groups, if created, have representation from each of ICANN's five regions.

In addition, the CCWG-Accountability will be open to any interested person as a participant. Participants may be from a chartering organization, from a stakeholder group not represented in the CCWG-Accountability, or may be self-appointed. Participants will be able to actively participate in and attend all CCWG-Accountability meetings, work groups and sub-work groups. However, should there be a need for a consensus call or decision, such consensus call or decision will be limited to CCWG-Accountability members appointed by the chartering organizations.

All members and participants will be listed on the CCWG-Accountability's Wiki. The mailing list of CCWG-Accountability will be publicly archived. All members and participants in this process are required to submit a Statement of Interest (SOI) following the procedures of their chartering organization or, where that is not applicable the GNSO procedures may be followed or alternatively a statement should be provided which at a minimum should include name, whether the participant is representing a certain organization or company as part of his/her participation in this effort, areas of specific interest in relation to this effort, material relationship with other parties affected by ICANN and primary country of residence.

Volunteer co-chairs appointed by the chartering organizations, should a chartering organization decide to appoint a co-chair to the CCWG-Accountability, will preside over CCWG-Accountability deliberations and ensure that the process is bottom-up, consensus-based and has balanced multistakeholder participation. ICANN is expected to provide day-to-day project administration and secretariat support and, upon request of the CCWG-Accountability co-chairs, professional project facilitators or expert assistance.

In addition to the working relationship between groups developing the IANA Stewardship Transition proposal which is detailed in a subsequent section, the CCWG-Accountability will include a liaison from the ICANN Board, who would be an active member of the CCWG-Accountability, bringing the voice of the Board and Board experience to activities and deliberations. The CCWG-Accountability will also include an ICANN Staff representative to provide input into the deliberations and who is able to participate in this effort in the same way as other members of the CCWG-Accountability. Should there be a need for any consensus call(s), neither the Board liaison nor the Staff representative would participate in such a consensus call.

### ***Group Formation, Dependencies and Dissolution***

Each of the chartering organizations shall appoint members to the CCWG-Accountability in accordance with their own rules and procedures.

### ***Working Relationship With the ICG, the CWG, and Other Groups Developing the IANA Stewardship Transition Proposal***

The co-chairs of the CCWG-Accountability will discuss and determine, along with representatives of the ICG, the CWG-Stewardship, and other groups developing the IANA Stewardship proposal, the most appropriate method of sharing information and communicating progress and outcomes, particularly in relation to Work Stream 1. This could, for example, be done through regular Chairs calls. In particular, the co-chairs will agree the method by which the final Work Stream 1 deliverable of the CCWG-

Accountability, the “Enhanced ICANN Accountability Related to the IANA Stewardship Transition Proposal” will be provided from the CCWG-Accountability to the ICG and CWG-Stewardship. The delivery of this Work Stream 1 Proposal is expected to occur following approval of the ICANN Board as outlined in Section V of this charter (see also <https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d>).

### *Expert Advisors*

In addition to input from the community, the CCWG-Accountability is expected to solicit and consider the input from the up to seven Advisors selected by the [Public Experts Group \(PEG\)](#) to provide independent advice, research and identify best practices, at an early stage of its deliberations. In addition to input that is specifically solicited by the CCWG-Accountability, the CCWG-Accountability is also expected to give due consideration to any additional advice or input that the Advisors provide as part of the CCWG-Accountability deliberations. The Advisors are expected to contribute to the dialogue similar to other CCWG-Accountability participants. However, should there be a need for any consensus call(s), the Advisors would not participate in such a call.

In addition to the advisors selected by the PEG, the CCWG-Accountability may also identify additional advisors or experts to contribute to its deliberations in a similar manner as the Advisors selected by the PEG. Should additional costs be involved in obtaining input from additional advisors or experts, prior approval must be obtained from ICANN. Such a request for approval should at a minimum include the rationale for selecting additional advisors or experts as well as expected costs.

The CCWG-Accountability should integrate one Accountability and Transparency Review Team (ATRT) past participant to bring perspective and avoid duplication of work. Should there be a need for any consensus call(s), the ATRT Expert would not participate in such a consensus call (unless the ATRT Expert is also selected as a member by one of the chartering organizations).

### *Staffing and Resources*

The ICANN Staff assigned to the CCWG-Accountability will fully support the work of the CCWG-Accountability as requested by the co-chairs, including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate by the CCWG-Accountability. ICANN will provide access to relevant experts and professional facilitators as requested by the CCWG-Accountability Chairs. ICANN staff, in a coordinated effort with the CCWG-Accountability, will also ensure that there is adequate outreach to ensure that the global multistakeholder community is aware of and encouraged to participate in the work of the CCWG-Accountability.

Staff assignments to the Working Group: ICANN will provide sufficient staff support to support the activities of the CCWG-Accountability.

The CCWG-Accountability is encouraged to identify any additional resources beyond the staff assigned to the group it may need at the earliest opportunity to ensure that such resources can be identified and planned for.

## Section V: Rules of Engagement

### *DECISION-MAKING METHODOLOGIES*

In developing its Proposal(s), work plan and any other reports, the CCWG-Accountability shall seek to act by consensus. Consensus calls should always make best efforts to involve all members (the CCWG-Accountability or sub-working group). The Chair(s) shall be responsible for designating each position as having one of the following designations:

- a) Full Consensus - a position where no minority disagrees; identified by an absence of objection
- b) Consensus – a position where a small minority disagrees, but most agree

In the absence of Full Consensus, the Chair(s) should allow for the submission of minority viewpoint(s) and these, along with the consensus view, shall be included in the report.

In a rare case, the chair(s) may decide that the use of a poll is reasonable to assess the level of support for a recommendation. However, care should be taken in using polls that they do not become votes, as there are often disagreements about the meanings of the poll questions or of the poll results.

Any member who disagrees with the consensus-level designation made by the Chair(s), or believes that his/her contributions are being systematically ignored or discounted should first discuss the circumstances with the relevant sub-group chair or the CCWG-Accountability co-chairs. In the event that the matter cannot be resolved satisfactorily, the group member should request an opportunity to discuss the situation with the Chairs of the chartering organizations or their designated representatives.

#### **SO and AC support for the Draft Proposal(s)**

Following submission of the Draft Proposal(s), each of the chartering organizations shall, in accordance with their own rules and procedures, review and discuss the Draft Proposal(s) and decide whether to adopt the recommendations contained in it. The chairs of the chartering organizations shall notify the co-chairs of the WG of the result of the deliberations as soon as feasible.

#### **Supplemental Draft Proposal**

In the event that one or more of the participating SO's or AC's do(es) not adopt one or more of the recommendation(s) contained in the Draft Proposal(s), the Co-Chairs of the CCWG-Accountability shall be notified accordingly. This notification shall include at a minimum the reasons for the lack of support and a suggested alternative that would be acceptable, if any. The CCWG-Accountability may, at its discretion, reconsider, post for public comments and/or submit to the chartering organizations a Supplemental Draft Proposal, which takes into accounting the concerns raised.

Following submission of the Supplemental Draft Proposal, the chartering organizations shall discuss and decide in accordance with its own rules and procedures whether to adopt the recommendations contained in the Supplemental Draft Proposal. The Chairs of the chartering organizations shall notify the Co-Chairs of the CCWG-Accountability of

the result of the deliberations as soon as feasible.

### **Submission Board Report**

After receiving the notifications from all chartering organizations as described above, the Co-Chairs of the CCWG-Accountability shall, within 10 working days after receiving the last notification, submit to the Chair of the ICANN Board of Directors and Chairs of all the chartering organizations the CCWG-Accountability Board Report, which shall include at a minimum:

- a) The (Supplemental) Proposal as adopted by the CCWG-Accountability; and
- b) The notifications of the decisions from the chartering organizations
- c) Documentation of the process that was followed, including, but not limited to documenting the process of building consensus within the CCWG-Accountability and public consultations.

In the event one or more of the chartering organizations do(es) not support (parts of) the (Supplemental) Proposal(s), the Board Report shall also clearly indicate the part(s) of the (Supplemental) Final Proposal(s) which are fully supported and the parts which not, and which of the chartering organizations dissents, to the extent this is feasible.

Board consideration and interaction with CCWG-Accountability and chartering organizations

It is assumed that after submission of the Board Report, the ICANN Board of Directors will consider the Proposal(s) contained in this Report in accordance with the process outlined in its resolution of 16 October 2014 (see <https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d>):

*Resolved (2014.10.16.17), the Board commits to following the following principles when considering the Cross Community Working Group Recommendations on Enhancing ICANN Accountability and Governance:*

- 1. These principles apply to consensus-based recommendations from the Cross Community Working Group on Enhancing ICANN Accountability and Governance.*
- 2. If the Board believes it is not in the global public interest to implement a recommendation from the Cross Community Working Group on Enhancing ICANN Accountability and Governance (CCWG Recommendation), it must initiate a dialogue with the CCWG. A determination that it is not in the global public interest to implement a CCWG Recommendation requires a 2/3 majority of the Board.*
- 3. The Board must provide detailed rationale to accompany the initiation of dialogue. The Board shall agree with the CCWG the method (e.g., by teleconference, email or otherwise) by which the dialogue will occur. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.*
- 4. The CCWG will have an opportunity to address the Board's concerns and report back to the Board on further deliberations regarding the Board's concerns. The CCWG shall discuss the Board's concerns within 30 days of the Board's initiation of the dialogue.*
- 5. If a recommendation is modified through the CCWG, it is returned back to the Board for further consideration. The CCWG is to provide detailed rationale on*

*how the modification addresses the concerns raised by the Board.*

6. *If, after modification, the Board still believes the CCWG Recommendation is not in the global public interest to implement the CCWG Recommendation, the Board may send the item back to the CCWG for further consideration, again requiring a 2/3 vote of the Board for that action. Detailed rationale for the Board's action is again required. In the event the Board determines not to accept a modification, then the Board shall not be entitled to set a solution on the issue addressed by the recommendation until such time as CCWG and the Board reach agreement.*

Before submitting a modified recommendation to the ICANN Board of Directors, as envisioned under 5. of the Board resolution, the CCWG-Accountability will submit a Draft Supplemental Board Report to the chartering organizations containing:

- a) The modified recommendations, and associated detailed rationale,
- b) The Board decision, and associated detailed rationale
- c) The recommendation as contained in the Board Report

Following submission of the Draft Supplemental Board Report, the chartering organizations shall discuss and decide in accordance with their own rules and procedures whether to adopt the modified recommendations contained in the report. The Chairs of the chartering organizations shall notify the co-chairs of the CCWG-Accountability of the result of the deliberations as soon as feasible.

After receiving the notifications from all chartering organizations, the co-Chairs of the CCWG-Accountability shall, within 10 working days after receiving the last notification, submit to the Chair of the ICANN Board of Directors and Chairs of all the chartering organizations the CCWG-Accountability Supplemental Board Report, which shall include at a minimum:

- a) The modified recommendations, and associated detailed rationale.
- b) The notifications of the decisions from the chartering organizations.
- c) Documentation of the process that was followed, including, but not limited to documenting the process of building consensus within the CCWG-Accountability and consultations with the chartering organizations.

If, in accordance with 6., the Board determines not to accept a modified recommendation, the CCWG-Accountability shall follow the procedure regarding the Supplemental Board Report, as just described, to reach agreement with the Board.

## ***MODIFICATION OF THE CHARTER***

In the event this charter does not provide guidance and/or the impact of the charter is unreasonable for conducting the business of the CCWG-Accountability, the co-chairs have the authority to determine the proper actions. Such action may, for example, consist of a modification to the Charter in order to address the omission or its unreasonable impact, in which case the Co-Chairs may propose such modification to the chartering organizations. A modification shall only be effective after adoption of the amended Charter by all chartering organizations, in accordance with their own rules and procedures.

### ***PROBLEM/ISSUE ESCALATION & RESOLUTION PROCESSES***

All participants are expected to abide by the [ICANN Expected Standards of Behavior](#).

The co-chairs are empowered to restrict the participation of someone who seriously disrupts the working group. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place; in extreme circumstances, this requirement may be bypassed. This restriction is subject to the right of appeal as outlined above.

In the event that no consensus is reached by the CCWG-Accountability, the co-chairs of the CCWG-Accountability will submit a Report to the chartering organizations. In this Report the co-chairs shall document the issues that are considered contentious, the process that was followed and will include suggestions to mitigate prevention of consensus. If, after implementation of the mitigating measures consensus can still not be reached, co-chairs shall prepare a Final Report documenting the processes followed, including requesting suggestions for mitigating the issues that are preventing consensus from the chartering organizations. The Final Report will be submitted to the ICANN Board and the chartering organizations requesting closure of the CCWG-Accountability by the chartering organizations.

### ***CLOSURE & WORKING GROUP SELF-ASSESSMENT***

The CCWG-Accountability will consult with their chartering organizations to determine when it can consider its work completed. The CCWG-Accountability and any sub-working groups shall be dissolved upon receipt of the notification of the Chairs of the chartering organizations or their designated representatives.

# Appendix C – Background & Methodology

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This section includes an overview of the Enhancing ICANN Accountability process, and its foundation in the IANA Stewardship Transition.

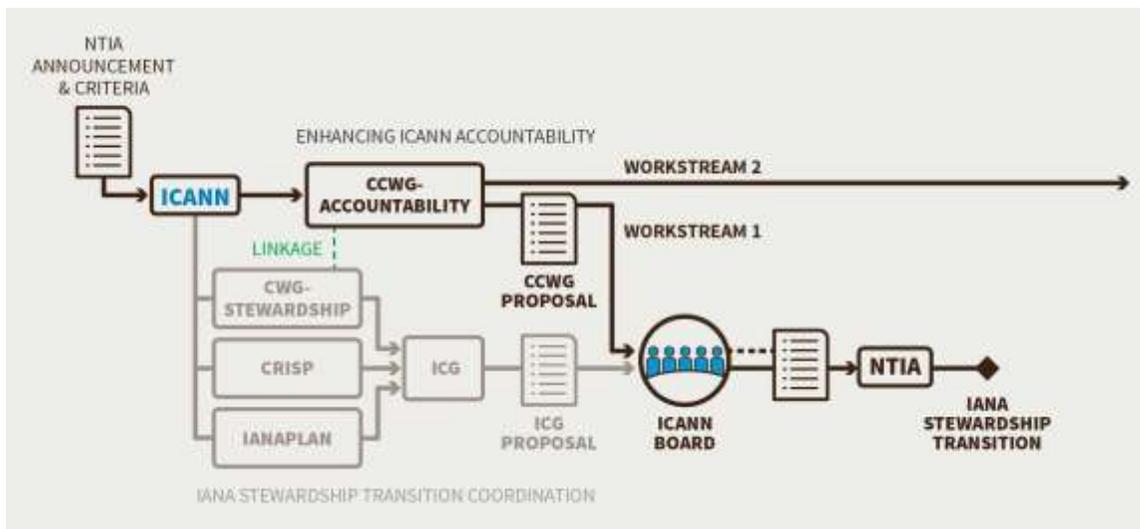
## Background On The IANA Stewardship Transition

- 1 On 14 March 2014 the National Telecommunications and Information Administration (NTIA) announced its intent to transition its stewardship of the Internet Assigned Numbers Authority (IANA) functions and related root zone management to the global multistakeholder community. NTIA asked ICANN to convene a multistakeholder process to develop a proposal for the transition.
- 2 In making its announcement, NTIA specified that the transition proposal must have broad community support and meet the following principles:
  - Support and enhance the multistakeholder model;
  - Maintain the security, stability, and resiliency of the Internet DNS;
  - Meet the needs and expectation of the global customers and partners of the IANA services;
  - Maintain the openness of the Internet.
- 3 NTIA also specified that it would not accept a proposal that replaces the NTIA role with a government-led or an intergovernmental organization solution.
- 4 The IANA Stewardship Transition Coordination Group (ICG) was formed in July 2014 to assemble and deliver through the ICANN Board to NTIA a transition proposal consistent with the key principles outlined in the NTIA announcement. The ICG is made up of 30 individuals representing 13 communities of both direct and indirect stakeholders of the IANA functions. Direct stakeholders are "direct customers" of the IANA functions, e.g. top-level domain registry operators, while indirect stakeholders are all those who benefit from performance of the IANA functions, e.g., businesses and end users.
- 5 In September 2014, the ICG published a Request for Proposals to the three communities. The three operational communities with direct operational or service relationships with the IANA functions i.e. Domain Names, Number Resources and Protocol Parameters were asked to provide a formal response to the ICG regarding its community's use of the IANA functions, its existing, pre-transition arrangements, proposed post-transition oversight and accountability arrangements, and any anticipated transition implications.
- 6 Each of the three operational communities formed working groups to develop a proposal:
  - **Domain Names:** Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG-Stewardship)
  - **Number Resources:** Consolidated Regional Internet Registries IANA Stewardship Proposal Team (CRISP Team); and

- **Protocol Parameters:** IANAPLAN Working Group (IANAPLAN WG)
- 7 In January 2015, the ICG received a proposal from the Protocol Parameters community and a proposal from the Numbering Resources community; the Domain Names community finalized its proposal for the ICG in June 2015.
  - 8 Following submissions from the three communities, the ICG assessed the respective outputs and assembling a complete proposal for the transition. Following a 30-day public comment period that ended on September 8 2015, the ICG received more than 150 comments from a wide variety of stakeholders all over the world. The majority of the comments expressed support for the proposal. In some cases that support was qualified by suggestions, questions, and criticism that the ICG is working hard to synthesize and address as appropriate.
  - 9 Following discussions at ICANN54 in Dublin in October 2015, the ICG announced that it finalized the IANA Stewardship Transition Proposal, with one exception of the conditionality between the CWG-Stewardship portion of the proposal and the ICANN-level accountability mechanisms currently under development in the CCWG-Accountability. Before sending this proposal to the NTIA via the ICANN Board, the ICG will secure confirmation from the CWG-Stewardship that its accountability requirements have been met.

## Introduction To The Enhancing ICANN Accountability Process

- 10 As initial discussions of the IANA Stewardship Transition were taking place, the ICANN community raised the broader topic of the impact of the transition on ICANN's current accountability mechanisms. From this dialogue, the Enhancing ICANN Accountability process was developed to propose reforms that would see ICANN realize a level of accountability to the global multistakeholder community that is satisfactory in the absence of its historical contractual relationship with the U.S. Government. This contractual relationship has been perceived as a backstop with regard to ICANN's organization-wide accountability since 1998.
- 11 Informed by community discussions held in March 2014 at ICANN's public meeting in Singapore, ICANN published a proposed process on Enhancing ICANN Accountability, with an opportunity for public dialogue and community feedback from 6 May – 27 June 2014, in addition to the comments received during the dedicated Enhancing ICANN Accountability session held on 26 June 2014 at the ICANN 50 meeting in London. The comments related to the development of the process were considered in the refinement of the second iteration of the process published on 14 August 2014. In response to community requests for additional time to review proposals and post questions and comments, ICANN provided an additional 21-day comment period from 6-27 September 2014.
- 12 The final Revised Enhancing ICANN Accountability: Process and Next Steps includes considering how ICANN's broader accountability mechanisms should be strengthened in light of the transition, including a review of existing accountability mechanisms such as those within the ICANN Bylaws and the Affirmation of Commitments.



## Formation of the CCWG-Accountability

- 13 Following public comment periods and discussions on accountability, the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) was convened, designed and approved by a Drafting Team composed of five ICANN community groups. Further information, including document drafts and meeting transcripts of the Drafting Team that developed the CCWG-Accountability Charter (see Appendix B), is available on the CCWG-Accountability Wiki site.
- 14 The CCWG-Accountability Charter was circulated for adoption on 3 November. Since then, the following organizations have adopted the Charter:
  - Generic Names Supporting Organization (GNSO) on 13 November 2014
  - At-Large Advisory Committee (ALAC) on 18 November 2014
  - Country Code Names Supporting Organization (ccNSO) on 20 November 2014
  - Governmental Advisory Committee (GAC) on 8 December 2014
  - Address Supporting Organization (ASO) on 9 December 2014
  - Security and Stability Advisory Committee (SSAC) on 6 July 2015

## Composition of the CCWG-Accountability

The CCWG-Accountability consists of 201 people, organized as 28 members, appointed by and accountable to the CCWG-Accountability chartering organizations, 173 participants, who participate as individuals, and 109 mailing list observers. Each of the Chartering Organizations may appoint a minimum of 2 and a maximum of 5 members to the working group in accordance with their own rules and procedures.

15 **THE CCWG-ACCOUNTABILITY ALSO INCLUDES:**

- 1 ICANN Board liaison who brings the voice of the Board and Board experience to activities and deliberations;
  - 1 ICANN staff representative who provides input into the deliberations;
  - 1 former ATRT member who serves as a liaison and brings perspective and ensures that there is no duplication of work;
  - ICG members who participate in the CCWG-Accountability, including 2 who serve as liaisons between the two groups.
- 16 Seven Advisors have also been appointed by a Public Experts Group (PEG) to contribute research and advice, and to bring perspectives on global best practices to enrich the CCWG-Accountability discussion, all while engaging with a broader network of accountability experts from around the world.
- 17 The CCWG-Accountability is open to all: anyone interested in the work of the CCWG-Accountability can join as a participant or observer. Participants may be from a chartering organization, from a stakeholder group or organization not represented in the CCWG-Accountability or currently active within ICANN, or self-appointed. For those who are merely interested to monitor the CCWG-Accountability conversations, there is the possibility to sign up as a mailing list "observer" which offers read-only access to the mailing list.
- 18 The group first met in December 2014 and has held weekly meetings since. It operates in a transparent environment: its mailing-lists discussions, meeting archives, drafts and correspondence are documented on a [public wiki space](#).

19 **Work Streams**

- 20 Per the CCWG-Accountability Charter, the work of the CCWG-Accountability would proceed in two Work Streams defined as follows:
- **Work Stream 1:** focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition
  - **Work Stream 2:** focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition

## Methodology

- 21 This section describes the methodology through which the CCWG-Accountability developed and completed the Work Stream 1 proposal.

22 **Defining Requirements for Work Stream 1**

- 23 The primary goal of the CCWG-Accountability is to deliver proposals that would enhance ICANN's accountability towards all stakeholders. The first step in achieving this goal was to understand and describe the status quo. To do this efficiently, the CCWG-Accountability established four initial Work Areas:

- **Work Area 1:** Existing Accountability Mechanisms (including the Affirmation of Commitments reviews on accountability)
- **Work Area 2:** Review Input from Public Comment and Categorize Items into Work Streams 1 & 2 (Work Stream 1 & Work Stream 2)
- **Work Area 3:** Review Issues Identified by CWG-Stewardship
- **Work Area 4:** Identify Contingencies (especially in relation to Work Stream 1)

24 The four areas were populated with volunteer CCWG-Accountability members and participants who had dedicated mailing lists and wiki spaces to advance their work.

### 25 **Work Area 1: Inventory of Existing Accountability Mechanisms**

26 One of the first deliverables within the CCWG-Accountability was an inventory of existing accountability mechanisms on 15 December 2014, delivered just one week after the CCWG-Accountability first met. The inventory was the starting point of CCWG-Accountability's discussions, about which ICANN accountability mechanisms should be enhanced to address the risks the group had identified, and where gaps would remain and the group would need to develop new mechanisms to mitigate against those risks.

### 27 **Work Area 2: Assessment of Comments to Date**

28 Another area of initial CCWG-Accountability work focused on a review of the collection of comments received during the development of the Enhancing ICANN Accountability process and assessed whether they were issues to address as part of Work Stream 1 or Work Stream 2. The group categorized the comments based on the following rationale:

- Work Stream 1 is designated for accountability enhancement mechanisms that must be in place or committed to, before IANA transition occurs.
- Work Stream 1 mechanisms are those that, when in place or committed to, would provide the community with confidence that any accountability mechanism that would further enhance ICANN's accountability would be implemented if it had consensus support from the community, even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity.
- All other consensus items could be in Work Stream 2, provided the mechanisms in Work Stream 1 are adequate to force implementation of Work Stream 2 items despite resistance from ICANN management and Board.

29 In addition to categorizing the comments, the ATRT Expert reviewed the comments and noted, where relevant, a reference to ATRT recommendations. Work Area 2 was complete as of 15 January 2015.

### 30 **Work Area 3: Interrelation with the CWG-Stewardship Work**

31 The CCWG-Accountability also reviewed the accountability elements identified by the CWG-Stewardship. In light of the clear linkage between the works of the two groups, the CWG-Stewardship and CCWG-Accountability Co-Chairs agreed that it would be valuable for the CWG-Stewardship to provide the CCWG-Accountability with a list of issues it identified during its

deliberations where the work of both groups may overlap. A robust collaboration was built between the two groups including leadership coordination call and exchange of letters.

32 In January 2015, the CCWG-Accountability extensively discussed the CWG-Stewardship list of issues, offered input and indicated that these avenues of work would be one of the focuses of CCWG-Accountability attention.

33 While the work was completed in March 2015, the collaboration was maintained throughout the end of their respective mandates.

#### 34 **Work Area 4: Stress Test and Contingencies Work Party**

35 A final area of focus was on the identification the main stress tests and contingencies that the CCWG-Accountability would use to test the proposed mechanisms and solutions, once elaborated.

36 The goal of this group was to identify the main contingencies that CCWG-Accountability should use to test proposed mechanisms and solutions once they are elaborated. The group defined contingencies as consisting of:

- An event (threat) to the IANA Functions Contract;
- Its consequence, such as creating significant interference with existing policy or the policy development processes; and
- What contingency plan, if any, is known to exist.

37 21 broad scenarios were initially identified, including for example, the impact of financial crisis in the domain name industry, capture by one or more stakeholders, and termination of the Affirmation of Commitments. A full list is available from the Work Area 4 webpage.

38 The group also received inputs from the ICANN Board Risk Committee on enterprise-wide risks identified within ICANN, as an input to its work. Furthermore, details of strategic risks that ICANN may face are identified in "ICANN Strategic Plan for fiscal years 2016-2020".

39 This work continues through the **Stress Tests Work Party (ST-WP)**: During the Istanbul Meeting of the CCWG, bundled the stress testing into 5 Categories (Financial Crisis or Insolvency, Failure to meet Operational Obligations, Legal / Legislative Actions, Failure in Accountability and Failure in Accountability to External Stakeholders) ; Post Istanbul, the ST-WP continued with regular review of the existing Stress Tests and continued with its identification of stress tests and their application. In reviewing the first public comment, there were an additional nine stress tests identified and included in the 2nd draft for public comment. Section 10 of this proposal details the 'to date' and ongoing work of the Stress Test Work Party.

#### 40 **Restructuring into Work Parties**

41 The Frankfurt face-to-face meeting on 19-20 January 2015 was a key turning point for the CCWG-Accountability: the group moved from an assessment phase into a development phase. As part of this development phase, the CCWG-Accountability mapped out Work Stream 1 requirements leading to a restructure of the group into Work Parties.

42 Work Party 1 and Work Party 2 were formed following the Frankfurt meeting in January 2015:

- Work Party 1: Community Empowerment (WP1) was formed to consider proposed is considering powers for the community to hold ICANN to account, and to develop a consensus on the most appropriate mechanisms to allow the community to exercise these

powers. WP1 will set out the necessary changes that would be required (e.g. Bylaws changes) to deliver these. Powers and mechanisms were defined as follows:

- Powers are actions the community should be able to take to maintain and improve ICANN's accountability;
  - Mechanisms are the structures or processes by which the community exercises its powers.
- Work Party 2: Review and Redress (WP2) was tasked with considering enhancements to existing accountability mechanisms and the creation of new accountability mechanisms to allow for review and redress for those affected by ICANN's failure to carry out its mission statement, and to hold ICANN accountable for carrying out its mission in compliance with agreed-upon standards. Work Party 2 articulated the following principles to guide its work:
    - Ensure that ICANN actions relate to issues that are within its stated mission and require ICANN to act consistent with clearly articulated principles;
    - Ensure that the ICANN Board can be held to its Bylaws;
    - Ensure that ICANN carries out its mission consistent with a binding statement of values/principles;
    - Prevent scope/mission creep through bylaws changes, policy, policy implementation, contracts and/or other mechanisms.
- 43 Work Party 3 Emerging Issues (WP3) was formed in July 2015 and tasked with reviewing the feedback received in the first public comment period (May-June 2015) with regards to issues flagged by the community as not being already addressed by the discussions and the draft proposal published by the CCWG-Accountability. Three topics were identified as emerging from feedback after the first public comment period:
- Enhancement of SO/AC accountability as the first draft document was perceived to be centered in Board accountability only.
  - Enhancement of Staff accountability so that the mechanisms being discussed might also be applicable to Staff's action or inaction.
  - Enhancement of diversity within ICANN and especially with regards to that of the newly created bodies being proposed.
- 44 Work Party 4 Human Rights (WP4) was created in August 2015 following extensive discussions within the CCWG-Accountability on inclusion of a potential Human Rights commitment into ICANN's Mission and Bylaws.
- 45 Work Party – IRP Implementation Oversight Team (WP-IOT) began its activities in January 2016. The Team responsible for reviewing the outcome produced by the legal counsel on IRP and to report back to the CCWG-Accountability. Its activities will be maintained as the group moves to Work Stream 2. It is composed of CCWG-Accountability experts in the field as well as representatives from the CCWG-Accountability's legal counsel and ICANN.
- 46 In addition, a Stress Test 18 Work Party (ST18-WP) was convened in November 2015 to draft consensus text on a proposed Bylaw to address Stress Test 18 (regarding the ICANN Board's consideration of advice from the Government Advisory Committee (GAC)). See Annex 11 – Board Obligations with regards to Governmental Advisory Committee Advice (Stress Test 18) for more information.

47 All Work Parties operated in a transparent environment, conducting their work on publicly archived mailing lists, on recorded calls and documenting progress and drafts on a [public wiki](#). Conclusions reached by Work Parties were confirmed by the full CCWG-Accountability.

## 48 **Building Blocks**

49 In February 2015, the CCWG-Accountability identified four building blocks that would form the accountability mechanisms required to improve accountability.

### 50 **Drawing a state analogy:**

- Empowered community refers to the powers that allow the community i.e. the people to take action should ICANN breach the principles.
- Principles form the Mission, Commitments and Core Values of the organization i.e. the Constitution.
- ICANN Board represents the executive entity the community may act against, as appropriate.
- Independent Review Mechanisms, i.e. the judiciary, confers the power to review and provide redress, as needed.

51 The accountability framework was compared to a cookbook populated with recipes for which the CCWG-Accountability would need to identify ingredients. A distinction was made between triggered actions i.e. triggered by the community and non-triggered i.e. part of a normal ICANN processes. The CCWG-Accountability developed a set of criteria to frame discussions.

52 From its building blocks, the CCWG-Accountability defined requirements that it established as a roadmap to follow during its discussions. The 12 recommendations embody the requirements.

## **Legal Advice**

53 The CCWG-Accountability engaged two law firms to receive expertise on feasibility of its proposed frameworks and mechanisms, Adler & Colvin and Sidley Austin LLP. The legal advice was key to the CCWG-Accountability in formulating its recommendations.

54 The CCWG-Accountability Legal Subteam's rules of engagement and working methodologies are described in Appendix C.

55 After a successful first phase lead by the Legal Subteam, and in response to the need for increased agility in the interaction between the external lawyers and the working parties, it was decided that the Legal Subteam should be dissolved in order to provide a more agile and direct interaction with the independent counsel. Rules of engagement changed: the Co-Chairs are in charge of certifying the assignments for the lawyers, but the rest of the general procedural rules stand and all interactions with counsel continue to be recorded on the [public wiki](#).

## **Definitions & Scoping**

56 The CCWG-Accountability scoped out and elaborated a problem statement along with definitions to help refine its understanding of the task it was entrusted with. The group endeavored to produce a definition of what accountability is, listed transparency, consultation, review mechanisms and redress mechanisms as criteria of accountability mechanisms.

- 57 As a general concept, the group proposed that accountability encompassed processes whereby an actor answers to others for the effects on them of its actions and omissions. For the CCWG-Accountability, then, accountability involves the processes whereby ICANN answers to its stakeholders for the impacts on those stakeholders of ICANN's decisions, policies and programs.
- 58 The group proposed that accountability is comprised four dimensions:
- 1) **Transparency** means that an actor (ICANN) is answerable to its stakeholders by being open and visible to them.
  - 2) **Consultation** means that the actor (ICANN) continually takes input from and explains its positions to the stakeholders.
  - 3) **Review** means that the actor's actions, policies and programs are subject to outside monitoring and evaluation.
  - 4) **Redress** means that the accountable actor makes compensations for any harms of its actions and omissions, for example, by means of policy changes, institutional reforms, resignations, financial reparations, etc.
- 59 Independence and checks and balances were identified as two key qualities of any accountability mechanism. The group defined "checks and balances mechanisms" as a series of mechanisms put in place to adequately address the concerns from the various interested parties in the discussion and decision process, as well as to ensure that the decision is made in the interest of all stakeholders. The group investigated two different non-exclusive views in order to assess independence: independence of persons participating in the decision process, and independence of a specific accountability mechanism with regards to other mechanisms.
- 60 The group flagged to whom should ICANN be accountable as an important component, and assembled a list of stakeholders which distinguished between affected parties and parties affecting ICANN. The following principles were agreed to guide the activities of the CCWG-Accountability:
- ICANN accountability requires that it comply with its own rules and processes (part of "due process", as a quality of fairness and justice);
  - ICANN accountability requires compliance with applicable legislation, in jurisdictions where it operates;
  - ICANN should be accountable to achieving certain levels of performance as well as security;
  - ICANN should be accountable to ensure that its decisions are for the benefit of the public, not just in the interests of a particular set of stakeholders or ICANN the organization.

# Appendix D – Engagement and Participation Summaries: Documenting Public Consultations

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- 1 Throughout the development of its Work Stream 1 Recommendations, the CCWG-Accountability has sought feedback, confirmations and input from the Internet’s global multistakeholder community. The channels through which consultation was conducted include (but are not limited to):
  - Organizing and providing engagement sessions at ICANN meetings
  - Relaying regular updates to Supporting Organizations and Advisory Committees through membership representation
  - Holding multi-lingual webinars
  - Posting versions of the Work Stream 1 Recommendations for public comment (described in more depth below)
- 2 This outreach plan was carefully developed to ensure that the work to enhance ICANN’s accountability was being adequately considered by the entire ICANN community. In addition, the CCWG-Accountability posted blogs, communiqués and multilingual videos to document its progress and establish resources for further engagement.
- 3 The CCWG-Accountability organized two public comment periods that were key in defining and refining its Work Stream 1 recommendations:
  - **First Public Comment Period (4 May-12 June 2015)**

The CCWG-Accountability requested community feedback on its Initial Draft Proposal for Public Comment of the enhancements to ICANN’s accountability it had identified as essential or necessary to take place or be committed to before the IANA Stewardship Transition to help improve its proposal and inform next steps. A set of [focused questions](#) were provided to help guide the feedback the CCWG-Accountability would need for next steps.

    - Contributions received in response to this call for input can be read [here](#).
    - A staff summary of the comments received can be found [here](#).
  - **Second Public Comment Period (3 August-12 September 2015)**

Similar to the first Public Comment Period, the second call for input was released to seek confirmation of the CCWG-Accountability’s Work Stream 1 Recommendations and identify levels of support and any outstanding concerns with the mechanisms developed. Framing questions and a summary of changes between the first and second reports were provided to facilitate community’s reading of the report.

    - Contributions received in response to this call for input can be read [here](#).
    - Work Party and staff summaries of this second call for input can be read [here](#).

- **Third Public Comment Period (30 November-21 December 2015)**

The CCWG-Accountability sought the six Chartering Organizations' support for their Work Stream 1 recommendations in this Draft Proposal. Although relaying comments through a Chartering Organization was the recommended approach, individuals were also welcome to submit comments separately. A survey was issued to frame the input received and established the level of support for each recommendation. Comments and suggestions were also encouraged. Similar to the Second Public Comment, summaries of changes between the first and second reports were provided to facilitate community's reading of the report.

- Contributions received in response to this call for input can be read [here](#).
- Work Party and staff summaries of this third call for input can be read [here](#).

Following the release of the [staff report](#) and the [summary of public comments](#), the CCWG-Accountability determined that the majority of revisions needed to the Third Draft Report would relate to specificities of implementation rather than content. As such, the group determined that an additional public comment period would not be necessary before approval by the Chartering Organizations.

To incorporate necessary changes, the CCWG-Accountability developed a "Supplemental" Final Report, developed through an open and transparent process. This Supplemental Final Report was distributed on 23 February 2016, and is to be considered by the six Chartering Organizations for approval and submission to the ICANN Board.

## Appendix D -- Engagement and Participation Statistics: Summary

Statistics as of 9 February 2016

### CCWG-Accountability

<b>Members/Participants:</b>	<b>200</b>
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	In Attendance	Hours	Total Working Hours
Meeting #1	51	1.75	89.25
Meeting #2	27	2	54
Meeting #3	34	2	68
Meeting #4	42	1.75	73.5
Meeting #5	63	2	126
Meeting #6	35	2	70
Meeting #7 Session 1	41	2	82
Meeting #7 Session 2	48	2	96
Meeting #7 Session 3	47	1.5	70.5
Meeting #7 Session 4	44	1.75	77
Meeting #8 Session 1	39	2	78
Meeting #8 Session 2	48	2	96
Meeting #8 Session 3	48	1	48
Meeting #8 Session 4	48	1	48
Meeting #9	40	1.75	70
Meeting #10	42	1.25	52.5
Meeting #11 (ICANN 52)	35	3	105
Meeting #12 (ICANN 52)	45	3	135
Meeting #13	37	2	74
WP1 Meeting #1	16	1.25	20
Meeting #14	39	2	78
WP1 Meeting #2	20	1.5	30
WP2 Meeting #1	14	1	14
WP2 Meeting #2	17	1	17
Meeting #15	44	2	88
WP1 Meeting #3	24	1.5	36
WP2 Meeting #3	18	1	18
Meeting #16	37	2	74
Legal SubTeam Meeting #2	13	1.5	19.5
Stress Tests SubTeam Meeting #1	13	1.25	16.25
WP1 Meeting #4	20	1.5	30
Legal SubTeam Meeting #3	8	0.5	4
Legal SubTeam Meeting #4	9	0.75	6.75
Meeting #17	43	2	86
Stress Tests SubTeam Meeting #2	7	1.75	12.25
Legal SubTeam Meeting #5	9	0.5	4.5

WP1 Meeting #5	23	1.5	34.5
Legal SubTeam Meeting #6	6	1	6
F2F Istanbul - Day 1 Session 1	45	1.5	67.5
F2F Istanbul - Day 1 Session 2	50	2	100
F2F Istanbul - Day 1 Session 3	57	2	114
F2F Istanbul - Day 1 Session 4	57	1.5	85.5
F2F Istanbul - Day 2 Session 1	47	2	94
F2F Istanbul - Day 2 Session 2	49	1.75	85.75
F2F Istanbul - Day 2 Session 3	57	2	114
F2F Istanbul - Day 2 Session 4	50	2	100
WP2 Meeting #4	20	1.5	30
Legal SubTeam Meeting #7	10	1	10
Meeting #20	40	2	80
Legal SubTeam Meeting #8	27	1	27
WP1 Meeting #6	15	1.25	18.75
Legal SubTeam Meeting #9	16	0.75	12
Meeting #21	47	1	47
Stress Tests SubTeam Meeting #3	11	1	11
Legal SubTeam Meeting #10	27	2.5	67.5
WP1 Meeting #7	29	1.5	43.5
WP1 Meeting #8	16	1.75	28
WP1 Meeting #9	26	0.75	19.5
Meeting #22	55	2	110
Stress Tests SubTeam Meeting #4	9	1	9
Legal SubTeam Meeting #11	21	1.75	36.75
WP1 Meeting #10	25	2	50
WP1 Meeting #11	20	2	40
Meeting #23	58	2	116
Legal SubTeam Meeting #12	18	2	36
Legal SubTeam Meeting #13	22	1	22
Meeting #24 (Intensive Work Days)	35	2	70
Meeting #25 (Intensive Work Days)	42	1	42
Meeting #26 (Intensive Work Days)	43	3	129
Meeting #27 (Intensive Work Days)	39	2	78
Meeting #28 (Intensive Work Days)	45	1	45
Meeting #29 (Intensive Work Days)	45	3	135
Meeting #30	37	2	74
Stress Tests SubTeam Meeting #5	26	2	52
Meeting #31	29	2	58
Meeting #32	40	2	80
Meeting with the Board	56	1.5	84
Meeting #33	28	2	56
Meeting #34	40	2	80
Meeting #35	39	2	78
Meeting #36	35	3	105
Meeting #37	32	1	32

Leadership and Lawyers #1	4	1	4
Stress Tests SubTeam Meeting #6	6	1.5	9
Stress Tests SubTeam Meeting #7	5	1.5	7.5
WP1 Meeting #12	13	2	26
WP2 Meeting #5	7	0.75	5.25
WP2 Meeting #6	10	1.5	15
WP1 Meeting #13	10	1.5	15
WP1 Meeting #14	10	1.75	17.5
Stress Tests SubTeam Meeting #8	4	1	4
Working Session 1 (ICANN53)	56	10	560
Meeting with the Board (ICANN53)	21	1	21
Working Session 2 (ICANN53)	46	3	138
Working Session 3 (ICANN53)	44	1.5	66
Meeting #38	32	2	64
WP1 Meeting #15	15	1	15
Leadership and Lawyers #2	2	1	2
WP1 Meeting #16	18	1.5	27
WP3 Meeting #1	28	1	28
Meeting #39	41	2	82
Stress Tests SubTeam Meeting #9	10	1	10
WP1 Meeting #17	11	2	22
WP3 Meeting #2	25	1.5	37.5
WP2 Meeting #7	9	1.5	13.5
WP3 Meeting #3	15	1	15
WP1 Meeting #18	12	2	24
WP3 Meeting #4	29	1.5	43.5
WP2 Meeting #8	14	1.5	21
WP1 Meeting #19	15	2	30
Meeting #40	41	2	82
WP3 Meeting #5	20	1	20
Stress Tests SubTeam Meeting #10	5	1	5
F2F Paris - Day 1 Session 1	74	2	148
F2F Paris - Day 1 Session 2	74	1.5	111
F2F Paris - Day 1 Session 3	76	2	152
F2F Paris - Day 1 Session 4	78	3	234
F2F Paris - Day 2 Session 1	71	1.75	124.25
F2F Paris - Day 2 Session 2	72	2	144
F2F Paris - Day 2 Session 3	69	1.5	103.5
F2F Paris - Day 2 Session 4	70	3.25	227.5
WP2 Meeting #9	17	1.5	25.5
Meeting #43	28	2	56
WP2 Meeting #10	12	1.5	18
WP3 Meeting #6	13	1.5	19.5
WP1 Meeting #20	17	2	34
Meeting #44	42	2	84
WP2 Meeting #11	14	1.5	21

WP1 Meeting #21	21	2	42
Meeting #45	51	2	102
WP1 Meeting #22	16	1.5	24
Meeting #46	48	2	96
Meeting #47	37	2	74
Meeting #48	39	2	78
Meeting #49	35	2	70
Meeting #50	34	2	68
WP4 Meeting #1	8	1	8
Meeting with the Advisors	30	1	30
Briefing to the Board	36	1.5	54
Meeting #51	44	2	88
WP4 Meeting #2	12	1	12
Board Dialogue Call	45	3	135
Meeting #52	38	2	76
WP4 Meeting #3	14	1	14
WP1 Meeting #23	17	2	34
Meeting #53	34	2	68
WP4 Meeting #4	9	1	9
Meeting #54	54	2	108
F2F Los Angeles - Day 1 (Meeting #55)	75	10	750
F2F Los Angeles - Day 2 (Meeting #56)	68	10	680
Meeting #57	64	2	128
WP1 Meeting #24	21	1.5	31.5
WP2 Meeting #12	15	2	30
WP4 Meeting #5	14	1.5	21
WP1 Meeting #25	23	2	46
WP2 Meeting #13	11	2	22
Meeting #58	45	2	90
WP1 Meeting #26	26	2	52
WP1 Meeting #27	23	1.5	34.5
WP1 Meeting #28	24	1.5	36
WP1 Meeting #29	24	2	48
WP1 Meeting #30	34	1.5	51
Stress Tests Meeting #11	13	1	13
Stress Tests Meeting #12	10	1	10
ST18 WG Meeting #1	26	1	26
ST18 WG Meeting #2	22	1	22
ST18 WG Meeting #3	28	1.5	42
WP3 Meeting #7	11	1	11
WP3 Meeting #8	14	1	14
WP4 Meeting #6	10	1.5	15
WP4 Meeting #7	12	1.5	18
WP4 Meeting #8	19	1.5	28.5
WP4 Meeting #9	19	1.5	28.5
Legal SubTeam Meeting #14	16	2	32

Legal SubTeam Meeting #15	9	1	9
Meeting #59	56	2.25	126
Meeting #60 ICANN54	83	8.5	705.5
Meeting #61 ICANN54	73	3.5	255.5
Meeting #62 ICANN54	80	2.75	220
Meeting #63 ICANN54	75	2	150
Meeting #64	47	1	47
Meeting #65	44	2	88
Meeting #66	51	1.5	76.5
Meeting #67	34	1.5	51
Meeting #68	55	2	110
SubTeam Breakout Session ICANN54	55	3.5	192.5
F2F Dublin - Meeting #61	73	4.5	328.5
F2F Dublin - Meeting #62	80	3	240
F2F Dublin - Meeting #63	75	2.5	187.5
Meeting #64	47	2	94
WP4 Meeting #8	19	1.5	28.5
WP1 Meeting #29	24	2	48
WP4 Meeting #9	19	1.5	28.5
WP1 Meeting #30	34	2	68
Meeting #65	44	2	88
Meeting #66	51	2	102
Meeting #67	34	2	68
ST-18 Meeting #1	26	1	26
Meeting #68	55	2	110
ST-18 Meeting #2	22	1	22
ST-18 Meeting #3	28	1.5	42
WP1 Meeting #31	10	2	20
WP1 Meeting #32	7	2	14
ST-18 Meeting #4	36	1.5	54
Meeting #69	53	2	106
Meeting #70	64	2	128
Meeting #71	50	2	100
Meeting #72	40	2	80
Meeting #73	55	2	110
Meeting #74	63	3	189
Meeting #75	61	3	183
WP2 Meeting #15	40	1	40
Meeting #76	56	3	168
Meeting #77	52	3	156
WP-IOT Meeting #1	12	1	12
Meeting #78	67	3	201
Meeting #79	67	3	201
Meeting #80	68	3	204
Meeting #81	66	3	198
Meeting #82	59	2	118

Rec #11 Meeting	52	1.5	78
Rec #11 Meeting	56	1.5	84
Meeting #83	65	2	130

<b>Total Working Hours</b>	<b>17368.25</b>		
<b>Total Calls/Meetings</b>	<b>221</b>		
<b>Total Meeting Hours</b>	<b>419.75</b>		

**Mailing List Archives**

**accountability-cross-community**

August	2
September	10
November	4
December	338
January	651
February	357
March	640
April	684
May	502
June	547
July	1141
August	234
September	824
October	1411
November	1249
December	643
January	1091
February	541

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**10869**

**ccwg-accountability1**

December	39
January	25
February	7
June	1
July	1
September	1
October	2
December	1

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**77**

**ccwg-accountability2**

December	33
January	24
February	1
December	1

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**59**

**ccwg-accountability3**

December	7
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January	11
February	4
December	1

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**23**

**ccwg-accountability4 (ST-WP)**

December	25
January	62
February	20
March	26
April	24
May	7
June	9
July	10
September	1
October	12

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**196**

**ccwg-accountability5 (Legal)**

January	5
February	35
March	53
April	345
May	70
June	26
July	3
August	1
September	18
October	16
November	60

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**632**

**wp1 (Comm. Empowerment)**

February	54
March	137
April	149
May	5
June	56
July	242
August	12
September	30
October	191
November	60

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**936**

**wp2 (Review/Redress)**

February	27
March	50
April	49
May	1

	June	35
	July	232
	October	42
	November	3
		<b>439</b>
<b>wp2-compactmission</b>		
	March	59
	April	10
		<b>69</b>
<b>wp2-ombudsman</b>		
	March	5
	April	4
	June	5
		<b>14</b>
<b>wp2-reconsideration</b>		
	March	12
	April	6
		<b>18</b>
<b>wp2-independentreview</b>		
	March	51
	April	32
	May	1
	June	1
		<b>85</b>
<b>wp3 (Emerging Issues)</b>		
	July	75
	October	9
		<b>84</b>
<b>wp4 (Human Rights)</b>		
	August	70
	September	40
	October	149
	November	27
	December	10
		<b>296</b>
<b>ST18</b>		
	November	105
		<b>105</b>

<b>Total Mailing List Exchanges</b>	<b>13902</b>
<b>Number of Mailing Lists</b>	<b>15</b>

# Appendix E: Work Area 1 Outcome

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## Inventory of Existing ICANN Accountability Mechanisms

### ICANN Bylaws and Bylaws-Mandated Redress Mechanisms

ICANN Bylaws specifically provide four avenues for review:

- **Reconsideration Process (Art. IV, Sec. 2):** mechanism to challenge staff action taken against ICANN policies, or Board actions taken without consideration of material information or based upon false or inaccurate information.
- **Independent Review Process (IRP) (Art. IV, Sec. 3):** allows for claims that the ICANN Board acted in a manner inconsistent with its Bylaws or Articles of Incorporation to be considered by an independent panel of neutrals.
- **Organizational Reviews (Art. IV, Sec. 4):** As required by the Bylaws, periodic reviews of the performance and operation of each Supporting Organization, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee are organized to determine whether that organization has a continuing purpose in the ICANN structure, and, if so, whether any change in structure or operations is desirable to improve its effectiveness. These regular reviews allow an examination of the continuing efficacy of ICANN's component entities.
- **Office of the Ombudsman (Art. V):** reviews claims of unfairness by ICANN or its constituent entities. The Ombudsman framework is consistent with international standards. Office of Ombudsman publishes on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns.

### Policy Consideration Requirements: Bylaws-Based Advisory Mechanisms

Bylaws define ICANN's relationships to its component entities, including its Supporting Organizations (GNSO, ccNSO, and ASO) and Advisory Committees (SSAC, GAC, ALAC, and RSSAC). The Bylaws include detailed requirements for how the Board considers community-developed policies and receives advice. Some of these relationships are further defined through more detailed documentation, such as the Memorandum of Understanding with the Address Supporting Organization.

### Affirmation Of Commitments

Signed with the United States Department of Commerce (DoC) on 30 September 2009, the Affirmation of Commitments contains joint commitments relating to ICANN's technical coordination role of the Internet Domain Name System. The commitments uphold the multi-stakeholder model, commit to operate in a transparent manner and in the global public interest, and, among other things, to undertake community-led, regular reviews relating to accountability and transparency as well as on three other

fundamental organizational objectives. More information about the Accountability and Transparency Reviews are outlined below.

## Headquarters

ICANN, as a California Not-for-Profit Public Benefit Corporation, is obligated to follow the laws of the State of California. ICANN is also subject to both California and U.S. laws and regulations regarding ICANN's tax-exempt, public benefit status, which each require ICANN to act in furtherance of its stated public benefit purposes. These laws, as well as the laws of other places where ICANN has a presence, carry with them obligations. For example, under law, all ICANN Directors hold a fiduciary duty to act in the best interests of ICANN, and not for their own personal (or business) benefit. ICANN has the ability to sue and be sued for its actions and to be held responsible in a court of proper jurisdiction for its dealings with the global community.

## Accountability and Transparency Review Teams 1 and 2 Recommendations

Periodic assessments of ICANN's progress toward ensuring accountability, transparency and the interests of global Internet users are undertaken by community-led Review Teams. The first accountability and transparency review, conducted in 2010 by the Accountability and Transparency Review Team 1 (ATRT1), resulted in a set of recommendations. A second review was launched in 2013 - in compliance with the Affirmation of Commitments timeframe. Pursuant to the Affirmation of Commitments, the Second Accountability and Transparency Review Team (ATRT2) assessed the extent to which the ICANN board and staff implemented the recommendations arising of the ATRT1, in addition to the core scope, and issued a set of recommendations.

## Contractual Requirements

ICANN enters into a variety of contractual arrangements through which it takes on obligations. While meeting these requirements are a matter of contractual compliance for ICANN, at times the contracts also include broader accountability requirements as well. Some of these contracts include:

- The IANA Functions Contract with the NTIA, which incorporates, for example, a customer complaint resolution process at c.2.9.2.g as well as requirements for how ICANN is to consider delegation requests for ccLTDs (C.2.9.2.c) and gTLDs (C2.9.2.d).
- Registry Agreements and Registrar Accreditation Agreements (see <https://www.icann.org/resources/pages/agreements-policies-2012-02-25-en> and <https://www.icann.org/resources/pages/registries/registries-agreements-en>) Through these agreements, there are escalation paths set out in the event of disagreement between ICANN and the Registry or Registrar, in each case leading to the ultimate reference to arbitration if needed
  - Both Registry and Registrar Contracts include a requirement to follow “Consensus Policies”, which are policies developed through the ICANN multistakeholder process and approved with high thresholds of support. Most commercial contracts do not include the ability to insert new

obligations in this way, and so the requirements on the ICANN Board and the ICANN community in developing and approving these policies are high and must be followed.

- The consensus policies may only cover specific issues that are specified within the agreements, and may not touch on other specific areas (such as pricing terms). Historically, this has been referred to as the “picket fence” around where ICANN could mandate registry and registrar compliance with obligations that are not specifically included within the contracts.
- Detailed topics subject to "Consensus Policy" are defined in the gTLD Registry and Registrar Agreements.

## **ICANN Board of Directors Documentation**

Documents relating to the Board of Directors include briefing materials, resolutions, preliminary reports and minutes. Since 2010, the ICANN Board has provided a rationale for its decisions, which are published in both Resolutions and Minutes. All resolutions of the Board are tracked in a searchable tool, with information on how the mandate within each resolution was achieved. The Board also makes public how it addresses the advice it receives from the Advisory Committees, with both a GAC Register of Advice as well as the new Advice tracking tool.

## **General ICANN Operational Information**

Financial information includes an annual budgeting process developed with community input, the posting of quarterly financial reports (following the practice of listed companies), as well as the annual posting of ICANN's Audited Financial Statements, and the annual Form 990 tax filing. For tracking of ICANN's operational activities, information about current projects across the organization is posted. ICANN also maintains the Documentary Information Disclosure Policy (DIDP) for members of the public to request the release of information within ICANN that is not already publicly available.

## **ICANN Board Selection Process**

The selection of voting Board Directors occurs through different community processes. The Nominating Committee appoints eight Directors, ICANN's Supporting Organizations appoint six Directors (specifically, the Address Supporting Organization the Country-Code Names Supporting Organization (ccNSO) and the Generic Names Supporting Organization (GNSO) each appoint two Directors), and the At-Large Community appoints one Director. Directors serve staggered terms enabling some annual renewal of the Board. Mechanisms for the removal of Directors and Non-Voting liaisons are described in ICANN Bylaws. The President and CEO of ICANN, who is appointed by the Board, also serves a Board member.

# Appendix E: Work Area 2 Outcome

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## Input Gathered from the Community: Required Community Powers

As indicated in Section 2, the CCWG-Accountability reviewed the collection of public comments received during the development of the Enhancing ICANN Accountability process and categorized them as Work Stream 1 and Work Stream 2. Work Stream 1 mechanisms were defined as those that, when in place or committed to, would provide the community with confidence that any accountability mechanisms necessary to enhance ICANN's accountability within the timeframe of the IANA Stewardship Transition would be implemented if it had consensus support from the community, even if it were to encounter ICANN management resistance or if it were against the interest of ICANN as a corporate entity.

### The mechanisms were divided into three sections:

1. **Mechanisms giving the ICANN community ultimate authority over the ICANN corporation:** Most of these were initially designated as Work Stream 1, since community Members need the leverage of the IANA Stewardship Transition to obtain these Bylaws changes.
2. **Mechanisms to restrict actions of the ICANN Board of Directors and management of the ICANN corporation:** Most of these were initially designated as Work Stream 2, since the Members could reverse ICANN Board or management decisions if Members are empowered in Work Stream 1 (see 1 above).
3. **Mechanisms to prescribe actions of the ICANN corporation:** Most of these were initially designated as Work Stream 2, since the Members could reverse ICANN Board or management decisions if Members are empowered in Work Stream 1 (above). For example, a bottom-up consensus process to change ICANN bylaws might be rejected by the ICANN Board, but the Members could then reverse that decision and force the change.

In addition, the CWG-Stewardship co-Chairs detailed, in a correspondence dated 15 April 2015, the expectations from their group with regards to CCWG-Accountability Work Stream 1 recommendations. These expectations are:

- **ICANN budget:** The CWG supports the ability for the community to “veto” a budget;
- **Community empowerment mechanisms:** The CWG-Stewardship will be relying on the community empowerment and accountability mechanisms that the CCWG-Accountability is currently considering and developing as a part of Work Stream 1. In particular, mechanisms such as: the ability to review ICANN Board decisions relating to periodic or ad-hoc reviews of the IANA functions undertake through the IANA Review Function (PRF or possibly IRF); the ability to approve or reject board decisions on PRF as well as the related creation of a stakeholder

community / member group in order ensure the ability to trigger these kinds of abilities;

- **Review and redress mechanisms:** The CWG-Stewardship would like to have the assurance that an IANA Periodic Review (or related ad-hoc review) could be incorporated as part of the Affirmation of Commitments mandated reviews integration into ICANN's Bylaws.
- **Appeal mechanisms (especially with regard to ccTLD related issues):** The CWG-Stewardship recommends that the CCWG-Accountability be mindful of the recommendations of the CWG-Stewardship in relation to an appeals mechanism for ccTLDs in delegation and re-delegation. The CWG-Stewardship has conducted a survey among the ccTLDs as part of the work of our Design Team B, and the results led to a recommendation which notes that ccTLDs may decide to develop their own appeals mechanism regarding re/delegation at a later date (post-transition). As such, any appeal mechanism developed by the CCWG-Accountability should not cover ccTLD delegation / re-delegation issues as these are expected to be developed by the ccTLD community through the appropriate processes. However, the CWG-Stewardship does want to emphasize the importance and need for an appeal mechanism to cover any other issues that may involve IANA, and notes that this is option is expected to be specifically called out as one of the possible escalation mechanisms<sup>1</sup> in the draft transition proposal.

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<sup>1</sup> As a note of clarification, the CWG-Stewardship has been referring previously to this appeals mechanism as IAP (Independent Appeals Panel) but understands that the CCWG-Accountability is referring to this mechanism as Independent Review Mechanism (IRP), which would also include the option for appeal. As such the CWG-Stewardship will be updating its references.

# Appendix F – Legal Counsel

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- 1 The CCWG-Accountability engaged two external law firms to provide advice and counsel on their Work Stream 1 Recommendations.
  - **Adler & Colvin** is the primary source of advice on California corporate governance and nonprofit corporate law, unincorporated association law, and charitable trust law.
  - **Sidley Austin LLP** advises on corporate governance, international law and jurisdiction issues, alternate dispute resolution issues, antitrust, and other topics as deemed appropriate. Sidley Austin serves as the coordinating law firm.
- 2 During initial engagement, the CCWG-Accountability created a Legal Subteam to coordinate the work of the firms. Methodology of the Legal Subteam can be found below for full reference.
- 3 Following the release of the Initial Draft Report in May 2015, the Legal Subteam was disbanded and the relationship with the law firms was redesigned. Moving forward, the CCWG-Accountability Co-Chairs, not the Legal Subteam, were designated as direct points of contact with the firms and given the authority to review and certify legal requests from the group. This new method of engagement allowed for more direct consultation between the leadership and improved ability to track costs.
- 4 All legal requests and responses are [documented](#) on the CCWG-Accountability Wiki.

## Rules of Engagement

- 5 The Legal Subteam put together the following set of rules of engagement to frame the legal counsel's work and cooperation between law firms.
- 6 **Law firms' coordination**
- 7 Sidley Austin will be the coordinating firm. Both firms are expected to work on the different issues assigned to them but Sidley Austin will coordinate how the complementary and collaborative work will be developed by the firms. It is of the essence for the success of the group to avoid having duplicate work that may impact in duplicate billable hours.
- 8 Private coordination meetings between lawyers would be acceptable and desirable. Information should flow freely between law firms.
- 9 **Legal advice**
- 10 While recognizing that Sidley Austin will be coordinating the work of both law firms with the aim of having a harmonized voice, law firms should state any differing views they may have on any particular issue where this difference happens. Furthermore, should this difference in views happen, each law firm will be required to provide the rationale for its differing view.
- 11 During face-to-face meetings/calls, high-level legal advice should come in real time in reply to anyone raising a question within the Charter's scope.

- 12 Lawyers' involvement with Work Parties of the CCWG-Accountability is key as it is the Work Parties that are building the proposals that will be subject to public comment. Therefore, the Legal Subteam and the law firms should be able to provide these Work Parties with the tools they need to build feasible and legally viable proposals.
- 13 The law firms analyzed different templates of powers and mechanisms and provided advice on whether those powers and mechanisms are legally viable in the first place and if not, which would be the alternatives. The law firms have also advised on how these mechanisms and powers may be implemented in a holistic view of the accountability enhancement process.

## Legal Subteam Methodology

- 14 When the Legal Subteam was active, the following methodology and working methods applied:

### 15 **Legal Subteam and law firms' coordination**

- 16 Law firms report to the CCWG-Accountability and receive instructions from the Legal Executive Subteam only. Legal Executive Subteam Members include: León Sánchez (lead); Athina Fragkouli; Robin Gross; David McAuley; Sabine Meyer; Edward Morris; Greg Shatan and Samantha Eisner (support).
- 17 Should there be the need for a call between the available members of the Legal Executive Subteam and any of the law firms in order to address urgent matters without the ability to setup a public call, it will always be required to provide proper debrief to the open list in a timely fashion. This method will be exceptional.
- 18 A single mailing list will be used. Legal Subteam members who are not listed in the Legal Executive Subteam have viewing rights to help streamline communications. Posting privileges should carry request privileges.
- 19 The mailing list remains open to any observers.
- 20 Activities and requests will be documented on the [dedicated CCWG-Accountability wiki page](#).

### 21 **Mailing list**

- 22 All formal requests, including follow-up clarifications, are made in writing and communicated through the public mailing list [ccwg-accountability5@icann.org](mailto:ccwg-accountability5@icann.org) ([Public archives](#)).

### 23 **Conference calls**

- 24 All weekly calls are to be recorded, transcribed and archived in the [public CCWG-Accountability wiki](#).
- 25 Legal Subteam and law firms coordination call will be held on Wednesdays: 14:00-15:00 UTC  
Legal Subteam only - 15:00-16:00 UTC  
Legal Subteam and lawyers.
- 26 Calls are open to anyone.

27 **Requests for advice**

- 28 No individual outside the Legal Executive Subteam should send requests to law firms.
- 29 Law firms are to alert the Legal Executive Subteam of any requests made by individuals outside the Legal Executive Subteam.
- 30 Only tasks assigned by memorandum will be subject for lawyers work. It is important that both law firms continue to follow the calls of the CCWG-Accountability and the discussion in the mailing lists as there might be important topics or questions raised over the different discussions that might provide context to the assignments made by the Legal Subteam.
- 31 Questions will continue to be gathered and compiled in a single document by the Legal Subteam to keep track of the different concerns and questions raised within the larger group and they will be triaged in order to then be assigned formally to the lawyers.
- 32 On each assignment, the Legal Subteam will do its best effort to provide as much context as possible to better guide the lawyers on the needs that the particular assignment is trying to address.
- 33 Requests for legal advice should be numbered consecutively for reference purposes.
- 34 All requests are archived in [the public CCWG-Accountability wiki](#).

# Appendix G – Legal Documents

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- 1 In their role as counsel to the CCWG-Accountability the law firms Sidley Austin and Adler & Colvin have provided a number of memoranda, charts, and legal reviews of report text. In this Appendix, the group presents key advice – presented in documents, emails, and on audio during CCWG-Accountability meetings – that was essential in the process of producing the Final Report and each of its interim draft iterations. These are presented below in a compiled version from each of the prior drafts.
- 2 There were over one hundred requests for advice submitted to the CCWG-Accountability’s Legal Counsel, all of which were mapped in a table on the [public CCWG-Accountability wiki](#).

## Key Advice – Final Report (18 February 2016)

- [Indemnification and Advancement of Expenses](#) – 10 February 2016
- [Memo on Questions Relating to GAC Decision-Making](#) – 9 February 2016
- [Assessment on Bylaw language \(“duly taken into account”\)](#) – 25 January 2016
- [Litigation Risk and Bylaws Provisions on Human Rights](#) – 14 January 2016
- [Memo on Director Independence](#) – 16 December 2015

## Key Advice – Third Draft Report (30 November 2015)

- [Sole Designator/Community Enforcement Vehicle Implementation](#) – 6 November 2015
- [Community Enforcement Vehicle Implementation](#) – 2 November 2015
- [Comparison of Enforcement Mechanisms between Models](#) – 16 October 2015
  - [Summary Comparison of Enforcement Mechanisms between Models](#) – 16 October 2015
  - [Three-Column Summary Comparison of Enforcement Mechanisms between Models](#) – 16 October 2015
- [Community Powers with Opportunity for Future Governance Review](#) – 16 October 2015
- [Current Corporate Status of ICANN under California Law](#) – 12 October 2015

## Key Advice – Second Draft Report (3 August 2015)

- [Chart of Mandatory Statutory Member Rights Relevant to the Community Mechanism as Sole Member](#) – 30 July 2015
- [Options for Board Replacement in the Event of Full Board Recall](#) – 18 July 2015
- [Empowered SO/AC Membership & Designator Models with Community Mechanism as Sole Member Model](#) – 17 July 2015
- [Description and Comparison of Empowered SO/AC Membership and Designator Model](#) – 07 July 2015
- [Updated Legal Assessment: Revised Summary Chart and Governance Chart](#) – 16 June 2015
- [Use of Unincorporated Associations in ICANN Governance](#) – 03 May 2015
- [Overview of Community Powers](#) – 24 April 2015
- [Response to Questions Re: Unincorporated Associations](#) – 23 April 2015
- [Legal Assessment: Executive Summary, Summary Chart and Revised Governance Chart](#) – 23 April 2015
- [Updated Sidley Austin, Adler & Colvin Joint Preliminary Analysis](#) – 10 April 2015

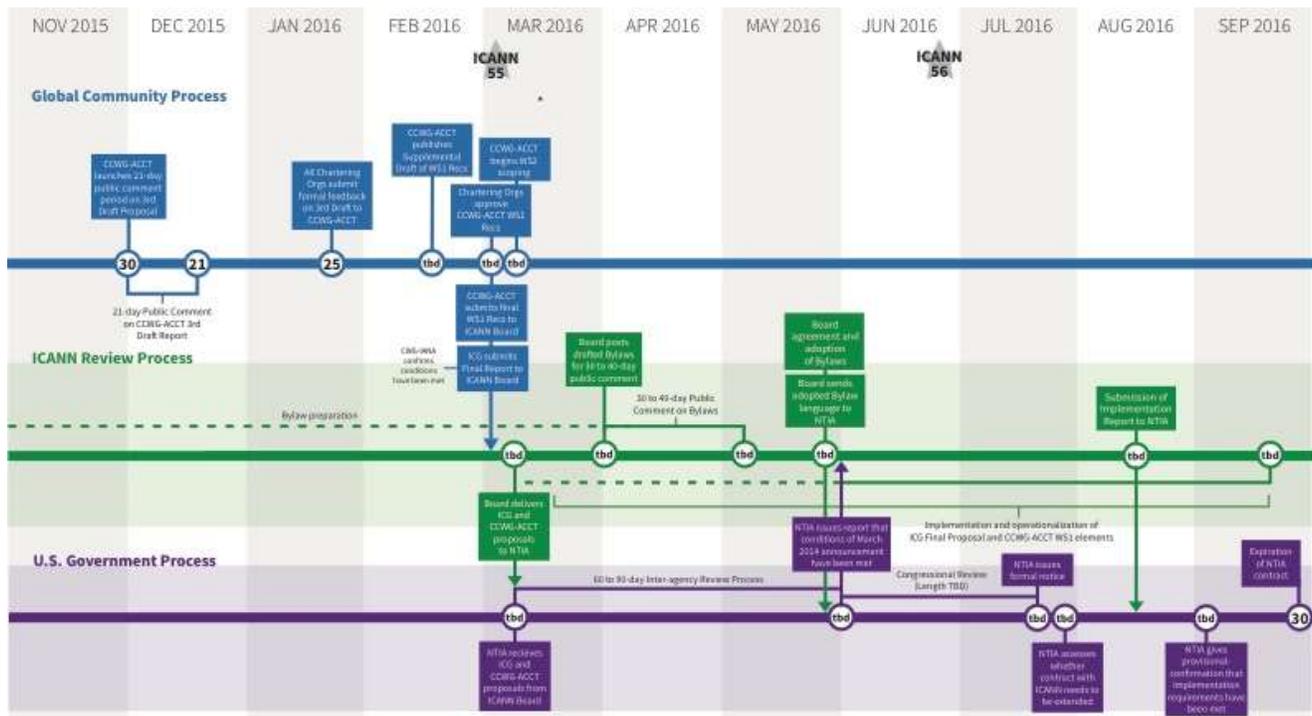
## Key Advice – First Draft Report (4 May 2015)

- [Use of Unincorporated Associations in ICANN Governance](#) – 03 May 2015
- [Legal Assessment: Executive Summary, Summary Chart and Revised Governance Chart](#) – 23 April 2015
- [Legal Assessment: Proposed Accountability Mechanisms Preliminary Response to Legal Subteam Templates \(Work Stream 2\)](#) – 20 April 2015
- [Legal Scoping Document](#) – 19 March 2014

# Appendix H – Bylaws Drafting Process & Implementation Timeline

- 1 The CCWG-Accountability views the oversight of Work Stream 1 implementation as a key obligation of the group. The final Work Stream 1 accountability changes will have to be implemented or committed to before the IANA Stewardship Transition can occur. Implementation efforts are being coordinated through ICANN, with several concurrent tracks, some of which will require multiple public comment periods.
- 2 The implementation plan of the CCWG-Accountability Draft Proposal on Work Stream 1 Recommendations is outlined in this section.

## Timeline



- 3 A detailed IANA Stewardship Transition and Enhancing ICANN Accountability timeline is available [here](#).
- 4 To ensure timely implementation, the CCWG-Accountability has initiated a Bylaws drafting process (in coordination with ICANN) to incorporate the requirements of the CCWG-Accountability proposal into the ICANN Bylaws. This includes incorporating the Affirmation of Commitments reviews and the CWG-Stewardship dependencies, as appropriate. Once a draft of the ICANN Bylaws is completed, it will be posted for public comment. ICANN Board approval and adoption of the Bylaws will take place after the public comment process has been completed and after the National Telecommunications and Information Administration completes its review of the proposals.

- 5 It is expected that the National Telecommunications and Information Administration will complete its review process in approximately 60-90 days. The adoption of the ICANN Bylaws is expected to occur shortly after completion of this review.

## Implementation Plan

- 6 A significant number of CCWG-Accountability Work Stream 1 recommendations involve updating the ICANN Bylaws. With exception of enhancements to the Independent Review Process,<sup>1</sup> most of the Work Stream 1 recommendations will be implemented through changes to the ICANN Bylaws.
- 7 As a result, the CCWG-Accountability and ICANN have developed a Bylaws drafting process based on the following requirements:
  - All final decisions about Bylaws proposed to the ICANN Board would be approved by the CCWG-Accountability and/or the relevant CCWG-Accountability subgroup.
  - The CCWG-Accountability's decisions and those of its subgroups would be informed by external legal advice.
  - ICANN legal staff provides legal advice to the ICANN Board.
  - The drafting process will be based on a collaborative effort between the CCWG-Accountability's legal counsel, ICANN legal staff, and the CCWG-Accountability.

## Bylaw Drafting Process

1. Specifications for revised Bylaws will be developed based on the CCWG-Accountability's final proposal.
2. The CCWG-Accountability will be responsible for approving the specification and initiating the Bylaws drafting process.
3. Initial Bylaws drafting and refining based on the specification will be undertaken by ICANN legal staff in collaboration with the CCWG-Accountability's legal counsel.
4. For initial draft review, the relevant CCWG-Accountability subgroup, supported by both ICANN legal staff and the CCWG-Accountability's legal counsel, will review the draft to ensure it meets the specification and intent of the CCWG-Accountability. The CCWG-Accountability subgroup will be responsible for approving the review.
5. The CCWG-Accountability's legal counsel will conduct a review to assess compliance with the specification and ensure the absence of any unintended consequences. ICANN legal staff may also review.
6. The CCWG-Accountability subgroup will review the advice and will make adjustments as necessary. The draft Bylaws and advice will be shared with the CCWG-Accountability and with the ICANN Board.

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<sup>1</sup> Operationalization of the Independent Review Process enhancements beyond the relevant Bylaw changes will include selecting panelists, establishing the secretariat for the panel, and defining the rules of procedure.

7. The full CCWG-Accountability members and participants will be responsible for deciding on any conflict of interpretation, and will be responsible for approving the Bylaw change for inclusion in a proposal that the draft be presented for public comment. In the situation where there is a conflict of interpretation, the full CCWG-Accountability will send the draft Bylaw back to the CCWG-Accountability subgroup and legal counsel for further refinement.
8. The ICANN Board has final approval of the Bylaws, using its community-focused processes including a public comment period.

# Affirmation of Commitments

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1. This document constitutes an Affirmation of Commitments (Affirmation) by the United States Department of Commerce ("DOC") and the Internet Corporation for Assigned Names and Numbers ("ICANN"), a not-for-profit corporation. In recognition of the conclusion of the Joint Project Agreement and to institutionalize and memorialize the technical coordination of the Internet's domain name and addressing system (DNS)<sup>1</sup>, globally by a private sector led organization, the parties agree as follows:
2. The Internet is a transformative technology that will continue to empower people around the globe, spur innovation, facilitate trade and commerce, and enable the free and unfettered flow of information. One of the elements of the Internet's success is a highly decentralized network that enables and encourages decision-making at a local level. Notwithstanding this decentralization, global technical coordination of the Internet's underlying infrastructure - the DNS - is required to ensure interoperability.
3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.
4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.
5. DOC recognizes the importance of global Internet users being able to use the Internet in their local languages and character sets, and endorses the rapid introduction of internationalized country code top level domain names (ccTLDs), provided related security, stability and resiliency issues are first addressed. Nothing in this document is an expression of support by DOC of any specific plan or proposal for the implementation of new generic top level domain names (gTLDs) or is an expression by DOC of a view that the potential consumer benefits of new gTLDs outweigh the potential costs.

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

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

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

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

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

9.1 Ensuring accountability, transparency and the interests of global Internet users: ICANN commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN's present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of the GAC and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS; (c) continually assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN's decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN will organize a review of its execution of the above commitments no less frequently than every three years, with the first such review concluding no later than December 31, 2010. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair

of the GAC, the Chair of the Board of ICANN, the Assistant Secretary for Communications and Information of the DOC, representatives of the relevant ICANN Advisory Committees and Supporting Organizations and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the Chair of the Board of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations. Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN have been successful in ensuring that ICANN is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

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

9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate

issues involved in the introduction or expansion. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC, the CEO of ICANN, representatives of the relevant Advisory Committees and Supporting Organizations, and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (in consultation with GAC members) and the CEO of ICANN. Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

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

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

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

FOR THE NATIONAL  
TELECOMMUNICATIONS  
INFORMATION ADMINISTRATION:

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

Date: September 30, 2009

FOR THE INTERNET CORPORATION  
AND FOR ASSIGNED NAMES AND  
NUMBERS:

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Name: Rod Beckstrom  
Title: President and CEO

Date: September 30, 2009

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# Glossary

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See also <https://www.icann.org/resources/pages/glossary-2014-02-03-en>.

<b>ADVISORY COMMITTEE (AC)</b>	<p>An Advisory Committee (“AC”) is a formal advisory body made up of representatives from the Internet community to advise ICANN on a particular issue or policy area. Several Advisory Committees are mandated by the ICANN Bylaws and others may be created as needed. Advisory Committees currently have no legal authority to act for ICANN, but report their findings and make recommendations to the ICANN Board.</p> <p>See also: <a href="https://www.icann.org/resources/pages/governance/bylaws-en/#XI">https://www.icann.org/resources/pages/governance/bylaws-en/#XI</a>.</p>
<b>AFFIRMATION OF COMMITMENTS (AoC)</b>	<p>The Affirmation of Commitments (“AoC”) is the 2009 agreement between ICANN and the NTIA under which ICANN reaffirmed its commitment to accountability and transparency, DNS security and stability, competition and consumer choice, international participation, periodic community reviews, and related activities. As part of the IANA Stewardship Transition, ICANN’s commitments under the AoC and the AoC Reviews will be incorporated into the ICANN Bylaws, and the AoC itself will be terminated.</p>
<b>AFFIRMATION OF COMMITMENTS REVIEWS (AoC REVIEWS)</b>	<p>The AoC Reviews are periodic community reviews required under the AoC to assess and report on ICANN's progress toward 1) ensuring accountability and transparency (see ATR below), 2) preserving security, stability and resiliency of the DNS, 3) promoting competition, consumer trust and consumer choice, and 4) enforcing WHOIS policy. As part of the IANA Stewardship Transition, the AoC Reviews will be incorporated into the ICANN Bylaws.</p>
<b>AT-LARGE ADVISORY COMMITTEE (ALAC)</b>	<p>The At-Large Advisory Committee (“ALAC”) is a body within the ICANN structure responsible for considering and providing advice on the activities of ICANN as they relate to the interests of individual Internet users (the "At-Large" community). Following the IANA Stewardship Transition, ALAC will participate as a Decisional Participant in the Empowered Community.</p> <p>See also: <a href="http://www.atlarge.icann.org/">http://www.atlarge.icann.org/</a>.</p>
<b>ADDRESS SUPPORTING ORGANIZATION</b>	<p>The Address Supporting Organization (“ASO”) advises the ICANN Board of Directors on policy issues relating to the allocation and management of IP addresses. Following the IANA Stewardship Transition, the ASO</p>

<p><b>(ASO)</b></p>	<p>will participate as a Decisional Participant in the Empowered Community.</p> <p>See also: <a href="https://aso.icann.org/">https://aso.icann.org/</a>.</p>
<p><b>ACCOUNTABILITY AND TRANSPARENCY REVIEW (ATR)</b></p>	<p>The Accountability and Transparency Review (“ATR”) is a periodic review required under the AoC to assess and report on ICANN’s progress toward ensuring accountability and transparency and to provide recommendations to enhance accountability and transparency activities throughout ICANN. As part of the IANA Stewardship Transition, the ATR and the other AoC Reviews will be incorporated into the ICANN Bylaws.</p>
<p><b>ACCOUNTABILITY AND TRANSPARENCY REVIEW TEAM (ATRT)</b></p>	<p>Each Accountability and Transparency Review is carried out by an Accountability and Transparency Review Team (“ATRT”).</p>
<p><b>BOARD GOVERNANCE COMMITTEE (BGC)</b></p>	<p>The Board Governance Committee (“BGC”) is an ICANN Board committee currently responsible for conducting periodic evaluations of the performance of the ICANN Board and each of its members.</p>
<p><b>BOTTOM-UP PROCESS</b></p>	<p>A fundamental principle of ICANN’s decision-making process is that policy analysis and decisions progress from a stakeholder level (made up of directly affected parties, Internet users, companies and anyone else who wishes to participate in the process) to the ICANN Board level. This “bottom-up process” provides the opportunity for open and equal participation at all levels, as practical and possible.</p>
<p><b>COUNTRY-CODE NAMES SUPPORTING ORGANIZATION (ccNSO)</b></p>	<p>The Country-Code Names Supporting Organization (“ccNSO”) is a body within the ICANN structure created for and by ccTLD managers. The ccNSO provides a forum for ccTLD managers to meet and discuss topical issues of concern to ccTLDs from a global perspective. The ccNSO provides a platform to nurture consensus, technical cooperation and skill building among ccTLDs and facilitates the development of voluntary best practices for ccTLD managers. It is also responsible for developing and recommending global policies to the ICANN Board for a limited set of issues relating to ccTLDs, such as the introduction of Internationalized Domain Name ccTLDs (“IDN ccTLDs”). Membership in the ccNSO is open to all ccTLD managers responsible for managing an International Organization for Standardization (“ISO”) 3166 ccTLD. Following the IANA Stewardship Transition, the ccNSO will participate as a Decisional Participant in the Empowered Community.</p>

	See also: <a href="http://ccnso.icann.org/">http://ccnso.icann.org/</a> .
<b>COUNTRY CODE TOP-LEVEL DOMAIN (ccTLD)</b>	A country code top-level domain (“ccTLD”) is an Internet top-level domain generally used or reserved for a country, a sovereign state, or a dependent territory.  See also: <a href="http://www.iana.org/cctld/cctld.htm">http://www.iana.org/cctld/cctld.htm</a> .
<b>CROSS COMMUNITY WORKING GROUP ON ENHANCING ICANN ACCOUNTABILITY (CCWG-ACCOUNTABILITY)</b>	The Cross Community Working Group on Enhancing ICANN Accountability (“CCWG-Accountability”) was convened to design a proposal that ensures that ICANN's accountability and transparency commitments to the global Internet community are maintained and enhanced following the transition of the U.S. Government’s stewardship of the IANA functions.  See also: <a href="https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability">https://community.icann.org/display/acctcrosscomm/CCWG+on+Enhancing+ICANN+Accountability</a> .
<b>COMMUNITY POWERS</b>	As part of the IANA Stewardship Transition, the following seven Community Powers will be vested in the Empowered Community, through Fundamental Bylaws, to enable the multi-stakeholder Internet community to hold ICANN accountable for its actions (or failure to act): <ul style="list-style-type: none"> <li>• The power to reject ICANN budgets, IANA budgets or ICANN strategic/operating plans;</li> <li>• The power to reject changes to ICANN's Standard Bylaws;</li> <li>• The power to approve changes to ICANN's Fundamental Bylaws or Articles of Incorporation, and to approve ICANN's sale or other disposition of all or substantially all of ICANN's assets;</li> <li>• The power to appoint and remove individual ICANN Board Directors;</li> <li>• The power to recall the entire ICANN Board of Directors;</li> <li>• The power to launch a binding community IRP or a non-binding Request for Reconsideration; and</li> <li>• The power to reject ICANN Board decisions relating to reviews of the IANA functions, including the triggering of any PTI separation process for the IANA naming functions.</li> </ul>
<b>COOPERATIVE ENGAGEMENT PROCESS</b>	As specified in Article IV, Section 3, of the ICANN Bylaws, prior to initiating an IRP, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought before the IRP Panel. It is contemplated that this “cooperative engagement process” will be initiated prior to the requesting party incurring any costs in the

	<p>preparation of a request for independent review. Cooperative engagement is expected to be between ICANN and the requesting party, without the participation of legal counsel.</p> <p>See also: <a href="https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf">https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf</a>.</p>
<b>CONSENSUS</b>	<p>Consensus is a form of decision-making employed by various SOs within ICANN. The method for establishing whether a “consensus” has been reached may differ among SOs. For example, the following method is used in the GNSO:</p> <p>“Full consensus” - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as Unanimous Consensus.</p> <p>“Consensus” - when only a small minority disagrees, but most agree.</p> <p>When the GAC provides consensus advice to the ICANN Board this is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.</p>
<b>CONSOLIDATED RIR IANA STEWARDSHIP PROPOSAL (CRISP) TEAM</b>	<p>The Consolidated RIR IANA Stewardship Proposal (“CRISP”) Team was established by the Internet number community through the RIRs to produce a proposal for IANA activities related to the allocation of blocks of Internet Number Resources, the IANA Number Registries, administration of the special-purpose "IN-ADDR.ARPA" and "IP6.ARPA" DNS zones, and other related registry management tasks.</p> <p>See also: <a href="https://www.nro.net/nro-and-internet-governance/iana-oversight/consolidated-rir-iana-stewardship-proposal-team-crisp-team">https://www.nro.net/nro-and-internet-governance/iana-oversight/consolidated-rir-iana-stewardship-proposal-team-crisp-team</a>.</p>
<b>CONSTITUENCY GROUP</b>	<p>A Constituency Group is a group of stakeholders united around a particular common interest or perspective.</p>
<b>CUSTOMER STANDING COMMITTEE (CSC)</b>	<p>As part of the IANA Stewardship Transition, a Customer Standing Committee (“CSC”) will be established to perform the operational oversight previously performed by the NTIA as it relates to the monitoring of performance of the IANA naming functions. The CSC structure will be set forth in ICANN’s Fundamental Bylaws.</p>
<b>CROSS COMMUNITY WORKING GROUP TO DEVELOP AN IANA STEWARDSHIP TRANSITION PROPOSAL ON NAMING RELATED</b>	<p>The Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (“CWG-Stewardship”) was convened to produce a consolidated transition proposal for the elements of the IANA Stewardship Transition that directly affect the Internet naming community.</p> <p>See also: <a href="https://community.icann.org/x/37fhAg">https://community.icann.org/x/37fhAg</a>.</p>

<b>FUNCTIONS (CWG- STEWARDSHIP)</b>	
<b>DECISIONAL PARTICIPANTS</b>	<p>Following the IANA Stewardship Transition, the following five ICANN SOs and ACs will participate as the Decisional Participants in the Empowered Community: ALAC, ASO, ccNSO, GNSO and GAC (if the GAC chooses to do so). The Empowered Community will act at the direction of its Decisional Participants to exercise and enforce the Community Powers vested in the multi-stakeholder Internet community as part of the transition of the NTIA's stewardship of the IANA functions. The GAC, however, will not be able to participate as a decision-maker in the Empowered Community's exercise of a Community Power to challenge a decision by the ICANN Board to implement GAC consensus advice. In such cases, the GAC will still be able to participate in an advisory capacity in the other aspects of the escalation process, but not as a decision-maker.</p>
<b>DIRECTORS</b>	<p>ICANN's Board Directors are natural persons who direct the activities and affairs of ICANN as a California nonprofit public benefit corporation and have fiduciary duties with respect to exercise of corporate power. Directors are distinguished from observers and liaisons, who can attend ICANN Board meetings but cannot vote.</p> <p>See also: <a href="https://www.icann.org/resources/pages/governance/bylaws-en/#VI">https://www.icann.org/resources/pages/governance/bylaws-en/#VI</a>.</p>
<b>DOCUMENTARY INFORMATION DISCLOSURE POLICY (DIDP)</b>	<p>ICANN's Documentary Information Disclosure Policy ("DIDP") is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. A principal element of ICANN's approach to transparency and information disclosure is the identification of a comprehensive set of materials that ICANN makes available on its website as a matter of course.</p>
<b>DOMAIN NAME SYSTEM (DNS)</b>	<p>The Domain Name System ("DNS") helps users find their way around the Internet. Every computer on the Internet has a unique address – just like a telephone number – which is a rather complicated string of numbers. It is called its IP address. IP addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net. It is a mnemonic device that makes addresses easier to remember.</p>
<b>EMPOWERED COMMUNITY</b>	<p>The Empowered Community will be formed as a California unincorporated association through the ICANN Bylaws and will have the power as the sole designator under California law to appoint and remove individual Directors or to recall the entire Board of Directors and take</p>

	<p>other action as directed by the community to enforce Community Powers. The Empowered Community and the rules by which it will be governed will be constituted in ICANN's Fundamental Bylaws.</p>
<p><b>ICANN FIVE-YEAR OPERATING PLAN</b></p>	<p>ICANN's <a href="#">Five-Year Operating Plan</a> is a means of planning and executing portfolios of ICANN activities that align with the strategic objectives and goals articulated in ICANN's Five-Year <a href="#">Strategic Plan</a>. This operating plan links strategic objectives and goals with ICANN's Annual Operating Plan and Budget, setting out planned outcomes (key success factors), means of measuring progress (key performance indicators), operational risks, dependencies and resources needed to accomplish goals.</p>
<p><b>ICANN FIVE-YEAR STRATEGIC PLAN</b></p>	<p>ICANN's Five-Year Strategic Plan articulates ICANN's vision and long-term strategic goals, which are developed through a collaborative, bottom-up, multistakeholder process.</p>
<p><b>FUNDAMENTAL BYLAWS</b></p>	<p>As part of the IANA Stewardship Transition, ICANN's Bylaws will be classified as either Standard Bylaws or Fundamental Bylaws. The Fundamental Bylaws will be those Bylaws that are integral to ICANN's organization, purpose and accountability to the global Internet community. As such, the threshold of Board approval required for changes to Fundamental Bylaws will be higher than that required for changes to Standard Bylaws. If the ICANN Board proposes any change to the Fundamental Bylaws, the proposal will require approval from three-fourths (3/4) of all of the Directors on the Board and the affirmative consent of the Empowered Community in order for the change to take legal effect.</p>
<p><b>GOVERNMENTAL ADVISORY COMMITTEE (GAC)</b></p>	<p>The Governmental Advisory Committee ("GAC") is an Advisory Committee comprising appointed representatives of national governments, multi-national governmental organizations and treaty organizations, and distinct economies. Its function is to advise the ICANN Board on matters of concern to governments. The GAC operates as a forum for the discussion of government interests and concerns, including consumer interests. As an Advisory Committee, the GAC currently has no legal authority to act for ICANN, but reports its findings and recommendations to the ICANN Board. Following the IANA Stewardship Transition, the GAC will participate as a Decisional Participant in the Empowered Community if it chooses to do so, except in instances where the Empowered Community exercises a Community Power to challenge a decision by the ICANN Board to implement GAC consensus advice.</p> <p>See also:  <a href="https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee">https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee</a></p>

<b>GENERIC NAMES SUPPORTING ORGANIZATION (GNSO)</b>	<p>The Generic Names Supporting Organization (“GNSO”) is the successor to the responsibilities of the Domain Name Supporting Organization (“DNSO”) that relate to the generic top-level domains. The GNSO has six constituencies, as follows: the commercial and business constituency, the gTLD registry constituency, the Internet service provider constituency, the non-commercial users constituency, the registrar’s constituency, and the IP constituency. Following the IANA Stewardship Transition, the GNSO will participate as a Decisional Participant in the Empowered Community.</p> <p>See also: <a href="http://gns0.icann.org/en/">http://gns0.icann.org/en/</a>.</p>
<b>GENERIC TOP-LEVEL DOMAIN (gTLD)</b>	<p>A generic top-level domain (“gTLD”) is one of the categories of TLDs maintained by the IANA department of ICANN for use in the Domain Name System of the Internet. It is visible to Internet users as the suffix at the end of a domain name.</p>
<b>INTERNET ASSIGNED NUMBERS AUTHORITY (IANA)</b>	<p>ICANN has been performing the Internet Assigned Numbers Authority (“IANA”) functions on behalf of the global Internet community since 1998. The IANA functions include the maintenance of the registry of technical Internet protocol parameters, the administration of certain responsibilities associated with Internet DNS root zone, and the allocation of Internet numbering resources. See also: <a href="http://www.iana.org/">http://www.iana.org/</a>.</p>
<b>IANA FUNCTIONS BUDGET</b>	<p>The IANA Functions Budget is currently part of ICANN’s Annual Operating Plan and Budget. As part of the IANA Stewardship Transition, the IANA Functions Budget will be prepared and considered as a separate ICANN budget.</p>
<b>IANA FUNCTIONS CONTRACT</b>	<p>As part of the IANA Stewardship Transition, ICANN will enter into an IANA Functions Contract including a Statement of Work with PTI pursuant to which PTI will perform the IANA naming functions.</p>
<b>IANA FUNCTION REVIEW (IFR)</b>	<p>Following the IANA Stewardship Transition, periodic IANA Function Reviews (“IFRs”) of the performance of the IANA naming functions against the contractual requirements set forth in the IANA Functions Contract and Statement of Work will be carried out by an IANA Function Review Team. The procedures of IFRs will be set forth in ICANN’s Fundamental Bylaws.</p>
<b>IANA STEWARDSHIP TRANSITION</b>	<p>ICANN has been performing the IANA functions under contract with the NTIA. In March 2014, the NTIA announced its intent to transition the NTIA’s stewardship of the IANA functions to the global Internet community (the “IANA Stewardship Transition”) and requested proposals from the ICANN multistakeholder community for that transition.</p>

<p><b>IANA STEWARDSHIP TRANSITION COORDINATION GROUP (ICG)</b></p>	<p>The IANA Stewardship Transition Coordination Group (“ICG”) was formed to coordinate the development of a proposal among the communities affected by the transition of NTIA’s stewardship of the IANA functions. The creation of the ICG was initiated and facilitated by ICANN, and the membership of the ICG has been defined by the Internet communities participating in it. The group’s sole deliverable is a proposal to the NTIA recommending a transition plan of NTIA’s stewardship of the IANA functions to the global Internet community, consistent with the key principles outlined in the NTIA announcement on March 14, 2014.</p> <p>See also: <a href="https://www.icann.org/en/stewardship/">https://www.icann.org/en/stewardship/</a>.</p>
<p><b>IANAPLAN WORKING GROUP</b></p>	<p>The IETF established the IANAPLAN Working Group to produce a proposal for the transition of the NTIA’s stewardship of the IANA functions related to maintaining the codes and numbers contained in a variety of Internet protocols developed by the IETF.</p> <p>See also: <a href="http://www.ietf.org/iana-transition.html">http://www.ietf.org/iana-transition.html</a>.</p>
<p><b>INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)</b></p>	<p>The Internet Corporation for Assigned Names and Numbers (“ICANN”) is a California nonprofit public benefit corporation that operates internationally and has responsibility for IP address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) Top-Level Domain name system management, and root server system management functions. ICANN has been performing the IANA functions under contract with the NTIA; however, in March 2014, the NTIA announced its intent to transition the NTIA’s stewardship of the IANA functions and requested proposals from the ICANN multistakeholder community for that transition.</p> <p>As a private-public partnership, ICANN is dedicated to preserving the operational stability of the Internet; to promoting competition in the registration of domain names; to achieving broad representation of global Internet communities; and to coordinating the development and implementation of policies consistent with its Mission through bottom-up, consensus-based, multistakeholder processes.</p> <p>See also: <a href="https://www.icann.org/">https://www.icann.org/</a>.</p>
<p><b>ICANN ANNUAL OPERATING PLAN AND BUDGET</b></p>	<p>ICANN’s Annual Operating Plan and Budget currently includes the IANA Functions Budget. As part of the IANA Stewardship Transition, the IANA Functions Budget will be prepared and considered as a separate ICANN budget.</p>

<b>ICANN ARTICLES OF INCORPORATION</b>	<p>ICANN's Articles of Incorporation are the instrument under which ICANN was incorporated as a California nonprofit public benefit corporation. They define fundamental aspects of ICANN's organization and purpose and are ICANN's highest-level governing document. As such, following the IANA Stewardship Transition, the threshold of Board and Empowered Community approval required for changes to ICANN's Articles of Incorporation will be the same as that required for changes to Fundamental Bylaws.</p>
<b>ICANN BYLAWS</b>	<p>Subject to ICANN's Articles of Incorporation and applicable law, ICANN's Bylaws define the framework and rules for governance and operations within ICANN. As part of the IANA Stewardship Transition, ICANN's Bylaws will be classified as either Standard Bylaws or Fundamental Bylaws. The threshold of Board approval required for changes to the Fundamental Bylaws will be higher than the threshold of approval required for changes to the Standard Bylaws, and any proposed changes to Fundamental Bylaws will also require the approval of the Empowered Community for the change to take legal effect. Following Board approval of a change to the Standard Bylaws, the Empowered Community will have an opportunity to reject the change before it takes legal effect. Public consultations will be required on all proposed changes to ICANN Bylaws (Standard or Fundamental).</p>
<b>COMMUNITY FORUM</b>	<p>Following the IANA Stewardship Transition, to exercise and enforce Community Powers, the Empowered Community will first need to satisfy the appropriate escalation process for the particular Community Power. A Community Forum for interested stakeholders will be a component of the escalation process for the Community Powers (except with respect to the power to appoint Directors and the power to remove certain individual Directors). This discussion phase will provide a forum for the petitioning Decisional Participant(s) to share the rationale for, and answer questions about, the proposed use of a Community Power, and the discussion and information sharing among interested stakeholders will help the Empowered Community reach well-considered conclusions about exercising its new powers.</p>
<b>INTERNET ENGINEERING TASK FORCE (IETF)</b>	<p>The Internet Engineering Task Force ("IETF") is a large open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet. It is open to any interested individual. The IETF develops Internet standards and in particular the standards related to the Internet Protocol Suite (TCP/IP).</p> <p>See also: <a href="https://www.ietf.org/">https://www.ietf.org/</a></p>
<b>INDEPENDENT REVIEW PROCESS</b>	<p>ICANN's Independent Review Process ("IRP") is an appeals process that provides for independent third-party review of ICANN Board actions or inaction alleged by an affected party to be inconsistent with ICANN's</p>

<b>(IRP)</b>	Articles of Incorporation or Bylaws. As part of the IANA Stewardship Transition, the existing IRP will be strengthened to ensure that it is more accessible and transparent, and the scope of the IRP will be expanded to include claims relating to ICANN staff actions/inaction, certain PTI actions/inaction, expert panel decisions and DIDP decisions. The IRP Panel will also hear claims initiated by the Empowered Community with respect to matters reserved to the Empowered Community in ICANN's Articles of Incorporation or Bylaws. IRP Panel decisions will be binding and enforceable in any court that recognizes international arbitration results. These enhancements to the IRP will be set forth in ICANN's Fundamental Bylaws.
<b>INDEPENDENT REVIEW PROCESS PANEL (IRP PANEL)</b>	The Independent Review Process Panel ("IRP Panel") is an independent standing judicial/arbitral panel charged with reviewing and resolving claims brought by affected parties through the IRP.
<b>INTERNET PROTOCOL (IP)</b>	Internet Protocol ("IP") is the communications protocol underlying the Internet, which allows networks of devices to communicate over a variety of physical links. Each device or service on the Internet has at least one IP address that uniquely identifies it from other devices or services on the Internet. An IP address is the numerical address and DNS naming uses user-friendly names to locate the devices and services.
<b>MULTI-STAKEHOLDER APPROACH</b>	<p>The "multistakeholder approach" is an organizational framework or structure for governance and policymaking which aims to bring together all stakeholders to collaborate and participate in the dialogue, decision-making and implementation of solutions to identified problems or goals.</p> <p>The multistakeholder approach at ICANN is comprised of a diverse set of stakeholders with an interest in Internet numbering, naming and protocols from around the world who have organized into various Supporting Organizations, Constituent Groups and Advisory Committees, and agree to operate in an open, bottom-up, consensus-driven, and transparent manner.</p>
<b>NETMUNDIAL PRINCIPLES</b>	<p>The NETmundial meeting, which took place in Sao Paulo, Brazil on 23-24 April 2014, was the first multistakeholder-designed event to focus on the future of Internet governance. NETmundial identified a set of common principles and important values that contribute to an inclusive, multistakeholder, effective, legitimate, and evolving Internet governance framework, and recognized that the Internet is a global resource which should be managed in the public interest.</p> <p>See also: <a href="http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf">http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf</a>.</p>

<b>NOMINATING COMMITTEE (NOMCOM)</b>	<p>The Nominating Committee (“NomCom”) is an independent ICANN committee tasked with selecting eight members of the ICANN Board of Directors, five members of the ALAC, three members of the GNSO, and three members of the ccNSO.</p> <p>See also: <a href="https://www.icann.org/resources/pages/nomcom-2013-12-13-en">https://www.icann.org/resources/pages/nomcom-2013-12-13-en</a>.</p>
<b>U.S. DEPARTMENT OF COMMERCE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA)</b>	<p>The U.S. Department of Commerce National Telecommunications and Information Administration (“NTIA”) is the Executive Branch agency that is principally responsible for advising the President of the United States on telecommunications and information policy issues. NTIA maintains a contract with ICANN for the technical coordination of the Internet's domain name and addressing system. In March 2014, NTIA announced its intent to transition out of its contractual role with respect to the IANA functions and requested proposals from the ICANN multistakeholder community for that transition.</p> <p>See also: <a href="http://www.ntia.doc.gov/">http://www.ntia.doc.gov/</a>.</p>
<b>OMBUDSMAN</b>	<p>The ICANN Ombudsman investigates and addresses complaints brought by members of the ICANN community who believe that the ICANN Board, staff or an ICANN constituent body has treated them unfairly. The Ombudsman must maintain neutrality and independence and facilitate fair, impartial and timely resolution of community complaints . See also: <a href="https://www.icann.org/resources/pages/accountability/ombudsman-en">https://www.icann.org/resources/pages/accountability/ombudsman-en</a>.</p>
<b>POLICY DEVELOPMENT PROCESS (PDP)</b>	<p>The Policy Development Process (“PDP”) is a set of formal steps, as defined in the ICANN Bylaws, to guide the initiation, internal and external review, timing and approval of policies needed to coordinate the global Internet's system of unique identifiers.</p>
<b>POST-TRANSITION IANA ENTITY (PTI)</b>	<p>As part of the IANA Stewardship Transition, a new Post-Transition IANA entity (“PTI”) will be created to provide the IANA functions after the transition of oversight responsibilities from the NTIA. PTI will take the form of a California nonprofit public benefit corporation, and ICANN will be its sole member. PTI’s governance structure will be set forth in ICANN’s Fundamental Bylaws.</p>
<b>PRIVATE SECTOR</b>	<p>The “private sector” includes businesses, not-for-profit bodies, individual persons, non-governmental organizations, civil society and academic institutions.</p>
<b>REGIONAL AT-LARGE ORGANIZATIONS</b>	<p>The At-Large community is structured into five Regional At-Large Organizations (“RALOs”). These organizations serve as the communication forum and coordination point to promote and assure the</p>

<b>(RALOs)</b>	participation of regional Internet user communities within ICANN activities as well as enhance knowledge and capacity building.
<b>RECONSIDERATION PROCESS</b>	The Reconsideration Process is an internal ICANN appeals mechanism through which affected parties may request that certain actions or inaction of the ICANN Board of Directors or staff be submitted to the ICANN Board for review or reconsideration. As part of the IANA Stewardship Transition, there will be several enhancements to the Reconsideration Process including expanding the scope of permissible Requests for Reconsideration and extending the time period during which an affected party may file a Request for Reconsideration .
<b>REGISTRAR</b>	Domain names ending with .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, and .pro can be registered through many different companies (known as "registrars") that compete with one another. A listing of the registrars that have been accredited by ICANN appears in the Directory of ICANN-Accredited Registrars( <a href="https://www.icann.org/registrar-reports/accredited-list.html">https://www.icann.org/registrar-reports/accredited-list.html</a> ).
<b>REGISTRY</b>	A "registry" is the authoritative, master database of all domain names registered in each Top-Level Domain. The registry operator keeps the master database and also generates the "zone file" which allows computers to route Internet traffic to and from TLDs anywhere in the world. Internet users don't interact directly with the registry operator; users can register names in TLDs including .biz, .com, .info, .net, .name, .org by using an ICANN-accredited registrar.
<b>REVIEW MECHANISM</b>	A "review mechanism" is a process to assess how a decision or policy is being put in place. ICANN has a series of review mechanisms mandated in its Bylaws to ensure its accountability and transparency.
<b>REGIONAL INTERNET REGISTRY (RIR)</b>	There are currently five Regional Internet Registries ("RIRs"): AfriNIC, APNIC, ARIN, LACNIC and RIPE NCC. These not-for-profit organizations are responsible for distributing and managing IP addresses on a regional level to Internet service providers and local registries.
<b>ROOT SERVERS</b>	The "root servers" contain the IP addresses of all the TLD registries – both the global registries such as .com, .org, etc. and the 244 country-specific registries such as .fr (France), .cn (China), etc. This is critical information. If the information is not 100% correct or if it is ambiguous, it might not be possible to locate a key registry on the Internet. In DNS parlance, the information must be unique and authentic.
<b>ROOT SERVER SYSTEM</b>	The Root Server System Advisory Committee ("RSSAC") advises the ICANN community and the ICANN Board on matters relating to the

<b>ADVISORY COMMITTEE (RSSAC)</b>	<p>operation, administration, security, and integrity of the Internet's root server system.</p> <p>See also: <a href="https://www.icann.org/resources/pages/rssac-4c-2012-02-25-en">https://www.icann.org/resources/pages/rssac-4c-2012-02-25-en</a>.</p>
<b>ROOT ZONE</b>	<p>The “root zone” is the central directory for the DNS, which is a key component in translating readable host names into numeric IP addresses.</p> <p>See also: <a href="http://www.iana.org/domains/root/files">www.iana.org/domains/root/files</a>.</p>
<b>SEPARATION PROCESS</b>	<p>A “separation process” means any process pursuant to which PTI may or will cease to perform the IANA naming functions under the IANA Functions Contract.</p>
<b>SPECIAL IFR</b>	<p>Following the IANA Stewardship Transition, Special IFRs may be initiated outside of the cycle for regular periodic IFRs to address certain deficiencies or issues relating to the performance of the IANA naming functions when the prescribed escalation mechanisms have been exhausted. The procedures for Special IFRs will be set forth in ICANN’s Fundamental Bylaws.</p>
<b>SUPPORTING ORGANIZATIONS (SOs)</b>	<p>The Supporting Organizations (“SOs”) are the three specialized policy developments bodies that currently provide the ICANN Board of Directors with policy recommendations on issues relating to domain names (GNSO and ccNSO) and IP addresses (ASO).</p>
<b>SPONSOR</b>	<p>A Sponsor is an organization which is delegated some defined ongoing policy-formulation authority regarding the manner in which a particular sponsored TLD is operated. The sponsored TLD has a charter, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the Sponsored TLD Community, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community.</p>
<b>SECURITY AND STABILITY ADVISORY COMMITTEE (SSAC)</b>	<p>The Security and Stability Advisory Committee (“SSAC”) is the President's standing committee on the security and stability of the Internet's naming and address allocation systems. Their charter includes a focus on risk analysis and auditing. SSAC consists of approximately 20 technical experts from industry and academia as well as operators of</p>

	<p>Internet root servers, registrars, and TLD registries.</p> <p>See also: <a href="https://www.icann.org/groups/ssac">https://www.icann.org/groups/ssac</a>.</p>
<b>STAKEHOLDER</b>	<p>A “stakeholder” is any individual or group affected by the actions of ICANN. Stakeholders at ICANN include ccTLD registries; gTLD registries and registrars; regional Internet registries who manage the regional distribution of Internet number resources including IP address and Autonomous System Numbers; the thirteen root name server operators; commercial interests, including those representing large and small businesses, intellectual property interests and providers of Internet and other communications services; non-commercial interests, including non-commercial users and not-for-profit organizations; governmental interests, including national governments, multi-national governmental organizations and treaty organizations, and distinct economies; technical experts from industry and academia; and Internet users worldwide.</p>
<b>STAKEHOLDER GROUPS</b>	<p>ICANN “stakeholder groups” represent a wide variety of individuals that compose the ICANN community. Stakeholder groups function as caucuses and are intended to facilitate the creation of new constituencies as well as self-growth and expansion.</p>
<b>STANDARD BYLAWS</b>	<p>As part of the IANA Stewardship Transition, ICANN’s Bylaws will be classified as either Standard Bylaws or Fundamental Bylaws. The threshold of Board approval required for changes to Fundamental Bylaws will be higher than that required for changes to Standard Bylaws. If the ICANN Board proposes any change to the Standard Bylaws, the proposal will require approval from two-thirds (2/3) of all of the Directors on the Board. Following Board approval, the Empowered Community will have an opportunity to reject a change to the Standard Bylaws before the change takes legal effect.</p>
<b>STRESS TEST</b>	<p>A “stress test” is a simulation exercise where a set of plausible, but not necessarily probable, hypothetical scenarios are used to gauge how certain events will affect a system, product, company or industry. Stress tests have been used to analyze how certain ICANN and DNS ecosystem risks or contingencies can be mitigated by applying the accountability mechanisms available to the CCWG-Accountability.</p>
<b>TOP-LEVEL DOMAIN (TLD)</b>	<p>Top-Level Domains (“TLDs”) are the names at the top of the DNS naming hierarchy. They appear in domain names as the string of letters following the last (rightmost) “.”, such as “net” in “www.example.net”. The administrator for a TLD controls what second-level names are recognized in that TLD. The administrators of the “root domain” or “root zone” control what TLDs are recognized by the DNS. Commonly used TLDs include .com, .net, .edu, .jp, .de, etc.</p>

<b>WORK STREAMS (WS)</b>	CCWG-Accountability Work Stream 1 (WS1) has focused on mechanisms to enhance ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition. Work Stream 2 (WS2) is focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.
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# Appendix K – Co-Chairs’ Special Appreciation of Staff and Rapporteur Efforts

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- 1 Developing the CCWG-Accountability Work Stream 1 Recommendations has been an unprecedented effort by the whole multistakeholder community. While we are proud of the tremendous, high-quality contributions and stamina dedicated by the volunteers, we would like to take this opportunity to give particular credit to a group of highly motivated, dedicated, patient and friendly individuals, without whom we could not have achieved the finalization of our report: *ICANN support Staff and CCWG Rapporteurs.*
  
- 2 **Thanks to our core Staff team:**
  - Brenda Brewer,
  - Alice Jansen,
  - Grace Abuhamad,
  - Hillary Jett,
  - Bernard Turcotte,
  - Adam Peake, and
  - Karen Mulberry.
  
- 3 **Thanks to the Rapporteurs:**
  - Becky Burr,
  - Cheryl Langdon Orr,
  - Steve DelBianco, and
  - Jordan Carter.
  
- 4 Also, we have benefited from flawless meeting support, always accommodating graciously our last minute requests. Thanks to Nancy Lupiano and the meetings team.
  
- 5 We are also grateful for the support and advice we received to prepare communications and correspondences from ICANN Communications department, as well as the outstanding graphics prepared by XPLANE.
  
- 6 From the daunting task of taking notes across hundreds of meeting hours to drafting to the incorporation of the various comments, Staff did all the heavy lifting across our four reports, as well as during and after the three public comment periods. They lived up to the very high transparency standards and always managed to deliver quality outcomes in the short times available. They have embodied the notion of accountability every minute. Beyond our appreciation of their efforts, we actually admired the skills, dedication and commitment from

Bernard Turcotte, Alice Jansen, Grace Abuhamad, Brenda Brewer, Hillary Jett, Karen Mulberry and Adam Peake. This appreciation also extends to the writers and other support teams who provided extra support during stretch times.

- 7 Finally, it is worth mentioning that beyond skills, beyond professional commitment, Work Stream 1 has been a wonderful team effort. Not only has our support Staff gained our deepest respect and appreciation, but they have also earned our trust and friendship, which we consider to be the greatest asset of all for the work that remains ahead of us.
- 8 León Sanchez, Thomas Rickert and Mathieu Weill
- 9 CCWG Accountability Co-chairs

**EXHIBIT JJN-23**

[العربية \(/ar/announcements/details/stewardship-of-iana-functions-transitions-to-global-internet-community-as-contract-with-us-government-ends-1-10-2016-ar\)](#)

[中文 \(/zh/announcements/details/stewardship-of-iana-functions-transitions-to-global-internet-community-as-contract-with-us-government-ends-1-10-2016-zh\)](#)

English

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[Русский \(/ru/announcements/details/stewardship-of-iana-functions-transitions-to-global-internet-community-as-contract-with-us-government-ends-1-10-2016-ru\)](#)

[Español \(/es/announcements/details/stewardship-of-iana-functions-transitions-to-global-internet-community-as-contract-with-us-government-ends-1-10-2016-es\)](#)



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# Stewardship of IANA Functions Transitions to Global Internet Community as Contract with U.S. Government Ends

1 October 2016

In addition to the U.N. six languages, this content is also available in:

**Português** (</en/announcements/details/stewardship-of-iana-functions-transitions-to-global-internet-community-as-contract-with-us-government-ends-1-10-2016-pt>)

Today, 1 October 2016, the contract between the Internet Corporation for Assigned Names and Numbers (ICANN) and the United States Department of Commerce National Telecommunications and Information Administration (NTIA), to perform the Internet Assigned Numbers Authority (IANA) functions, has officially expired (<http://www.ntia.doc.gov/press-release/2016/statement-assistant-secretary-strickling-iana-functions-contract>). This historic moment marks the transition of the coordination and management of the Internet's unique identifiers to the private-sector, a process that has been committed to and underway since 1998.

"This transition was envisioned 18 years ago, yet it was the tireless work of the global Internet community, which drafted the final proposal, that made this a reality," said ICANN Board Chair Stephen D. Crocker. "This community validated the multistakeholder model of Internet governance. It has shown that a governance model defined by the inclusion of all voices, including business, academics, technical experts, civil society, governments and many others is the best way to assure that the Internet of tomorrow remains as free, open and accessible as the Internet of today."

Internet users will see no change or difference in their experience online as a result of the stewardship transition.

In managing the coordination of the Internet's unique identifiers, ICANN plays a small but significant role in the Internet's ecosystem. For more than 15 years, ICANN has worked in concert with other technical bodies such as the Internet Engineering Task Force, the Regional Internet Registries, top-level domain registries and registrars, and many others.

The final chapter of the privatization process began in 2014, when NTIA asked ICANN to convene the global multistakeholder community, which is made up of private-sector representatives, technical experts, academics, civil society, governments and individual Internet end users, to come together and formulate proposals to both replace NTIA's historic stewardship role and enhance ICANN's accountability mechanisms.

## Recent Announcements

[ICANN Request for Proposal: Middle East Domain Name Industry Study 2023](#)

(</en/announcements/details/request-for-proposal-middle-east-domain-name-industry-study-2023-08-06-2023-en>)

[ICANN Releases Full Schedule for Asia Pacific DNS Forum 2023](#)

(</en/announcements/details/releases-full-schedule-for-asia-pacific-dns-forum-2023-08-06-2023-en>)

[ICANN Request for Proposal: The Grant Program](#)

(</en/announcements/details/request-for-proposal-the-grant-program-05-06-2023-en>)

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The package of proposals developed by the global community met the strict criteria (<http://www.ntia.doc.gov/press-release/2016/iana-stewardship-transition-proposal-meets-criteria-complete-privatization>) established by NTIA in its March 2014 announcement. Since their submission to NTIA, ICANN and its various stakeholder groups have worked tirelessly to ensure that all the necessary implementation tasks (</news/announcement-3-2016-08-12-en>) have been completed, so the IANA functions contract could expire on 30 September 2016.

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The proposals reinforce ICANN's existing multistakeholder model and are also aimed at enhancing ICANN's accountability. The improvements include empowering the global Internet community to have direct recourse if they disagree with decisions made by ICANN the organization or the Board.

The IANA stewardship transition is a testament to the tireless work of the global community, and a validation of the multistakeholder model that frames that community.

To learn more about the IANA Stewardship Transition, go here:  
<https://www.icann.org/stewardship-accountability>  
(<https://www.icann.org/stewardship-accountability>).

Akram Atallah's blog: "[Final Implementation Update](https://www.icann.org/news/blog/final-implementation-update)"  
(<https://www.icann.org/news/blog/final-implementation-update>)"

Stephen D. Crocker's blog: "[Cheers to the Multistakeholder Community](https://www.icann.org/news/blog/cheers-to-the-multistakeholder-community)"  
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**EXHIBIT JJN-24**



# TLD Application Process FAQs

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**We add/revise material on this page frequently. If you have visited here before, please reload/refresh this page.**

(Please note that in some cases the questions in the following FAQs have been edited to generalize them or otherwise to provide information of greater general interest.)

## **FAQ #1: What is the process for obtaining information about how to apply to sponsor or operate a new TLD?**

ICANN will make various information for applicants available on its web site. The information can be accessed through the web page at <<http://www.icann.org/tlds/tld-application-process.htm>>. This information will include various explanatory materials as well as application forms.

If you have a question before 3 October 2000 about the TLD application process that, after carefully reviewing the posted materials, you feel has not yet been answered, you may submit that question by e-mail to [tld-applications@icann.org](mailto:tld-applications@icann.org). To help provide all applicants with equitable access to information about the process as they prepare their applications, it is ICANN's practice to respond to questions about applications during the application period **only** when they are submitted **in writing**. Please do not attempt to get additional information by calling or visiting our offices.

We will periodically review the questions submitted and, if a response is appropriate, we will post the question (or an edited version of it, if we feel that would be more informative) along with our responses on this web page. Please watch this web page to see any response to your question. We will not be replying separately to e-mail inquiries.

We may also create and publish other FAQs on this page as we become aware of points that should be clarified.

Please note that any question that you submit to [tld-applications@icann.org](mailto:tld-applications@icann.org) is subject to being published verbatim on this web page. If you do not wish to publish an idea you have to the world, you should not include it in your question.

**IMPORTANT NOTE:** Those seeking information about the possibility of registering domain names within an existing or to-be-created TLD should direct their questions to [icann@icann.org](mailto:icann@icann.org). **Questions of this character should not be sent to the tld-applications mailbox.**

**FAQ #2: My TLD concept is complicated, and I feel I need to meet with ICANN to explain it. How do I do that?**

After the close of the application period on 2 October 2000, ICANN staff will be evaluating all of the applications received. This process will involve not only reviewing what has been submitted, but also consulting with technical, financial, business, and legal experts and gathering additional information that may be pertinent to the application.

As needed, after the application period is concluded the ICANN staff may gather additional information by sending applicants e-mails asking for the information, by conducting telephone or in-person interviews with applicants, by attending (possibly with ICANN-retained experts) presentations by applicants or their experts, or by other means. These inquiries will be initiated by the ICANN staff; if you feel a presentation to ICANN is necessary to properly present your proposal you should suggest that in your written application.

**FAQ #3:**

**(A) I represent a fairly large ISP & newly forming open source registrars' group that is also interested in possibly creating a new TLD. How do I know what TLD is being spoken for? The US\$ 50,000 application fee is not a problem, but I don't want to waste it on a TLD that already has been dealt with or is being processed.**

**(B) Recently I'm drawing an Chinese DNS standard and require information about DNS, especially TLDs. As I know, ICANN issued new TLDs recently during the meeting in Yokohama, and I want to know what are these new TLDs.**

In Yokohama, the ICANN Board adopted a policy that will allow the introduction of new TLDs, which will probably become operational

next year. However, **no particular TLDs were approved in Yokohama**. The TLDs that are presently in effect are described in the "[Present Structure of the Domain-Name System](#)" section of the "[Introduction of New Top-Level Domains](#)" document published in advance of the Yokohama meeting.

**FAQ #4: Will the date I submit my application matter if multiple candidates apply for the same name(s)? Do applicants who submit their applications earlier get priority with everything else equal?**

You must submit your complete application to ICANN by the 2 October 2000 deadline. If you do so, the date on which you submit your application will not affect the selection process. In other words, the date you apply makes no difference (as long as you get your application in on time).

**FAQ #5: Is it correct to assume that new TLDs to be considered by ICANN may utilize non-ASCII characters in both the name of the TLD and in name components ("labels") hierarchically below it?**

No. Domain names are used as identifiers in a variety of protocols and applications that conform to them. These protocols expect the identifiers they use to conform to a very narrow definition, which has been established in the Internet for over 25 years. Use of names that do not conform to the narrowest of the rules and conventions is known to cause operability and interoperability problems. The format is described in several places, most importantly section 3 of [RFC 1034](#) and section 2.1 of [RFC 1123](#) (both full Internet Standards).

Specifically, applications expect domain names that are composed only of the letters A to Z (interpreted in a case-independent fashion), digits, hyphens, and the period, all coded according to the rules of the "ASCII" character set (the "basic version" character coding specified in ISO 646). The period is used only to separate name components (called "labels" in the DNS). Labels may not start or end with a hyphen or be more than 63 characters in length; top-level domain names (i.e. the rightmost label in a name) may not start with a digit.

At this time, ICANN will only establish top-level domains having names that comply with the above format. Registries will be expected similarly to follow that format for the names they register.

The [Internationalized Domain Name \(IDN\) Working Group](#) of the [Internet Engineering Task Force \(IETF\)](#) is charged with specifying the requirements for internationalized access to domain names and a standards track protocol and encodings, based on those requirements, which will adequately respond to applications

restrictions. When IDN's work is complete, the above name-formation requirements might be modified.

See [FAQ #9](#) and [FAQ #36](#) for related information.

**FAQ #6: Will applications submitted after 2 October 2000 (around December or early next year) be considered?**

The current activity (in calling for proposals to sponsor or operate new TLDs) is part of a "proof of concept" program in which various ideas for new TLDs will be tested in actual practice. The plan is to introduce a limited number of new TLDs in a measured and responsible manner and then to evaluate how the introduction fared.

To be included in this proof-of-concept program, applications must be received by 2 October 2000. Based on evaluation of how things proceed, next steps will be decided, and later applications might then be accepted.

**FAQ #7: How can I arrange for ICANN to send me a hard copy of the application form?**

You can't. Applications will consist primarily of comprehensive technical, business, and policy proposals prepared by or for the applicant. There will also be various forms to be submitted, which are scheduled to be available on the ICANN web site on 15 August 2000. Once these are available, you should print them, fill them out, and submit them as part of your overall application.

**FAQ #8: In some jurisdictions, it is a long process to authorise a not-for-profit corporation. Will ICANN accept an application for which the temporary applicant is an ordinary corporation with the intent to convert it to a not-for-profit corp? Such an authorisation may be conditional upon the conversion prior to fully implementing the registry.**

The appropriate course in this situation depends on whether the to-be-formed not-for-profit corporation is proposed to be a sponsoring organization (the usual case), the registry operator, or both.

A proposed sponsoring organization need not actually be formed at the time that the application is made. The application for a sponsored TLD can be made by those proposing to form the sponsoring organization. Of course, formation must be complete before the organization enters a TLD sponsorship agreement with ICANN. Ordinarily, ICANN's decision to delegate to a sponsoring organization will be made based partly on the characteristics of the proposed organization, and that organization should be the one that will serve as the sponsoring organization throughout the period of the requested delegation.

In contrast, the registry operator's proposal should be submitted by an existing organization. As with sponsoring organizations, ICANN's decision to delegate to a registry operator will be made based partly on the characteristics of the operator. The proposed operator should be the one that is proposed for the entire period of the requested delegation.

See [FAQ #12](#) for related information.

**FAQ #9: If a restricted TLD were to be the subject of an application, would ICANN accept a TLD name in ASCII letters which are conversions from another symbolic system to Roman letters?**

A TLD name must conform to format requirements summarized in [FAQ #5](#). Provided it does, it can be a transliteration having meaning in another symbolic system. For example, .san (transliterated from Japanese) would be acceptable as the name of a TLD for personal-use domain names.

**FAQ #10: Will there at any time be the opportunity to secure an extended window to lodge an application or the possibility of securing some sort of option over the right to lodge an application? The very short time frame within which to lodge applications is short.**

The current application process is part of a "proof of concept" program that is intended to involve introduction of only a limited number of new TLDs. In recognition of the limited recent experience in introducing new TLDs, the program is meant to allow the Internet community to evaluate possible additions and enhancements to the DNS and possible methods of implementing them. After these initial introductions, decisions can be made about evolution of the DNS (including new TLDs) based on the experience gained. While it would not be appropriate to prejudge those decisions, they may involve seeking additional applications in the future.

**FAQ #11: One might think that all applicants must be not-for-profit organizations. Is this understanding correct?**

No. Depending on the type of TLD being proposed (sponsored or unsponsored), the applicant will be either a sponsoring organization or a registry operator. For discussions of the role of each, see the [Sponsored and Unsponsored TLDs section of the New TLD Application Process Overview](#) document and [criteria 7 in the Criteria for Assessing TLD Proposals](#) document. Each organization should have characteristics (not-for-profit, for-profit, etc.) appropriate to its role within the overall context of the proposal.

**FAQ #12: Can multiple organizations make an application to sponsor a TLD?**

Yes, in the situation where the sponsoring organization is not yet formed. See, for example, [item A1 on the Sponsored TLD Application Transmittal Form](#) and [Instruction I9.2](#). In all other situations, there should be only a single applicant. For related information, see [FAQ #8](#).

**FAQ #13: I have the question about paying the US\$50,000 fee. If the application is not granted, is ICANN giving the US\$50,000 back?**

No. The fee is only an application fee, in exchange for which ICANN will review your application. ICANN will keep your fee even if it does not grant your application.

There is only one situation in which your application fee might be returned. If you claim your application contains confidential information and ICANN disagrees, ICANN will delete the information before reviewing your application on the merits. In this situation, you will be offered the opportunity to withdraw the application and obtain a refund of the US\$50,000 application fee. See [section I of the Statement of Requested Confidential Treatment of Materials Submitted](#) for details.

**FAQ #14: If the application is granted by ICANN, is ICANN keeping the fee?**

Yes. Applications will be granted only after review and evaluation by ICANN. The fee is designed to defray ICANN's costs associated with processing and evaluating the applications, and follow-up.

Please note that ICANN recovers its costs of operation from domain-name and IP-address registries and registrars. Those preparing Registry Operator Proposals should [factor their share \(if the application is accepted\) of ICANN's cost-recovery needs into their business model](#).

**FAQ #15: Why is the application fee so high? Aren't you going to prevent non-profit TLD registry proposals by requiring such a steep application fee?**

As a small non-profit organization, ICANN must conduct its activities so they are essentially self-funding, on the principle of cost-recovery. For example, the accreditation process for .com, .net, and .org registrars is funded through application and accreditation fees paid by those registrars. Likewise, the new-TLD-application process must be self-funding. This process will include very intensive review and analysis of applications on many levels (including technical, financial, legal, etc.). The application fee was set at a level intended to cover all

of ICANN's costs related to the process. It would not be justifiable to require existing registries and registrars to subsidize the process.

In establishing the fee, ICANN's Board was concerned that the application fee might discourage some applications for special-purpose restricted TLDs. However, a multi-tiered fee structure would mean that some applicants would subsidize the application-review costs of others. This would be particularly unfair because of difficulties in distinguishing between for-profit and non-profit proposals in the global context. Accordingly, a single, cost-recovery-based application fee has been adopted for this year's new-TLD-application process.

**FAQ #16: ICANN states clearly its intention to create competition among gTLD registries as it did with registrars. Will ICANN grant an application for a new registry for an existing gTLD like .com, .net, or .org?**

No. The current program involves the evaluation of applications to sponsor or operate "[new TLDs](#)," not existing ones. As stated in the [New TLD Application Process Overview](#) document, "The adopted policy calls for submission of proposals to sponsor or operate new TLDs by interested persons and organizations." There is no intent to upset arrangements for existing TLDs through this program.

**FAQ #17: My group is dissatisfied with the operation of the two-letter ccTLD that has been assigned to our country. We would like to apply to operate a registry for that ccTLD. Should we submit an application under the New TLD program?**

No. The [New TLD Application Process](#) involves establishing new TLDs, not changing the delegation of existing ones. Applications in the New TLD program should not seek TLD strings that match [alpha-2 codes on the ISO 3166-1 list](#).

See [FAQ #21](#) and [FAQ #24](#) for related information.

**FAQ #18: If we go through all the effort to apply for a top level domain, who owns it? What could potentially happen to change ownership?**

Top-level domains are established for the benefit of the Internet community. Their operation is delegated to particular organizations based on a showing that doing so is in the best interests of the Internet community. An operator does not "own" a top-level domain. As noted in [RFC 1591](#) (written by Jon Postel in 1994 and entitled "Domain Name System Structure and Delegation"): "Concerns about 'rights' and 'ownership' of domains are inappropriate. It is appropriate to be concerned about 'responsibilities' and 'service' to the community."

It is anticipated that TLD registry agreements will provide that, if a registry operator fails to meet its service obligations, the agreement may be terminated. In their proposals, sponsoring organizations and registry operators should state the term they are suggesting and explain why they believe that term would best serve the interest of the Internet community. See, for example, [item D13.2.10 of the Registry Operator's Proposal](#).

See [FAQ #39](#) for similar information concerning sponsored TLDs.

**FAQ #19: Is the non-refundable US\$ 50,000 application fee per TLD or per idea? In other words, if I apply for multiple TLD strings is that one or many applications?**

It is US\$ 50,000 *per application*. [Section VIII of the New TLD Application Instructions](#) discusses the circumstances in which a single application can propose multiple TLD strings.

**FAQ #20: I am planning to submit an application to ICANN for a new TLD. I would like to submit my application in writing. What address should I send my application to?**

This information is provided in [item I22 of the New TLD Application Instructions](#). Persons considering submitting an application are urged to carefully review that document as well as the instructions stated in the applications. Failure to follow all of the instructions can lead to denial of your application.

**FAQ #21: Will an application which accidentally proposes a TLD that is an alpha-3 code on the ISO-3166-1 list fail?**

As stated in [FAQ #17](#), applications in the New TLD program should not seek TLD strings that match [alpha-2 codes on the ISO 3166-1 list](#). There is no similar, automatic disqualification on alpha-3 codes on the ISO 3166-1 list.

See [FAQ #24](#) for a follow-up question.

**FAQ #22: What is the procedure in the event of duplicate submission of a domain name by different parties? Which party would get preference? Would the fee be non-refundable for the party that is not selected?**

Applications to sponsor or operate a TLD will be evaluated according to the [Criteria for Assessing TLD Proposals](#), under which all aspects of the proposal (operational, financial, technical, etc.) will be considered. The particular TLD string requested is only one of many factors in the evaluation. Clearly, the same TLD cannot be established for both proposals; differences between the applications

would be considered according to the criteria. The fee paid by a non-selected applicant would not be refundable.

**FAQ #23: Will two (or more) parties that apply for a TLD in related fields or that propose identical plans be asked to negotiate to present a joint proposal?**

Although it is possible that negotiations toward a joint proposal would be urged depending on the circumstances, applicants should not assume that ICANN will request or require such negotiations.

Applicants should consider discussing their proposals with other interested members of the community before submitting them.

**FAQ #24: [FAQ #21](#) states that there is no "automatic disqualification" of applications proposing TLD labels that are alpha-3 codes on ISO 3166-1 list. Is this the correct even if a [ccTLD has been established for the corresponding alpha-2 code on the ISO 3166-1 list](#)?**

Yes, it is correct that there is no automatic disqualification. Please take note, however, of [consideration 4\(b\) in the Criteria for Assessing TLD Proposals](#), which states:

- b. Is the proposed TLD semantically "far" from existing TLDs, so that confusion is avoided? (For example, TLD labels suggesting similar meanings might be more easily confused.) Is it phonetically distinct from existing TLDs? Meanings and pronunciations in different languages may be relevant to these inquiries.

In this context, "existing TLDs" includes ccTLDs that have been established.

**FAQ #25: We are an established not-for-profit institute that wishes to sponsor a chartered TLD. However, we feel that the eventual formation of an international sponsoring organization would be best for this chartered TLD. We would therefore like to propose our institute as the sponsoring organization pro tem, with a well-defined schedule for the establishment of the international sponsoring organization (as negotiated with ICANN). Would such a proposal be acceptable to ICANN?**

Assuming that a proposal qualifies in other respects, the fact that the proposed sponsoring organization has not yet been formed should not disqualify the proposal. As noted in [section 1\(c\)\(i\) of the New TLD Application Process Overview](#), "Where the proposed sponsoring organization has not yet been formed, the submission may be made by the organizers of that organization." Thus, it would be appropriate to have a proposal under which your not-for-profit institute would propose to establish the international sponsoring organization. If you

wish your proposal to be evaluated based on the appropriateness of the to-be-formed international organization (rather than the institute) as sponsor, we recommend that your proposal include plans to form the organization before completion of any contract negotiations with ICANN. The proposed organization could be affiliated initially with your institute, with a spin-off scheduled for a later time.

In submitting your application, you should check the box in [item A1 of the Sponsored TLD Application Transmittal Form](#) next to "Organization(s) or person(s) proposing to form the sponsoring organization (check this item only if the sponsoring organization has not yet been formed)." [Section I of the Sponsoring Organization's Proposal](#) should be completed to give the information for the sponsoring organization that is proposed (i.e. the one to be formed).

**FAQ #26: Will existing ICANN-accredited registrars for .com, .net, and .org be able to act as registrars in the new TLDs?**

The type of channels used for registrations in a TLD is only one of many factors that will be considered in determining whether to select a proposal for negotiations toward possible establishment of a TLD. For a discussion of some relevant factors that may pertain to the considerations raised by your question, see [Criteria for Assessing TLD Proposals](#), and particularly "[the enhancement of competition for registration services](#)" (factor 3).

See [FAQ #38](#) for related information.

**FAQ #27: Can the floppy diskette requirement be expanded to allow softcopy submission on CD?**

Yes, it can. Thanks for the great suggestion! We have already changed the documents to make this change.

See [FAQ #40](#) for related information.

**FAQ #28: Can you provide any estimate on the timing for the "proof of concept" phase for new TLDs, and when the next opportunity to propose TLDs after this initial phase will be?**

There is not yet any date that has been scheduled for a "next round," and at present we have no predictions as to the schedule. In the current round of applications, applicants are [requested to describe the value of their proposals as proofs of concept](#). [Item E30 of the Description of TLD Policies](#) requests suggestions for how the results of the introduction being proposed should be evaluated. Once a decision is made on the evaluation procedure to be used for TLDs introduced in the current round, the timing of future steps should become clearer.

See [FAQ #54](#) for related information.

**FAQ #29: We would like to provide an Executive Summary of our TLD proposal (perhaps 1 to 3 pages in length) that describes the motivation and overall goals of the TLD. Where should such a summary be placed in the application? Perhaps as a cover letter?**

We suggest that you attach it to your [Description of TLD Policies](#). Before item E1 on your description, you should type in a statement such as "An Executive Summary of this proposal is attached."

Materials that you wish ICANN to consider in support of your application should be included in the body of your application materials (i.e. your transmittal form, the Sponsoring Organization's Proposal, the Registry Operator's Proposal, the Description of TLD Policies, the fitness disclosures, or the Statement of Requested Confidential Treatment) or as a referenced attachment, not in an unreferenced, separate cover letter.

**FAQ #30: [Item \(c\) under factor 8 of the Criteria for Assessing TLD Proposals](#) states that when evaluating proposals ICANN will examine: "c. Has the proponent considered intellectual property interests or otherwise designed protections for third-party interests?" What types of intellectual-property protections should be included?**

Applicants should propose measures they believe are appropriate to protect intellectual property and other third-party interests. The types of protections that are appropriate will depend, to some extent, on the nature of the TLD and other circumstances. Applicants should anticipate that one of the topics of [public comments on their proposals](#) will be the appropriateness of the protections they propose.

In preparing their proposals, applicants may wish to consult the materials prepared by the ICANN DNSO Intellectual Property Constituency (IPC) and [posted on the IPC website](#). These are the views of the IPC only.

**FAQ #31: What TLDs are already established?**

Presently, there are seven traditional "generic" TLDs (.com, .edu, .gov, .int, .mil, .net, and .org), nearly 250 [two-character "country-code" TLDs](#), and one infrastructure TLD (.arpa).

For a more detailed description of the present TLDs, see the [detailed topic paper on TLDs](#) prepared in advance of the ICANN Yokohama meeting.

**FAQ #32: I'm investigating the possibility of two companies (parent companies) with complimentary capabilities forming a jointly held**

**company (joint venture) to operate a new non-sponsored TLD registry. The joint venture would not have any operational experience and history. Am I correct in assuming that the Registry Operator's Proposal should describe the data and history for the two parent companies? Also, will ICANN consider the application if the joint venture is not yet established when the application is sent?**

A [Registry Operator's Proposal](#) must be submitted by a proposed registry operator that is in existence (i.e. has already been formed) at the time the proposal is signed and submitted. Note that the proposed registry operator should be an organization, such as a corporation, having the ability to enter legally binding contracts.

The Registry Operator's Proposal should describe the capabilities of the entity proposed actually to serve as registry operator. In the circumstances you describe, that could be done by describing the data and history of the parent companies and by providing documentation that the parent companies are firmly committed to transferring their relevant operational units to the newly formed entity.

### **FAQ #33: How do I pay the application fee?**

When they were first posted, the instructions required that the non-refundable application fee be paid by check. That is still the payment method we prefer that you use. However, for the convenience of those that may have difficulty in obtaining a check drawn on a United States bank, we have decided to permit payment by wire transfer. In either case, because your application will only be considered once we are satisfied you have fully paid the application fee, it is vital that you follow the payment instructions **exactly**:

- If you choose to pay by check, with your application you must send a check, drawn on a United States bank and **payable to the Internet Corporation for Assigned Names and Numbers (ICANN)**, in the amount of 50,000 United States dollars.
- If you choose to pay by wire transfer, you must arrange for the wire transfer to be sent to ICANN at the following account:

Internet Corporation for Assigned Names and  
Numbers

Account number 09141-04900

Routing indicator 121000358

Bank of America Branch 0914

4754 Admiralty Way

Marina del Rey, CA 90292 USA

Telephone +1/310/247-2080

We must receive wire transfers **at least five business days before we receive your application** and **you must include a wire transfer receipt or other document identifying the wire transfer with your application.**

See [FAQ #57](#) for related information.

**FAQ #34: Where can I obtain a list of the parties that previously submitted a letter of interest and brief proposal to operate/sponsor a new gTLD?**

For a list of expressions of interest received in the period leading up to the ICANN meeting in Yokohama, [click here](#).

See [FAQ #49](#) for related information.

**FAQ #35: Can I propose to act as both the registry operator also a registrar?**

Applicants should describe the marketing channels they are proposing. See [item D13.2.4 of the Registry Operator's Proposal](#). A proposal to act as both registry operator and registrar is not forbidden, though that feature may affect how your proposal is evaluated. In formulating recommendations for the ICANN Board, the ICANN staff currently intends to consider at least the factors stated in the [Criteria for Assessing TLD Proposals](#), including [factor 3](#): "The enhancement of competition for registration services."

**FAQ #36: In your response to [FAQ #5](#), regarding the use of non-ASCII characters in a TLD string, you stated, "top-level domain names... may not start with a digit." Having conducted research into this specific area, we have proven (just by the adoption of simple policies that can be applied at the registry level) that it is possible to operate a TLD with a digit as the first character while maintaining the stable operation of the DNS, and we believe that a proposal of this sort "[might increase the utility of the DNS](#)." Can the no-beginning-digit statement of [FAQ #5](#) be relaxed?**

Not at this time. It is important to Internet stability that DNS names conform to the relatively narrow format rules and conventions stated in the RFCs because, among other things, application developers have relied on those format rules and conventions in designing, implementing, and testing software that handles DNS names. Although the statements in [RFC 1034](#) and section 2.1 of [RFC 1123](#) (cited in the response to [FAQ #5](#)) might, standing alone, be subject to differing interpretations, subsequent RFCs have interpreted those RFCs to prohibit TLD labels starting with digits. See [RFC 2396](#), pages 13-14 (August 1998); [RFC 1738](#), page 6 (December 1994). At least one of these RFCs has been available to software developers for over five years.

If the no-first-digit requirement for TLD labels is to be relaxed, it should be done through the IETF, which developed the documents articulating the requirement.

**FAQ #37: It has been rumored that there is a financial backing requirement of \$10,000,000. Can you please clarify these details? If not \$10,000,000, what is the specific requirement?**

There is no specific, fixed amount of firmly committed capital required. The level of capital will depend on the nature of the overall proposal. The Registry Operator's Proposal submitted with the application should contain a detailed analysis of capital requirements and demonstrate firm commitments for that capital. See Items [D13.2.5](#), [D13.2.13](#), and [D13.4.4](#). As noted under [factor 9 of the Criteria for Assessing TLD Proposals](#):

The ICANN staff intends to place significant emphasis on the completeness of the proposals and the extent to which they demonstrate that the applicant has a thorough understanding of what is involved, has carefully thought through all relevant issues, has realistically assessed the business, financial, technical, operational, and marketing requirements for implementing the proposal, has procured firm commitments for all necessary resources, and has formulated sound business and technical plans for executing the proposal.

**FAQ #38: Is ICANN planning on establishing a general registrar accreditation process for all the new TLDs?**

As noted in [Item E4 of the Description of TLD Policies](#), an applicant for the operation or sponsorship of a new TLD should propose policies for selection of, and competition among, registrars concerning the TLD. That policy can include use of ICANN's accreditation program for the .com, .net, and .org or some alternative mechanism. Please refer to [FAQ #26](#) for a discussion of the effect the proposed policies may have on evaluation of the application.

**FAQ #39: In the case of a sponsored and restricted TLD where policy formulation is granted by ICANN, under which conditions may this delegation be revoked? Are there precedents? What appeal mechanisms exist?**

The conditions for revocation of the delegation of policy-formulation responsibility for a sponsored and restricted TLD would be set forth in an agreement between ICANN and the sponsoring organization (likely including a charter for the TLD). In general, violations by the sponsoring organization of the agreed conditions for the delegation,

or a determination that the charter is no longer appropriate to the needs of the Internet community and should be revised or rescinded, could lead to revocation of the delegation. The terms of agreements will be discussed in negotiations after initial selections are made in November.

As [noted in the Detailed Topic Paper prepared for the Yokohama meeting](#), in many respects the sponsorship paradigm is a generalization of the concepts underlying appointment of managers for ccTLDs under existing ccTLD delegation policy. The current policies in that regard are set forth in [ICP-1](#).

ICANN decisions are subject to review by the ICANN Board under [ICANN's reconsideration policy](#). One topic of the negotiations will be other "appeal" mechanisms.

**FAQ #40: Assuming that the required HTML-format electronic copy of the specified parts of the application is for posting on the web site for public review, are other formats acceptable as long as they fulfill the same purpose of being publicly readable? Would you allow for PDF as an alternative/supplement to be posted on the site?**

Applicants must provide electronic copies of the specified portions of their applications in both HTML format and a common word-processing format. See Items [17](#) and [110](#) of the New TLD Application Instructions. Applicants may, if they choose, also submit those portions of their applications in PDF format. ICANN staff will decide whether to post the PDF format in addition to the HTML format once all the applications are received.

See [FAQ #60](#) and [FAQ #73](#) for related information.

**FAQ #41: How many hard (i.e. paper) copies of the application should be submitted?**

A single copy is sufficient.

**FAQ #42: We are planning to propose a sponsored, restricted TLD. We propose that the sponsoring organization be responsible for making policies, assessing individual applications, informing the registry operator which applications meet the TLD's requirements and should be registered, providing customer support, and carrying out marketing. The sponsoring organization will be the profit center and the registry operator will be paid fees by the sponsor and receive an equity interest in the sponsor. Does this structure meet the structural requirements for running a TLD or do we have to place the marketing, advertising, and other operational functions in the hands of the registry operator?**

The configuration of the proposed structure is up to the applicant. Please note, however, that sponsoring organizations are intended to allow participation of the affected segments of the relevant communities. As [stated in the New TLD Application Process Overview](#):

The extent to which certain policy-formulation responsibilities are appropriately delegated to a sponsoring organization will depend upon the characteristics of the organization that may make such delegation appropriate. These characteristics may include the mechanisms the organization proposes to use to formulate policies, its mission, who will be permitted to participate and in what way, and the degree and type of accountability to the community it will serve (to the extent these are necessary and appropriate). The Sponsoring Organization's Proposal provides an opportunity to provide information on these characteristics.

**FAQ #43: What period should the pro-forma financials included in the registry operator's business plan cover?**

The registry operator's business plan required by [Item D13.2 of the Registry Operator's Proposal](#), as well as the pro-form financial projections required by [Item D13.3](#), should cover the entire term of registry agreement being proposed (see [Item D13.2.10](#)), but in any event need not be presented for more than four years. As noted in [Item D13.3](#), the pro-forma projections should be broken down into periods no longer than quarterly.

**FAQ #44: In [Item D13.2.5 of the Registry Operator's Proposal](#) you ask for projections of demand for registry services in the proposed new TLD "for at least 10%, 50%, and 90% confidence levels." What does this mean?**

Proposed registry operators are requested to provide at least three estimates of the demand for registry services. One estimate (the 50% confidence estimate) should express the projection of demand that the registry operator concludes is equally likely to be exceeded as to be not met. The other two estimates (the 90% and 10% confidence estimates) should be nine times as likely to be exceeded as to be not met, and vice versa.

**FAQ #45: The application transmittal forms (e.g., Items [A13-A15](#) and [B12-B14](#)) limit ICANN's liabilities to the applicant unless and until the application is selected for negotiations, those negotiations are successfully concluded, and formal, written agreements are entered. What about the applicant's liabilities to ICANN? For example, the persons proposing to form a sponsoring organization may fail to successfully**

**organize the sponsoring organisation (broad based, etc.) even though they may have started negotiations with ICANN. Would they be liable to ICANN (other than for the US\$50,000 non-refundable application fee)?**

The applicants must abide by the various obligations and certifications (concerning, as one example, truthful and complete disclosure) stated in the application materials. Assuming they do so, neither a sponsoring organization, its organizers, nor a registry operator incurs any monetary liability to ICANN by submitting the application, beyond the US\$50,000 non-refundable application fee. In particular, submitting an application does not subject the applicants to liability for failing to properly form a sponsoring organization even though negotiations are commenced.

In the event that, after negotiations, formal written agreements are reached, those agreements will specify the obligations of the selected sponsoring organizations and registry operators to ICANN. Sponsoring organizations must be formed before agreements with them will be entered.

**FAQ #46: Regarding the the Registry-Registrar Protocol (RRP) used in the .com, .net, and .org TLDs and described in [RFC2832](#):**

**(A) Will new registries have open, unrestricted access to the RRP for use and future modification, without the requirement of a license from Network Solutions, Inc.?**

**(B) If a license will be required, will such license require a license fee and allow the future modification of the RRP, including the creation of derivative works?**

**(C) Does Network Solutions Registry claim intellectual property rights in the RRP as described in RFC 2832, or any other basic functionality necessary for the efficient interface between registries and registrars utilizing the RRP?**

**(D) Will Network Solutions cooperate with a formal IETF process to create a permanent open and peer reviewed standard?**

Questions (A), (B), and (C) involve legal issues, about which you should consult your lawyer. Please note the following two items in that connection:

a. The RRP is described in [RFC 2832](#), which contains the following statement:

"Copyright (C) The Internet Society (2000). All Rights Reserved.

"This document and translations of it may be copied and furnished to others, and derivative works that comment on or otherwise explain it or assist in its implementation may be prepared, copied, published and distributed, in whole or in part, without restriction of any kind, provided that the above copyright notice and this paragraph are included on all such copies and derivative works. However, this document itself may not be modified in any way, such as by removing the copyright notice or references to the Internet Society or other Internet organizations, except as needed for the purpose of developing Internet standards in which case the procedures for copyrights defined in the Internet Standards process must be followed, or as required to translate it into languages other than English.

"The limited permissions granted above are perpetual and will not be revoked by the Internet Society or its successors or assigns."

b. NSI Registry is [offering its RRP software development kits as open source software](#) under the terms of the [GNU Lesser General Public License](#).

On Question (D), please note that Scott Hollenbeck of NSI Registry has submitted an [Internet Draft on "Generic Registry-Registrar Protocol Requirements"](#) (**New: Now in version 5**). Members of the Internet community wishing to contribute in this area should [contact Mr. Hollenbeck](#).

#### **FAQ #47: What are the acceptable lengths (number of characters) for TLD labels?**

Ordinarily, TLD labels (e.g., "com") that are proposed for the new TLD program should be between three and sixty-three characters long, inclusive.

Two-letter codes must be available for establishing ccTLDs according to the policy set forth in [ICP-1](#). Under that policy, ccTLDs are established with two-letter codes that appear on the [ISO 3166-1 list](#). To avoid the possibility of future name collision, proposals for two-letter TLDs will not be accepted in the new TLD program unless the [ISO 3166 Maintenance Agency](#) has indicated that the proposed two-letter code will not be placed on the ISO 3166-1 list in a way that would be incompatible with the proposal. Compatibility could be

demonstrated, for example, for a proposed TLD not meeting the alpha-2 code format used in the ISO 3166-1 list (e.g., "a1") or where the Maintenance Agency has reserved the proposed code, in a manner compatible for the proposed usage under the new TLD program, for stated "particular applications" including Internet TLD usage (this includes reservations for all usages).

Under current practice of the Internet Assigned Numbers Authority, one-letter codes are reserved from assignment to allow for future DNS extensibility.

See [FAQ #56](#) for related information.

**FAQ #48: Will ICANN require that current second-level-domain-name holders in .com, .net, and .org be given an opportunity to register their names before the general public?**

Applicants should propose mechanisms to deal with start-up issues for the proposed TLD in a way that takes account of the rights and expectations of existing domain-name holders, trademark owners, and others. [See Item E15 in the Description of TLD Policies](#). At this stage of the new TLD program, there is no fixed set of required mechanisms in this regard, such as giving a preferential opportunity for registration in the proposed TLD to domain-name holders in the existing TLDs. [One factor that will be considered in evaluating proposals](#) is the adequacy of the proposed mechanisms for allocation of names during the start-up phase of the proposed TLD.

**FAQ #49: Where can a sponsoring organization obtain a list of registry operators?**

We are not aware of any comprehensive list of organizations seeking to become registry operators. However, you might review the [expressions of interest that ICANN received before its Yokohama meeting in July 2000](#).

**FAQ #50: How many unrestricted TLDs and how many restricted TLDs will ICANN be approving?**

At its 16 July 2000 meeting in Yokohama, the ICANN Board [adopted a recommendation](#), which was made by ICANN's Domain Name Supporting Organization, to introduce new TLDs in the next several months in a measured and responsible manner. The exact number of TLDs that will be introduced will depend on the character of the proposals received. The mix of restricted and unrestricted TLDs will also depend on the character of the proposals.

**FAQ #51: What is the current amount that NSI Registry pays for each domain name in the registry? Will the fee structure be the same for new**

## TLDs?

ICANN's operating costs are supported by the name registries and registrars and the address registries according to formulas established through a budget process that includes discussions among those entities. For the 2000-2001 fiscal year, .com, .net, and .org registrars are contributing US\$2,140,000 and NSI Registry is contributing US\$250,000. The exact arrangements for new TLDs are not yet established, but they will be expected to contribute a fair share of ICANN's cost-recovery needs.

### **FAQ #52: What guidance can you provide on independent but related registry submissions that seek to solve a common problem, specifically where there is a cross subsidy from one registry to the other?**

If there are multiple registries, multiple applications (with multiple application fees) should be submitted. See [Instruction I30](#). The applications should note their relationship to each other, and should take account of the subsidy (for example, in the [pro forma financial projections](#)).

### **FAQ #53: [Item D13.2.15 of the Registry Operator's Proposal](#) asks for a detailed description of plans for dealing with the possibility of registry failure. Does this refer to system failure, business failure, or both?**

It refers to all types of failures from any cause, including business failures, system failures, natural disasters, and sabotage.

### **FAQ #54: If our TLD application is not accepted, what becomes of our application? I understand that the \$50,000 is non-refundable, but does the application remain active for the second round of TLD applications?**

As stated in [FAQ #28](#), plans for any subsequent rounds of TLD introductions will not be made until evaluation of the present "proof of concept" round. It is likely that, if there are subsequent rounds, there will be revisions in the program based on experience in the first round. This will likely require submission of new application materials. As to the non-refundable application fee, please note that it "is only an application fee to obtain consideration of *this* application." See Items [A7](#) and [B6](#) of the transmittal forms.

### **FAQ #55: The [Registry Operator's Proposal](#) asks for the Dun & Bradstreet D-U-N-S Numbers (if any) of the operator and certain subcontractors. What is a D-U-N-S Number?**

Information about D-U-N-S Numbers is [available on the Dun & Bradstreet web site](#). Although any existing D-U-N-S number(s) should be given in the application, you need not obtain a D-U-N-S Number to apply.

**FAQ #56:** According to [FAQ #47](#), two-character TLDs must be available for ccTLDs. However, it is not clear as to whether or not a two-character TLD can be proposed if it in fact has not been assigned a country. Can a two-character TLD can be established if it is not currently on the ISO 3166-1 list?

Generally, no. A two-character code will be considered only if (a) it is not presently on the [ISO 3166-1 list](#) and (b) the [ISO 3166 Maintenance Agency](#) has indicated that the code will not be added to the list in the future for any purpose that is incompatible with the use you propose for the code.

**FAQ #57:** Please confirm my understanding that if payment of the non-refundable application fee is made by check, payment is timely if it is received by ICANN on 2 October. I.e. that the five-day requirement applies solely to wire transactions.

If you pay by check drawn on a United States bank and payable to the Internet Corporation for Assigned Names and Numbers (ICANN) in the amount of 50,000 United States dollars (see [Item 18.1 of the Instructions](#)), then your payment will be timely if the check is received at ICANN's offices by 2 October. If you choose to pay by wire transfer, your wire transfer must be received at least five business days before we receive your application and you must include a wire transfer receipt or other document identifying the wire transfer with your application (which must be received by 2 October).

**FAQ #58:** [Item C18.2 of the Sponsoring Organization's Proposal](#) indicates that ICANN will accept an application for a sponsored TLD where there is not yet a finalized contract between the sponsor and the registry operator, if the sponsoring organization submits proposed terms for a contract (i.e. at least a detailed term sheet) with the registry operator for provision of registry services, proof of commitment from the registry operator for provision of services under those proposed terms, and a notation of the estimated date of entry into the contract. What do you mean by "proof of commitment from the registry operator"? Isn't the signed copy of the Registry Operator's Proposal sufficient proof?

An example of sufficient proof of commitment by the registry operator would be a signed letter of intent stating the proposed terms for the contract. The signed Registry Operator's Proposal is not necessarily sufficient because it may not indicate the registry operator's willingness to enter into a contract on the proposed terms.

**FAQ #59:** I am confused as to the meaning of a sponsored vs. unsponsored TLD. Please describe the difference between the two and what ICANN's involvement in the policy making process would be in each case.

For a description of the differences between sponsored and unsponsored TLDs, please see [section 1\(b\) of the New TLD Application Process Overview](#).

**FAQ #60: [Item C1 of the Sponsoring Organization's Proposal](#) states that the following documents should be attached to the proposal: articles of incorporation, association, etc.; bylaws or any similar organizational document; list of persons presently on the supervising Board of the organization (or to be initially on the Board); and their resumes. Because we were established long ago, we do not have these in electronic form. Is it acceptable to attach hard copy documents instead, with a brief summary in the electronic version?**

Because we expect to post these materials for public review and comment, they should be submitted in electronic form.

See [FAQ #40](#) and [FAQ #73](#) for related information.

**FAQ #61: [Item D15.2.4 of the Registry Operator's Proposal](#) asks about interface and user authentication in the zone generation process. If the zone file generation process is automated and user intervention is not required, what interface and user authentication is referred to?**

If your registry systems design does not contemplate user intervention in any circumstances please note this and explain how operations ordinarily done with user intervention (e.g., emergency updates) are accomplished.

**FAQ #62: [Item D15.2.3 of the Registry Operator's Proposal](#) asks about the reporting capabilities of the registry database. Are you looking for the native reporting capabilities of the proposed database? Or are you looking for reporting capabilities that can be added on top of the database? What types of reports? Financial, technical? Please be more specific.**

Item D15.2.3's reference to database reporting capabilities is directed to the reporting capabilities of the registry database system as it will be implemented. Please explain what reporting capabilities will be implemented in the overall system you employ. This includes financial, technical, operational, and any other type of report you anticipate will be available. Your response should be as specific as possible.

**FAQ #63: Do you anticipate granting any extensions of the time to submit applications beyond 2 October?**

No, we do not.

**FAQ #64: Our sponsoring organisation and the registry operator are based in different countries. We plan to send the two parts of the proposal**

**separately to ICANN, although the proposals will be clearly labelled as being component parts of the same proposal. Is this acceptable to ICANN?**

Yes. Please be sure each proposal clearly designates the connection to the other proposal.

**FAQ #65: At what time on October 2, 2000 does the application process conclude? Since this is a Monday does this mean that all applications need to be received by the previous Friday, September 29, 2000? At what time do your offices close?**

[Item I24 of the Instructions](#) states:

I24. The complete application, including all forms, attachments, and accompanying materials, along with the check for the non-refundable application fee (or wire-transfer documentation), must be received by ICANN at its office in Marina del Rey during the period beginning 5 September and ending 2 October 2000. All materials must be received before 5:00 pm, California time, on 2 October 2000.

Lately we have been receiving many questions that are answered in the instructions, the application forms, these FAQs, and the other materials we have posted. This indicates that some persons are considering applying without carefully reading all the materials. Failure to **fully understand** and **follow exactly** all the instructions in all the materials may result in your application being denied.

**FAQ #66: [Item E7 in the Description of TLD Policies](#) talks about policies on data privacy, escrow and Whois service. What is "escrow" service?**

For background on escrow requirements, please see [Section II.I of the .com, .net, and .org Registrar Accreditation Agreement](#) and [Section 7 of the ICANN-Network Solutions Registry Agreement](#).

**FAQ #67: In completing [Item E9 of the Description of TLD Policies](#), regarding "Services and Pricing", is it obligatory to specify how much would be charged, or will a description of the guiding principles behind a tariff structure be sufficient?**

There are no absolute requirements on this, but the ICANN staff has indicated that specificity and completeness will be positive factors in the evaluation process. See [Factor 9 of the Criteria for Assessing TLD Proposals](#). Please note that pricing levels will ordinarily be important to formulate your [Business Capabilities and Plan](#) and [pro-forma financial projections](#). See [Item D13.2.12 of the Registry Operator's Proposal](#). If your pricing formula is not pegged to a specific value (such as a system in which overall registry costs are

divided equally among all registrants), please describe exactly the formula and in connection with your pro-forma financial projections give projections of the resulting pricing.

**FAQ #68: Is it appropriate to include references to pricing in [Item C18.2 of the Sponsoring Organization's Proposal](#), which refers to "proposed terms for a contract with the registry operator", or is this area reserved for direct discussion between ICANN and the Registry Operator?**

Ordinarily, the proposed terms for a contract between the sponsoring organization and the registry operator should cover the services the registry operator will provide and the terms on which they will be provided.

**FAQ #69: [Item A3 in the Sponsored TLD Application Transmittal From](#) asks for "copies of documents demonstrating the authority (of the person signing the application)". What type of documents are you expecting? Is an officer or employee of the sponsoring organization sufficient?**

If the person is not a top officer of the organization (Chair, etc.), you should submit a Board resolution (certified by the secretary or similar officer) authorizing the application. A top officer may simply state that she or he has authority to make the application.

**FAQ #70: I am located in the Southern California area. May I hand deliver my application to ICANN at its Marina del Rey office or do I have to send my application by mail or courier as stated in [Item I22 of the Instructions](#)?**

You may mail your application, have a messenger deliver it to our offices, or act as the messenger yourself. The deadline is 5:00 pm California time. Please note that we will not discuss your application in any way with you on 2 October.

**FAQ #71: What level of detail is necessary for the pro-forma financial projections required by [Item D13.3 of the Registry Operator's Proposal](#)? Are the following categories sufficient levels of detail: personnel costs, research and development, marketing expenses, general administrative expenses exclusive of salaries?**

The level of detail is ultimately up to the organization preparing the Registry Operator's Proposal. In reviewing the proposals, however, ICANN will place significant emphasis on their completeness and the extent to which they demonstrate that the applicant has a thorough understanding of what is involved, has carefully thought through all relevant issues, has realistically assessed the business, financial, technical, operational, and marketing requirements for implementing the proposal, has procured firm commitments for all necessary resources, and has formulated sound business and technical plans

for executing the proposal. These characteristics are more likely to be demonstrated by specific pro-forma financial projections, based on clearly articulated assumptions, than by general ones.

**FAQ #72: We are submitting our proposal with a letter of intent from our subcontractor for the registry operations/data center. Is it acceptable to submit a complete detailed document of their operations no later than Wednesday, 4 October? The additional document is in the final stages of completion for that section of the proposal.**

[Item 24 of the New TLD Application Instructions](#) states:

I24. The complete application, including all forms, attachments, and accompanying materials, along with the check for the non-refundable application fee (or wire-transfer documentation), must be received by ICANN at its office in Marina del Rey during the period beginning 5 September and ending 2 October 2000. All materials must be received before 5:00 pm, California time, on 2 October 2000.

Only the following materials will be accepted after the 5:00 pm (California time) 2 October 2000 deadline: (a) notification of a material change in circumstances (b) withdrawal of the application, and (c) items requested by ICANN. (Please note the completion after the deadline of documentation required as part of the application does not constitute a "material change in circumstances".) If you submit your application on 2 October without some element of documentation, ICANN will consider the application without that element. If the element is required by the application materials (such as [Item D15.3\(c\) of the Registry Operator's Proposal](#), which requires a comprehensive technical proposal from certain subcontractors), omission of that element may reflect negatively on the application.

**FAQ #73: I understand application must be in both hard copy and electronic format. For attachments such as lengthy shareholder's agreements from participating organizations --- can they be scanned and submitted as jpeg or tiff or must they be submitted in Word format?**

The portions of the application specified in Items [17](#) and [110](#) of the New TLD Application Instructions must be submitted in both hard copy (paper) form and electronic form on one or more 3 ½" floppy diskettes (IBM high density) or on a CD-ROM in a common word-processing format and in HTML format. (MS Word is acceptable for the word-processing format.) Accompanying materials requested in these portions (such as the articles of incorporation, association, etc. sought by [Item C1 of the Sponsoring Organization's Proposal](#)) must be submitted in HTML and word-processing format.

See [FAQ #40](#) and [FAQ #60](#) for related information.

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Comments concerning the layout, construction and functionality of this site should be sent to [webmaster@icann.org](mailto:webmaster@icann.org).

Page Updated 10-October-00

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**EXHIBIT JJN-25**



# Report on TLD Applications: Application of the August 15 Criteria to Each Category or Group (9 November 2000)

## B. APPLICATION OF THE AUGUST 15 CRITERIA TO EACH CATEGORY OR GROUP

The evaluation team applied the August 15 Criteria to all of the applications on a group-by-group basis. The evaluation of each individual application is contained in Appendix B.

### 1. General-Purpose TLDs

#### a. General Group

The fourteen applications that could best be described as "general" are set forth in the following table:

Applicant	Strings Requested
Abacus America, Inc.	.biz, .cool, .fam, .inc, .xxx
Affinity Internet, Inc.	.biz, .ebiz, .firm, .inc
Afilias, LLC	.info, .site, .web
Commercial Connect, LLC	.mall, .shop, .svc
Diebold Incorporated	.cash, .global, .secure
Dubai Technology, Electronic Commerce and Media Free Zone Authority	.dubai, .go
Eastern Communications Company Limited	.firm, .game, .inc, .info, .ltd, .news, .shop, .store, .tour
iDomains, Inc.	.biz, .ebiz, .ecom
Image Online Design, Inc. (dba Web Registry)	.web
JVTeam, LLC	.biz

KDD Internet Solutions Co., Ltd.	.biz, .home
Name.Space	.ads, .agency, .aids, .air, .antiques, .art, .artists, .auction, .audio, .bbs, .books, .café, .cam, .card, .cars, .center, .city, .channel, .church, .club, .commerce, .computers, .consulting, .design, .digital, .direct, .dtv, .dvd, .factory, .fashion, .festival, .fiction, .film, .films, .foundation, .free, .fun, .fund, .funds, .gallery, .games, .gay, .graphics, .group, .guide, .hotel, .help, .history, .index, .insurance, .jazz, .jobs, .lab, .mad, .mag, .magic, .mail, .market, .media, .men, .monitor, .movie, .music, .news, .now, .nyc, .one, .online, .opera, .page, .partners, .people, .planet, .politics, .power, .productions, .projects, .properties, .radio, .records, .school, .service, .sex, .shoes, .shop, .show, .security, .society, .sound, .shareware, .site, .software, .solutions, .soup, .space, .sports, .star, .studios, .sucks, .systems, .tech, .temple, .theatre, .time, .times, .toys, .trade, .travel, .voice, .war, .watch, .weather,

	.women, .world, .writer, .zine, .zone
NeuStar, Inc.	.dot, .info, .site, .spot, .surf, .web
Rathbawn Computers Limited	.africa, .llc, .sansansan.sex, .three33, .wap, .xxx

Threshold Review

As a threshold matter, the evaluation team applied the first and the last of the August 15 Criteria to these applications. Early consideration of these criteria was thought necessary to promote efficient review and evaluation of the application pool, to understand the fundamentals of the applications, and to ascertain what additional steps were appropriate for further review. The first criteria, maintaining the Internet's stability, generally requires applications to "demonstrate specific and well-thought-out plans, backed by ample, firmly committed resources, to operate in a manner that preserves the Internet's continuing stability." The last criteria places significant emphasis on the completeness of the applications and the extent to which the applications demonstrate that the applicant has a thorough understanding of, and has carefully thought through, all relevant issues, has realistically assessed the business, financial, technical, operations, and marketing requirements for implementing the application, has procured firm commitments for all necessary resources, and has formulated sound business and technical plans for executing the application. Especially for applications seeking this type of string where a poorly managed or failed registry could have significant commercial or other consequences, the potential effects on stability and the demonstration of the resources necessary to manage a large global unrestricted registry seem critical preconditions to the grant of an application, especially in this "proof of concept" stage.

The applications were reviewed for completeness and demonstrated soundness and feasibility from technical and business-process perspectives, as required by the first and last criteria. The business/financial team and the technical team identified those applications that in their judgment did not demonstrate<sup>2</sup> realistic business, financial, technical, and operational plans or sufficient resources based on the factors described in Part II.B.2. or from a technical or business-process perspective did not, in the judgment of the evaluation team, demonstrate these factors as persuasively as other proposals for the same or similar TLD string.

As a result of this review, the evaluation team concluded that the following applications merited further review:

Applicant	Strings Requested	Preferred String
Afilias, LLC	.info, .site, .web	.web

Diebold Incorporated	.cash, .global, .secure	[not apparent from application]
iDomains, Inc.	.biz, .ebiz, .ecom	.biz
Image Online Design, Inc.	.web	.web
JVTeam, LLC	.biz	.biz
KDD Internet Solutions Co., Ltd.	.biz, .home	.biz
NeuStar, Inc.	.dot, .info, .site, .spot, .surf, .web	.web

The technical team concluded that some of the applications assigned to this group did not merit further review because they did not demonstrate realistic technical and operational plans on various grounds. Some of the applications did not demonstrate relevant technical expertise. Some applications did not demonstrate the technical ability to operate a TLD targeting a large group of potential registrants and end users with high reliability. In others, the proposed technical plan did not support the proposed business plan in one or more areas, including under-specification of total capacity, projected growth rate, startup period, fault tolerance, or security. A summary of the conclusions of the technical team with respect to each of these applications is set forth in Appendix B.

The business/financial team concluded that some of the other applications assigned to the general group did not merit further review because they did not demonstrate realistic business or financial plans on various grounds. Several of the applicants submitted an incomplete or weak business plan. Some of the applicants had little or no relevant business or registry/database/Internet experience. Many of these applications did not demonstrate that the operator had sufficient capital and resources, or would commit sufficient capital or resources, to meet the forecasted requirements. In others, the marketing plan and promotion strategy did not appear reasonable and well thought out for the TLD(s) requested and lacked detail. A summary of the conclusions of the business/financial team with respect to each of these applications is set forth in Appendix B.

Again, we emphasize here that these judgments were comparative. A decision not to proceed past the initial threshold examination of any particular application was not necessarily a judgment that either the applicant or its proposal had no merit, or could never qualify under other circumstances. At this "proof of concept" stage, the evaluation process was focused on identifying a finite, relatively small number of strong applications that could serve the purpose of this effort -- to authorize the inclusion in the root server system of a relatively small number of diverse TLD strings in a way that allowed the Internet community to evaluate the effects (if any) on the DNS of additional TLDs and that would minimize to the extent possible any possible disruption of or instability in the DNS as a result of the addition of multiple new TLDs.

### *Note about Image Online Design*

Both the business/financial team and the technical team each independently concluded after the threshold review that the application from Image Online Design, Inc. did not justify further evaluation. However, because of the large number of favorable comments in the ICANN Public Comment Forum, the ICANN staff requested that the evaluation team examine Image Online Design's application more closely in the evaluation process.

Operation of a large registry will require substantial technical and managerial resources. A failure of a new TLD to service the global community of registrars and registrants could fatally damage its reputation and the likelihood of its successful adoption by the public, and therefore its ability to be a vigorous competitor with .com. It could also seriously damage public confidence in new TLDs that could be introduced in the future.

Image Online Design proposes to operate a very large registry that will compete directly with .com. Currently, Image Online Design's registry operation is very modest (20,000 names) and, not being part of the DNS root, experiences little traffic.

In its application, Image Online Design identified the need for a staff of approximately 70 during its first year of operation. (Although this staff size is larger than other large domain applicants proposed, this appears to be because Image Online Design will act as both registry and registrar initially.) Image Online Design identified only three employees who would form the core competency team of the expanded company. Only one of the "core" employees has technical experience. The principal experience of the other two, the CEO and the COO, is in the operation of auto dealerships; their experience in technical management and operations comes from their experience at Image Online Design's currently modest registry operation. Image Online Design's proposal describes a hiring plan to fill other executive positions. Its proposed staffing plan for other personnel is premised on recruiting from colleges located in the vicinity of San Luis Obispo, California. In contrast, other applicants explicitly identified mature, capable teams and large pools of managerial and technical talent to draw upon. Image Online Design proposes to support both registry and registrar functions during the first year,<sup>3</sup> including during the start-up period. It has proposed no demand throttling mechanism to control initial load from the expected "land rush" during this period.

In the judgment of the technical team, the small pool of talent available to Image Online Design is a very serious deficiency in Image Online Design's proposal. Given the lack of identified technical and management resources, the technical evaluation team concluded that there is a very significant risk that Image Online Design will not be able to react quickly to unpredictable surges in demand, especially during the critical startup period. A failure to service a global customer base on a 24x7 basis, particularly during the initial startup period, could fatally damage the reputation of the new TLD.

The business/financial team concluded that there were significant deficiencies in the business plan submitted by Image Online Design, particularly compared to other applications in this group. First, Image Online Design expects to obtain a 15 to 23 percent market share of all new registrations in the very first quarter of operation, even with additional competition from other new top-level domains. It assumes one third of these applications will be for prepaid registrations of five to ten year increments at a combined registry/registrar price of \$35 per name per year. This combination creates a very large influx of money to finance operations, with Image Online Design's cash balance increasing from \$450,000 to \$37.4 million in three months at the 50 percent confidence level, which is 83 times larger. The need for this influx presumably is the motivation for Image Online Design's insistence on being the sole registrar during startup. Nonetheless, the business/technical team does not believe these projections are realistic. Second, according to the pro-forma financial statements, Image Online Design will act as the registry and the sole registrar for the entire first year. Even by the end of the fourth year, after other registrants have been permitted to compete for three years, Image Online Design estimates that it will still obtain a 30 percent registrar market share within the TLD, and that it will do so with a \$20.00 registrar markup. This is inconsistent with experience in .com, .net and .org.

Despite this new competition, moreover, Image Online Design anticipates maintaining its \$15 registry price throughout the forecast period. This is at least two and a half times the registry prices anticipated by others in this category. This higher price is likely to deter registrars and potential registrants. In addition, with any new venture there are always many unknown factors that will occur. For this category, becoming a viable competitor within the existing structure is key. Holding only \$450,000 is a significantly weaker capital position than the capital positions of the other applicants. Finally, based upon its historical experience, Image Online Design has not demonstrated the ability to grow, even when performing other services such as web hosting and design. Overall, the other applications in this group are significantly more realistic and would result in much more viable competition for the .com registry.

#### *Note about Diebold*

Because Diebold Corporation's request for confidential treatment of large portions of its application was not resolved until after the end of the threshold review, its application also proceeded to the second review. When Diebold and the ICANN staff were unable to reach agreement on its request for confidential treatment, Diebold elected to withdraw significant portions of its application, including its pro forma financial statements.

Viewed in the light of this withdrawal, there were many serious issues identified in Diebold's application. In the judgment of the technical team, the Diebold proposal, when compared with the other proposals in this group, provided virtually no information about the organization that would actually operate the registry. Specifically, the proposal lacked information on how the Diebold

technical team would be staffed, resumes of the principal managers, where registry operation would fit in the Diebold organization, and how additional software would be provided. This lack of information made it difficult for the technical team to assess how the registry operator would deal with surprises not anticipated in Diebold's business plan.

The business/financial team concluded that Diebold's application did not include a thorough analysis of the target market or a detailed marketing plan. The application did not provide a sufficient rationale for the estimated demand or the resources to meet that demand. Without such details, Diebold's application was not complete enough to demonstrate an understanding of what is involved in operating a registry business. The business/financial team concluded that Diebold's application was not as strong as the other applications that merited further review.

#### *Note about NeuStar*

NeuStar, Inc. and Melbourne IT are associated with a number of applications for new TLDs as members of JVTeam. JVTeam submitted proposals for the .biz TLD, as well as the .per TLD. In addition, NeuStar submitted a separate application for the .web TLD. After receipt of NeuStar's application, ICANN asked NeuStar to identify the proposed registry operator and, if not NeuStar, to provide the information about the proposed registry operator required in the Registry Operator's Proposal. In answer to the question, NeuStar stated that it is "fully capable and unconstrained from operating the registry and in delivering all that is included in the .web proposal." In its answer, NeuStar also indicated its preference, if awarded .web, to implement and operate the TLD with full support from JVTeam, which it suggested would be accomplished by the assignment of the registry operator's agreement to JVTeam after the award. The evaluation team evaluated NeuStar's application with the understanding that JVTeam would, on some basis, be involved in the operation of the registry, as indicated throughout NeuStar's application.

Subsequently, on November 8, 2000, NeuStar sent a letter to ICANN informing ICANN that NeuStar would not assign or subcontract the operations of the registry to JVTeam. During the short period of time between ICANN's receipt of NeuStar's letter and the posting of this report, the evaluation team has attempted, to the extent possible, to re-evaluate the application with NeuStar as the registry operator without any participation by JVTeam or Melbourne IT.

The evaluation team concluded that lack of participation by Melbourne IT may negatively affect NeuStar's application. Some specific concerns identified by the team are included in the summary of NeuStar's application found in Appendix B. However, given the short period of time since the receipt of NeuStar's letter and given the difficulty of extracting Melbourne IT's participation and contribution from NeuStar's application, the evaluation team is, at this juncture, unable to completely assess that impact. Work on this analysis is continuing.

## Comparison

Having applied the first and last of the August 15 Criteria to these applications as a threshold matter, the evaluation team evaluated how each of the August 15 Criteria should be applied to proposals for these TLDs in light of the diversity in purpose and targeted markets reflected in the categorization. The evaluation team concluded that the August 15 Criteria apply as follows:

August 15 Criteria	Application to General Group
The need to maintain the Internet's stability	Generally applies
The extent to which selection of the proposal would lead to an effective "proof of concept" concerning the introduction of top-level domains in the future	Applies primarily with respect to the process of introducing a large top-level domain and to the issue of the effectiveness of inter-TLD competition for general-purpose TLDs
The enhancement of competition for registration services	Generally applies
The enhancement of the utility of the DNS	Applies primarily with respect to appropriateness of the TLD label, avoidance of confusion of TLDs, and the extent to which the TLD will aid users
The extent to which the proposal would meet previously unmet types of needs	Generally does not apply to the introduction of a large top-level domain
The extent to which the proposal would enhance the diversity of the DNS and of registration services generally	Generally applies
The evaluation of delegation of policy-formulation functions for special-purpose TLDs to appropriate organizations	Generally does not apply
Appropriate protections of rights of others in connection with the operation of the TLD	Generally applies
The completeness of the proposals submitted and the extent to which they demonstrate realistic business, financial, technical, and	Generally applies

operational plans and sound analysis of market needs	
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Stability, enhancement of competition, proof of concept and enhancement of diversity seem particularly relevant to analysis of these TLDs.

*Stability*

The threshold review concluded that all of the applicants, except Image Online Design and Diebold, presented proposals that appear to provide for stable operation of the proposed TLD. For the reasons summarized above, the proposals presented by Image Online Design and Diebold do not address significant stability concerns, potentially leading to early registry disruption or failure. These events in a large TLD, if they transpired, would significantly impair DNS stability.

*Enhancement of Competition and Proof of Concept*

The market will be the ultimate arbiter of the competitive merit of any new TLD. The evaluation of whether proposals for a new TLD will enhance competition for registration services, therefore, should focus on the realistic prospects of the proposed TLD and registry for effectively competing with other TLDs and registries and should include such factors as the adequacy of marketing and promotion plans, the competitiveness of the proposed services, pricing and service levels with other TLDs and operators having significant market share, and restrictions on accredited registrars.

Introduction of a new general purpose TLD is a concept to be tested, as is the effectiveness and character of inter-TLD competition between .com and newly introduced TLDs. In general, market mechanisms that support competition and consumer choice should, where possible, drive the management of the DNS. See *United States Department of Commerce White Paper*, at <<http://www.icann.org/general/white-paper-05jun98.htm/Principle2>>. One of ICANN's core principles is the encouragement of competition at both the registry and the registrar level. Because of the limited number of new TLDs to be introduced at this time, it is appropriate to make a preliminary evaluation of competitive "proof of concept."

In order to have a realistic prospect of effectively competing with .com (which as of September, 2000 contains approximately 20 million domain names and appears to continue to grow at an exponential rate) and to provide an effective proof of concept, a general purpose TLD applicant must realistically assess the business, financial, technical, operational, and marketing requirements for implementing the proposal and procure firm commitments for necessary resources. Some of the significant factors in evaluating whether these TLDs have a realistic prospect of competing with other TLDs and registries having significant market share are summarized in the following table:

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Applicant	Expected Cumulative Number of Registrations (Year 4)	Capital Investment	Registry Operator's Marketing Budget (Year 1 - 4)	Number of Registry Operator Employees (Year 4)
iDomains, Inc. (.biz)	12.0M	\$1.0M	\$29.2M	35
JVTeam, LLC (.biz)	3.85M	\$72.5M	\$28.0M	68
KDD Internet Solutions Co., Ltd. (.biz)	21.1M	\$8.4M	Not apparent from application	43
Diebold Incorporated (.cash, etc.)	No response <sup>4</sup>	No response	No response	No response
Afilias, LLC (.web)	16.2M	\$4.8M	\$76.7M	69
Image Online Design, Inc. (.web)	3.8M	\$450K	\$103.1M	184
NeuStar, Inc. (.web)	11.1M	\$46.3M	\$35.4M	122

As the table indicates, wide variations exist among these applicants, including among those seeking the same TLD (.biz or .web). Expected demand<sup>5</sup> in year 4 for a .biz TLD ranges from 3.85 million to 21.1 million registrants and for a .web TLD from 3.8 million to 16.2 million. In comparison, at the end of September, 2000, .com had approximately 20 million registrations. If those applicants forecasting a smaller demand for a general purpose TLD like .biz or .web are correct, these general TLDs may provide less effective competition to .com than would a general TLD with a larger market demand.

Among those applicants forecasting a larger demand, the initial equity investment also varies widely. Some of the variations may be explained in part because some applicants propose leveraging existing infrastructure, including outsource partners, while others must build the infrastructure.

Even accounting for the stated reasons for the variations in investment levels, the table indicates that applicants like JVTeam, Afilias and NeuStar appear willing to devote significant resources to operate a large TLD to effectively compete with .com.

Due to the widely varying number of registrations and capital investment, the potential rate of return also varies widely. The rate of return can generally be determined by comparing the initial capital investment with the estimated future cash flow. In this situation, the applicants were not asked to provide a lengthy cash flow projection. Consequently, a representative comparison cannot be reasonably made. This is especially true because many of the applicants anticipate several years of investment prior to becoming profitable. Nevertheless, the data provided in the application does provide some indication about the potential return. The table below outlines (i) the cumulative net income for the years one through four, (ii) the capital investment and (iii) the ratio of cumulative net income to capital investment of each of the applicants (except Diebold, which withdrew its pro forma financial statements).

Applicant	Cumulative Net Income (Years 1-4)	Capital Investment	Cumulative Net Income/Capital Investment
iDomains, Inc. (.biz)	38.50M <sup>6</sup>	1.0M	3,850%
JVTeam, LLC (.biz)	-88.97M <sup>7</sup>	72.5M	-123%
KDD Internet Solutions Co., Ltd. (.biz)	22.80M	8.4M	271%
Afilias, LLC (.web)	-12.80M	4.8M	-267%
Image Online Design, Inc. (.web)	53.30M	0.45M	11,844%
NeuStar, Inc. (.web)	-58.00M <sup>8</sup>	46.3M	-125%

Generally, the lower the capital investment, the greater the potential return and vice versa. Two applicants, iDomains and Image Online Design, are not planning on investing significant capital into the new venture. Consequently, the ratio of cumulative net income to capital investment is extremely high. Alternatively, the JVTeam and NeuStar applications are anticipating investing significant sums, thereby requiring a greater number of periods to recoup their investment.

Another factor promoting effective competition with .com is enhanced service content, particularly with respect to the registry interface protocol. Many applicants proposed changes to the current registry/registrar protocol (RRP) developed by Verisign. Generally, the primary changes suggested by the applicants relate to model and content. The current RRP might be referred to as a "thin" protocol in which the registry is provided with the bare minimum of information required to perform its function and the registrars retain full

information on registrants. In particular, the Whois service is provided by the registrars. Many applicants proposed various "thick" registry protocols where the registry would be the repository for most or all of the registrant data. There are several potential advantages to this approach: the Whois function is centralized and can be better managed, the stored data takes advantage of the registry's more robust storage structure, and registrar facilities are simplified, enabling broader registrar-level competition.

The second type of change raised by applicants suggesting changes to the current RRP relates to the type of information that might be stored. Many applicants propose that the registry interface protocol be extended to include additional information beyond the bare minimum required to support registration. Such information might include directory information, business category, keywords and so forth. Many applicants in fact proposed to develop an extensible protocol (sometimes based on extensible markup language or XML) to support essentially unlimited extension to the content definition.

The following table summarizes the service offerings of the applicants with respect to the registry interface protocol:

Applicant	Registry Interface Protocol
Afilias, LLC	"Thick", extensible registry protocol with augmented information storage
Diebold Incorporated	Not applicable (combined registrar/registry)
iDomains, Inc.	"Thick" registry protocol
Image Online Design, Inc.	"Thin" proprietary protocol migrating to current RRP
JVTeam, LLC	"Thick", extensible protocol with augmented information storage
KDD Internet Solutions Co., Ltd.	"Thin" protocol using current RRP
NeuStar, Inc.	"Thick", extensible protocol with augmented information storage

In order for any new TLD to be attractive to consumers as an alternative to .com, to provide effective proof of concept, and to provide a realistic prospect of meeting unmet needs, proposed pricing and service levels must be competitive with other TLDs and operators having significant market share. The following table summarizes the applicants' proposed pricing and service levels:

Applicant	Price	SRS Availability	Time to Confirm	Time to Reliance	Capacity

Afilias, LLC	\$5.75 per year (2 year commitment) (less volume rebates)	99.90%	400 msec	5 minutes	230 tps
Diebold Incorporated	\$10.00 per year	99.863%	4 seconds	6 hours	133 tps
iDomains, Inc.	\$5.45 per year	99.00%	1 second	6 hours	Unspecified
Image Online Design, Inc.	\$35 (\$20 to Registrar + \$15 to Registry)	99.99%	Unspecified	5 minutes	28.6 tps
JVTeam, LLC	\$3.75 - \$5.30 per year (volume discounts)	99.95%	500 msec	5 minutes	350 tps
KDD Internet Solutions Co., Ltd.	\$9.00 in 1st quarter; \$8.00 in 2nd quarter; \$7.00 in 3rd quarter; \$6.00 thereafter	99.40%	5 seconds	12-24 hours	2000 tps
NeuStar, Inc.	\$3.75 - \$5.30 per year (volume discounts)	99.95%	500 msec	5 minutes	350 tps

All of the applicants, except Image Online Design, propose a price of \$10.00 per year or less (some significantly less) for registrations. The current price of Verisign Global Registry, the registry operator of .com, is \$6.00 per year. The proposed pricing by Afilias, iDomains, JVTeam and NeuStar is under \$6.00 per year (and can go down to \$3.75) and the proposed pricing by KDD (by the end of the first year) matches the current Verisign price. Image Online Design's long-term price on the registry level is more than 2.5 times the initial pricing proposed by most of the applicants in this group.

The table above summarizes four measures of service provided by the registry, although other measures can be evaluated. Availability applies to the shared registry service (SRS). All applicants recognized that DNS service must be provided by a constellation of servers. "Time to Confirm" is the time required from posting for the registry to confirm that the name has been registered. "Time

to Reliance" refers to the time required for the mapping to be updated in the zone files of the DNS. Many applicants consider that near-instant update is an important function, and the technical team concurs. Capacity is in terms of SRS transactions per second. All applicants listed in the table predict a high level of SRS availability, though the proposals submitted do not permit a reliable assessment of what levels of availability are actually achievable. With the exception of iDomains, all proposals project an acceptable level of availability.

A related issue for evaluation of a large, general TLD (which goes not only to effective competition with .com but also goes to an effective proof of concept) is the manner in which the applicants propose to handle the probable initial surge of registrants, especially with the potential for pre-registration. Intertwined with any initial surge is the issue of fairness to registrants and registrars. While this is not strictly a technical question, the solution may incorporate a technical approach because the initial surge may overwhelm one or more registry systems (SRS, Whois, Billing and Collection). The table below summarizes the approaches offered:

Applicant	Surge	Fairness
Afilias, LLC	Batch Processing	Random Selection
Diebold Incorporated	Declining Price	First Come First Served
iDomains, Inc.	Batch Processing	Random Selection
Image Online Design, Inc.	Direct Processing	First Come First Served
JVTeam, LLC	Batch Processing	Random Selection
KDD Internet Solutions Co., Ltd.	Direct Processing	First Come First Served
NeuStar, Inc.	Batch Processing	Random Selection

Direct processing is an approach whereby the registry provides sufficient capacity to capably process the maximum surge. Applicants that used this approach also processed the requests on a "first come, first served" basis. In contrast, the batch approach requires the registrars to provide requests periodically (for example, once per day) as a batch transfer. Requests are then processed as a batch using a random selection approach. The Diebold declining price approach establishes a higher initial price for names as a means of dampening demand.

Another competitive issue considered in evaluating the proposals is whether the proposals restrict the ability of accredited registrars to offer registration services within the TLD. The following table summarizes restrictions contained in these applications:

Applicant	Restrictions on Accredited Registrars
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Afilias, LLC	No restrictions
Diebold Incorporated	Diebold will operate as sole registrar
iDomains, Inc.	No restrictions
Image Online Design, Inc.	Image Online Design will be the only registrar for the first year. In its pro forma financial statements, Image Online Design assumes that it will process 100% of all registrations in the first year; 80% for the next 6 months; 70% for the next 6 months; 60% for the next 6 months; 50% for the next 6 months; 40% for the next 9 months; and 30% thereafter. <sup>9</sup>
JVTeam, LLC	No restrictions
KDD Internet Solutions Co., Ltd.	No restrictions
NeuStar, Inc.	No restrictions

Both Diebold and, during its initial year, Image Online Design do not allow other registrars to process applications for the TLD. During the period of restriction, neither applicant provides other, effective mechanisms for providing competitive choices to domain-name holders seeking to register within the TLD. In addition, failure to use other accredited registrars may adversely impact effective marketing of the TLD to the public by eliminating marketing efforts by other accredited registrars and reduce the ability of the new TLD to provide an effective competitive alternative to .com.

### *Enhancement of Diversity*

Enhancement of diversity is the other of the August 15 Criteria that seems particularly relevant to analysis of these proposals. Evaluation of whether these proposed TLDs enhance diversity encompasses several inquiries, including diversity in business models and of geographic locations. In addition, some of the factors identified in the August 15 Criteria in connection with effective proof of concept largely overlap the diversity evaluation. Some of the significant factors in evaluating whether the proposed TLDs enhances diversity are summarized in the following table:

Applicant	Location	Ownership	Outsource Partner	Revenue Model
Afilias, LLC	New York, NY	The 19 members of	Tucows, Inc. (Canada)	Subscription-based revenue

		Afilias are existing registrars, based in 8 countries		model with a rebate based on volume
Diebold Incorporated	Canton, OH	Publicly held US corporation	None	Subscription-based revenue model
iDomains, Inc.	Bethlehem, PA	Privately-held US corporation	CORE (back-end subcontractor) (international consortium)	Subscription-based revenue model
Image Online Design, Inc.	San Luis Obispo, CA	Privately-held US corporation	GST Telecom (subcontractor of physical facilities for registry data center) (US) & UltraDNS (subcontractor for DNS Zone propagation) (US)	Subscription-based revenue model
JVTeam, LLC	Washington, D.C.	NeuStar, Inc. (US) & Melbourne IT (Australia)	None	Subscription-based revenue model with volume discounts
KDD Internet Solutions Co., Ltd.	Tokyo, Japan	Publicly held Japanese corporation	Verisign (primary in Phase 1 and secondary in Phase 2)	Subscription-based revenue model
NeuStar, Inc.	Washington, D.C.	Privately-held US corporation	None	Subscription-based revenue model with volume discounts

All of the applicants in this group, except KDD Internet Solutions, are based in the United States. KDD Internet Solutions is based in Tokyo, which would enhance diversity of geographic location of operators of large TLDs. However, KDD's choice of Verisign as its outsource partner somewhat counterbalances this diversity because of the current delegation of the .com registry to Verisign. KDD's application describes Verisign's role as "primary" in Phase 1 and

"secondary" in Phase 2, but KDD's pro forma financial statements at the 50% confidence level show the revenue to Verisign increasing from ¥152 million in year 1 to ¥14.1 billion in year 6. The ¥14.1 billion in year 6 represents 89% of KDD's total costs. This suggests that, rather than becoming secondary, Verisign's role will remain significant.

Diversity of geography in ownership is also a relevant inquiry. Afilias' members are headquartered in Canada, Germany, India, Japan, Sweden, Switzerland, the United Kingdom and the United States. Sixty-five percent of Afilias' members have offices in North America, 53% in Europe, 26% in Asia and the Pacific Rim, 5% in Australia and 5% in the Middle East. One of two members in JVTeam is Melbourne IT, an Australian company.

Diversity of geography is also present in some of the outsource partners: Afilias' outsource partner is Tucows, a Canadian company, and iDomains' outsource partner is CORE, an international consortium based in Geneva, Switzerland of 72 member registrars in 20 countries and four continents.

All of the applicants have a subscription-based revenue model, although both JVTeam and NeuStar offer volume discounts that could bring their price down to \$3.75. Afilias anticipates offering a rebate to its registrars based on volume in year 3, which if included in Afilias' price would bring the price somewhat below \$5.00 per year by year five.

There is also a variety of organizational models among the applicants with various applicants being privately-held companies, publicly-held companies, and joint ventures. One unusual model is Afilias. Afilias currently consists of 19 ICANN accredited registrars committed to forming a large, open and diverse organization with no single company having a controlling interest. Afilias' responses to questions state that the original membership criteria for joining the consortium were minimal, that all accredited registrars were offered the opportunity to join, and that as many as nine other ICANN accredited registrars expressed differing levels of interest in joining. Afilias further states that one of its founding premises is to ensure to the fullest possible extent that a new general TLD not be owned, controlled by or benefit only a few large businesses, but instead be controlled by a geographically diverse group of ICANN accredited registrars. The structure of the operating documents tend to support Afilias' claim of openness and diversity.

Pursuant to the Afilias Operating Agreement, the original 19 members of Afilias are and will remain the only Class A Unit members of the limited liability company. The Operating Agreement, however, allows qualified registrars to participate in an annual subscription program under which they are afforded the opportunity to purchase Class B Units of Afilias. The criteria for qualified registrars, the number of units for each annual program and other mechanisms for the subscription program are determined by the Class A Unit members. The Operating Agreement envisions, over time, that the Class B Unit members will control a maximum of 60% of Afilias and the Class A Unit members will control a

minimum of 40% of Afilias. This potential ownership arrangement also provides the basis for allocation of net income and loss: a maximum 60% allocation will go to Class B Unit members and a minimum of 40% will go to Class A Unit members. Afilias defends this permanent allocation by pointing out that it will voluntarily give up majority control and allow non-founding members to reap the majority of the potential rewards, while guaranteeing the founding members' return based on their risk of investment.

Another interesting provision of the Operating Agreement provides that no member can own more than 11% of Afilias. This limitation of ownership appears to promote a diverse membership base, while recognizing the potential for consolidation in the industry at the registrar level. Another feature of the Afilias structure is the annual rebate program whereby 25% of the company's profits are distributed to all registrars registering the new TLD domain names. The rebate program is claimed to be a way for non-member registrars (as well as member registrars) to share in the economic profits of the company. The non-member registrars do not share the risk of any potential loss.

Although one of the members of Afilias is Verisign, which on its face does not appear to enhance diversity or competition, depending upon how the operating agreement is implemented in practice, Afilias' subscription program could offer an opportunity for many other applicants to participate at the ownership level in a TLD awarded to Afilias. Limitations on ownership and potential control allocation to non-founding members tend to offset the negative effect Verisign's involvement may have on diversity or competition level analysis.

#### *Enhancement of Utility of the DNS*

Enhancement of the utility of the DNS is another of the August 15 Criteria relevant to these applications. These applications for general, open TLDs appear to sensibly add to existing DNS hierarchy, do not appear to create or add confusion to the existing DNS hierarchy, and are semantically far enough from existing TLDs to avoid confusion.

#### *Protection of Rights of Others*

Protection of the rights of others is another of the August 15 Criteria relevant to analysis of these proposals. In order to protect the rights of others, a general purpose TLD applicant should propose a well-thought-out plan for the allocation of domain names, especially during the initial rush for registrations, and provide adequate protections to stakeholders and third parties. Some of the significant factors of a well-thought-out plan include (1) whether the applicant provides for a "sunrise period"; (2) the adoption of dispute resolution procedures; (3) considerations for third party intellectual property protections; (4) Whois service mechanisms; and (5) policies to discourage abusive registration practices.

As mentioned in the June 13, 2000 report for the ICANN Yokohama Meeting Topic: Introduction of New Top Level Domains found at

<<http://icann.org/yokohama/new-tld-topic.htm>> (the "June 13 Report"), a consensus exists that varying degrees of intellectual property protection is necessary during the start up phase of new TLDs. Furthermore, TLDs focusing primarily on commercial uses should afford greater protections than TLDs focusing on non-commercial uses. The general purpose category focuses on commercial use and presents the greatest risk of intellectual property violations. In general, these proposals provide basic methods for protecting and enforcing infringed rights (i.e. status quo) and offer limited extra protections. If one or more of the applicants in this group is accepted, the evaluation team recommends that further clarification and direction as to these protections be required.

The proposals in this group provide differing approaches for the protection of the rights of others, summarized as follows:

#### Sunrise Period

Afflias, iDomains and Diebold propose a sunrise period for registrations. The sunrise period programs for Afilias and iDomains are very similar and generally provide for a 90-day announcement period followed by a 30- to 60-day registration period, and concluding with a 30-day evaluation period. Sunrise registration will be available for trademark and service mark registrations which are effective and issued prior to October 2, 2000. Diebold, on the other hand, envisions a straight 90-day sunrise period during which trademark and service mark holders can register if they provide written documentation with proof of the holder's right covering the previous 12-month period.

For various reasons, the remaining applicants do not propose a sunrise period. JVTeam, KDD and Neustar, however, expressly state they will adopt a sunrise period if required by ICANN. Image Online Design proposes no sunrise period. Image Online Design and KDD will register domains on a strict first-come, first-served basis during the start-up phase.

#### Dispute Resolution Policy

All of the applicants propose to adopt the UDRP for dispute resolution. JVTeam and Neustar propose to modify the UDRP by allocating a daybreak implementation, which is not well defined in the application. (Afilias further intends to require binding, non-appealable arbitration for all disputes between it and its registrars.)

#### Third Party Intellectual Property Protections

None of the applicants propose extensive new protections. JVTeam and Neustar propose a fee-based intellectual property notification service: parties that register their marks with the registry will be notified if a registrant applies for the mark as a domain name. This is only a notification service, and neither JVTeam or Neustar will refuse the registration of the mark. iDomains will not pre-screen

applicants but, during the sunrise period only, will require registrants to demonstrate ownership of a validly registered trademark.

### Whois Services

JVTeam, Neustar and Diebold will make the Whois service publicly available and iDomains will provide an interactive web page and a port 43 Whois "fat" service allowing free public query-based access. Afilias will allow free public access to its registry level Whois database while KDD and Image Online intend to maintain the current level of Whois services.

### Measures Against Abusive Registrations

Diebold commits to suspending registrations based on false contact data, but does not provide for third party challenge mechanisms. Image Online proposes a 14-day blackout period prior to entering the root to allow trademark holders to scan registered names and challenge registrations. The domain name would then be put on hold until resolution of the dispute. All of the applicants will rely on UDRP and additional mechanisms to police abusive registrations. In addition, iDomains' application states that it requires a two year pre-payment for registration to facilitate compliance with trademark and cybersquatting legislation. The JVTeam and Neustar proposals require only a self certification and forces the review burden on the registrars. JVTeam and iDomains provide limited registration restrictions requiring registrants for the .biz (or similar) TLDs to certify in one form or another that they are devoted to business/e-commerce activities.

### Recommendations

In view of the submissions of multiple applications in this group that present strong proposals under the August 15 Criteria, the team believes that the Board could responsibly select a limited number of applications from this group. Selections should be made based on assessment of each proposal under a combination of the August 15 Criteria, as discussed above.

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### **Footnotes:**

2. We emphasize again that the evaluation at this stage was based solely on the applications themselves, and the material and information contained therein. Thus, the use of the word "demonstrate," which is intended to reflect the fact that these judgments were made on the basis of the applications, and not on extra-application facts or information.

3. In answer to a question from ICANN after submission of Image Online Design's application, Image Online Design states that "the period when external

registrars are unable to process .Web registrations be as short as possible" [sic]. It also states that it has accelerated development of its RRP implementation in order to shorten the period of time during which "external" registrars are unable to process registrations and expects to begin a test bed within 30 to 60 days after entry into the root server. However, none of these statements are consistent with its application, and no necessary adjustments to its application were submitted. Image Online Design did not identify a different time period than the first year during which it would be the only registrar. Moreover, an attempt to so significantly revise a registry so soon after launch would be a serious stability problem.

4. Since Diebold and the ICANN staff were unable to reach agreement on its request for confidential treatment, Diebold elected to withdraw significant portions of its application, including its pro forma financial statements.

5. The applicants in this group were asked about their assumptions on expected demand. Of those applicants requesting more than one string, iDomains' estimate is based on being granted .biz; KDD's estimate is based on receiving both .biz and .home; and Afilias' estimate is based on .web. In addition, the applicants were asked about their assumptions regarding other potential new TLDs. JVTeam responded that it assumed the introduction of additional general-purpose TLDs and multiple business TLDs over time. NeuStar responded that it assumed the introduction in subsequent rounds of other new open TLDs every 12 months after the introduction of .web.

6. Earnings before Interest and Taxes.

7. Earnings before Interest and Taxes.

8. Earnings before Interest and Taxes.

9. In answer to a question from ICANN after submission of Image Online Design's application, Image Online Design states that "the period when external registrars are unable to process .Web registrations be as short as possible" [sic]. It also states that it has accelerated development of its RRP implementation in order to shorten the period of time during which "external" registrars are unable to process registrations and expects to begin a test bed within 30 to 60 days after entry into the root server. However, none of these statements are consistent with its application, and no necessary adjustments to its application were submitted. Image Online Design did not identify a different time period than the first year during which it would be the only registrar. Moreover, an attempt to so significantly revise a registry so soon after launch would be a serious stability problem.

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**EXHIBIT JJN-26**

# Scribe's Notes

## ICANN Board Meeting - November 16, 2000 - Los Angeles, California

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ICANN Board Meeting November 16, 2000 – Los Angeles, California

I. Introduction - Dyson

II. Agenda - Roberts

- A. Audit Committee
- B. At-Large Study
- C. Staff Officers
- D. Report from GAC.
- E. Housekeeping
- F. Kraaijenbrink: Need report from Ad Hoc Committee.

III. Audit Committee - Wilson

A. Committee: Crew, Davidson, Wilson

B. Closing the books for 2000. Engaged KPMG as auditors.

C. KPMG engaged to audit ICANN. Financials posted on website. Found only one material misstatement. Concerned about ccTLD situation; need more evidence there. Statement of activities detailing revenue and expenses. Restrictions from donors are noted on financial report. Statement of cash flows. Required disclosures – accounting policies and procedures, footnotes re larger balances, property/plant/equipment, debt.

1. Work needs to be done to establish segregation of duties. Easier as more people added.

D. Fockler: Statement of cash flows. Was there an error where one number purportedly from last year was actually this year?

1. One adjustment made to reflect liability that should have been in 1999 versus 2000. So we adjusted the beginning balance of net assets.

E. Note: No disagreements with management. Management and auditors both determined to find the right answers.

F. Wilson: Standard representations, from Board to auditors and vice versa all in order?

1. Right. Nothing unusual.

G. Cerf: What if ccTLD revenue situation isn't resolved promptly? Impact on our non-profit status?

1. Mainly impacts ability to fund operations, rather than any particular disclosures.

H. Wilson: Committee was reviewing work of management in documenting financial control policies. Reviewed risk management and insurance coverage. Recommend use of KPMG for fiscal year 2001.

I. Cerf: Directors and officers liability? What amounts?

1. Wilson: Evaluation considered these issues. Committee believes current insurance is appropriate.

J. Roberts: Audit has been conducted and statements have been published in accordance with accounting policies. Our duties are fulfilled. No action required at this time.

IV. At Large Membership Study

A. [link: [draft resolution presented](#)]

B. Abril i Abril: Not convinced that this procedure will bring us to the necessary point re study. But have no better approach. So this is best for now.

C. Cerf: Begin a discussion of what steps to take next?

D. Roberts: Staff expects further Board input.

E. McLaughlin: Read resolution.

F. Fitzsimmons: Establish timetable for next steps. Should try to accelerate this process

G. Wilson: It's important to do this. But first, need staff report on which to comment. Can't set a deadline yet.

H. Motion to adopt. Carries unanimously.

V. Annual election of staff officers.

**A.** Roberts: Month-to-month relationship with consulting committee resulted in the Board not reviewing performance on a month-to-month basis.

1. So normal procedure of CEO review has not occurred.

**B.** Touton: President has recommended continuation of officers.

1. [link: [resolution presented](#)]

2. Note: Same resolution as last year.

3. Dyson: Looks like a formality, and to some extent it is. Board has not discussed this formally. But unanimous sentiment that staff is doing a great job under tough conditions. In that sense, this is more than a formality.

4. Cerf: Adopt all resolutions.

5. Carries unanimously.

## **VI.** New TLDs

**A.** Recusals:

1. Crew - relationship with Melbourne IT, though not with their registrar or TLD activities, with which I have had no involvement, nor with any other applicant

2. Abril i Abril - have not participated in prior discussion re TLDs; serve as advisor to one applicant

3. Davidson - Company has expressed support for one applicant.

4. Blokzijl – firm was technical advisor to an applicant.

5. Cerf – Board members have fairly thin reasons for escaping. We'll find some other way to get this done.

**B.** Touton: Narrow question is selection of applications for negotiation between ICANN and applicants of contractual agreements. Agreements intended to be completed by end of year. Have heard from applicants. Proceed in order of groups and categories, as in comments yesterday.

1. General purpose TLDs. Staff recommendation that a few ("one or more") such TLDs be responsibly selected for negotiation as part of proof of concept. Board should discuss pros and cons. Board can ask staff for information if wanted.

**C.** Fockler: Have been preparing a basket of diverse applications to meet needs of Internet community. Rearranging some applicants within categories based on what I've learned. Thinking about size of basket in each category. Also have to think about diversity (geographic and other). What about that approach – making only tentative decisions initially.

1. Cerf: Endorse that basic strategy. Should find a set of proposals we consider strong, viable, likely to succeed. See what all those are, then make final choices for negotiation.

2. Dyson: To carry this forward, I'd like to suggest a few names to get the discussion going.

- JVTeam is a strong candidate – international, strong technical / experience. Seems the clearest established player.
- .biz and .inc would create something other than first-come-first-served. Competition based on some characteristic other than price; higher fees, perhaps other services.

- Leaves .web out. But looking for compelling reasons to select applicants, rather than choosing anyone who can fit.

3. Cerf: Don't disagree with those suggestions.

- The .biz and .inc fees would create exclusivity. Interesting idea.

- IOD's .web is interesting because it has been in operation for some time. Is their operation compatible with registrar protocols? Not inclined to exclude them from list of potential candidates.

4. Touton: Image Online Design has been operating outside the standard root; has been pointed to by a number of alternate roots over the last few years. 18,000 registrations to date, a bit of a surge. System as currently operating is proprietary, single-registrar. IOD proposed to be the sole registrar for a year, dropping to 60% with implementation of a shared registration system. Don't recall whether protocol perfectly matched the NSI Registry. Proposed to charge \$35/year for each registration during the first year. Under competitive registrar model, would charge registry fee of \$15 per registrant.

5. JD: Affinity was atypical. Did not move forward because this application did not provide much detail re future plans. And Affinity proposed to screen "is a business" but not "is a 'good' business" which might not be what we were hoping for.

- Cerf: There are ways to figure out if someone is a business. Dun & Bradstreet listings.

- Stuck in the middle. Affinity wasn't completely open, nor did Affinity give a stamp of approval. Could be confusing.

- Touton: What specifically does Affinity intend to screen?
6. Kyong: One TLD per proposal?
    - Dyson: No agreement there.
    - Kyong: Some proposals include large numbers of TLD strings. We approve a proposal, including all the proposed strings? Or we approve a TLD string, and most suitable proposal for that string is then selected.
      - Dyson: We should consider name.space. But having a couple TLDs in a single registry is part of the diverse business models we intend to facilitate. Discuss this in the context of a particular proposal.
      - Kyong: So we discuss all TLD strings from an applicant?
      - Kraaijenbrink: We asked applicants which string each would favor. Markings with asterisks in staff reports indicate this.
        - Kyong: Should consider how many strings is reasonable this time?
        - Kraaijenbrink: Would favor two strings in each category. In General, perhaps .biz and .web. Then look for applicant with best proposal for each. That's how I approach this process.
  7. Fitzsimmons: We'll have to return to this time and time again. It's easy to expand. But we committed as a Board to a limited proof of concept. Received specific advise on this from the Names Council. Multiple strings per applicant? No, because we committed to a limited proof of concept. Expect other rounds in the future. Also consider our capacity. Staff's ability to negotiate and monitor contracts within the next 6-12 months.
    - Touton: Indicated in Yokohama that staff was concerned that large number of TLDs would threaten success of proof of concept. Learn to walk before trying to run. Current target date of Dec 31 for finalization of agreements. Might have to relax the schedule if many new TLDs approved. That might be inconsistent with "proof of concept" which means doing this in a few rounds.
    - Cerf: Trying to create competitive registries and registrars. Endorse a plan for no more than one TLD per applicant. Shouldn't accept all of the applicants; need a sense of how many are viable.
      - Fockler: Suggest the basket approach. My basket started with a capacity of nine or ten, subject to change. And do need to be clear about specific TLD strings.
      - Dyson: We can argue forever about overall plans, but still have to make choices. Shouldn't make too many decisions in advance. Notion of a single registry with a single registrar might not be out of hand in a world of competitive TLDs.
      - Cerf: Failure of either registrar or registry would put at risk the whole TLD at risk under a single-registrar/single-registry model.
      - Wilson: Iterative process. Shouldn't lock ourselves in.
      - Kraaijenbrink: We'll make a decision to delegate a TLD string, which yields a registry. But expansion of that registry to another string would require a further application to the Board.
      - Touton: Most applicants intend their string proposals to be alternatives.
      - Kraaijenbrink: We manage strings. We must indicate which specific strings to be added. Especially so in the proof-of-concept phase.
  8. Roberts: Diversity encouraged in the applicants is intended partly to facilitate international competition, while others create new facilities. Want to decide whether or not to create such new spaces.
  9. Fockler: Let's be clear to staff in our directions about specific applications.
  10. Kyong: Recommend one TLD string per accepted proposal. Must decide on size of basket, and number of proposals to be accepted in each category. Otherwise, we'll be here all night.
  11. Cerf: Categorization was a bit ad hoc. And don't want to say "only x from this category" before we look carefully at specific proposals. Let's decide which applicants seem to have the best proposals.
  12. Cohen: Agree with Vint. Should decide which applications are strongest. Categorization was for organizational purposes, and Board understands the difficulty of this process.
  13. Schink: Categorizations helpful in reviewing proposals (yesterday), but not for selecting proposals. Should select proposals that are technically sound.
  14. Fockler: Hope we establish a principle that we're just setting these proposals into a tentative basket. That we'll stop and rethink our choices if we get to have ten or more.
  15. Roberts: Go through the list.

- Cerf: Yes, let's press on with what we began before. For example, IOD proposal which lacked provision for multiple registrars at outset.

- Touton: We only discussed these applications halfway. Need to finish Affinity and IOD.

16. Dyson: Avoidance of cybersquatting is of benefit to the Internet but maybe not directly to consumers.

17. Fitzsimmons: One of primary criteria is competition. Some other applications are more aggressive in providing competition with .com. I like restriction on price. But this .biz proposal seems unlikely to compete as well with .com. Also others have more aggressive marketing plans. JVTeam and Neustar have plans to aggressively compete with .COM on a short timeframe.

18. Fockler: Put JVTeam's .biz in the basket?

- Cerf: Let's not make decisions. Just tentative.

- Dyson: Agreed.

19. Cohen: This is clearly the right approach.

20. Schink: Let's not be influenced by the categorizations.

21. Cerf: If two applicants want .biz, we'll choose from them later.

22. Touton: OK, .biz is in the basket. (No opposition.)

D. Touton: More on Image Online Design. Public and staff comments encouraged IODesign to accelerate timetable for making their multiple-registrar systems available sooner, perhaps in as little as 30 to 60 days. Question of whether such an amendment is in order after the application is submitted. NSI's experience suggests this may be harder and more time consuming than IOD now suggests. Also, questions of financing levels – no commitment of using all available credit lines for this business, as principals also available in an auto dealership which may require credit.

1. Fitzsimmons: Affilias and Neustar seem more serious about opening the market and providing competition with .com.

2. Cerf: Impressed by Affilias, with shared registry and 19 registrars. Comfortable with Affilias in the tentative basket.

3. Roberts: Values of Affilias are consistent with my community. Tucows as a real-time registry is intriguing.

4. Dyson: NSI Registrar is a member of Affilias. Are NSI Registrar and Registry separate? Will they be?

- Touton: NSI last year received a four-year registry agreement, renewable for another four years if they divested the registrar and registry businesses by May 2001. They seem to intend to comply with that to get the four year intention. Expect significant separation of ownership shortly.

- Dyson: Even so, NSI registrar a big player. Affilias's co-op status is appealing because it's different. But it doesn't foster competition in the sense that we've created a competitive market only to see cooperatives formed. Would need some strong and binding language to prevent, say, NSI from changing its charter to buy half or some such. Gives me a queasy feeling

- Touton: Sympathize with much of what you say. This "Nominet cooperative model" is neutral, allows smaller companies to get involved in the registry business. Affilias was open to all accredited registrars, and it is ICANN which accredited NSI Registrar. Board could select Affilias contingent on certain changes to make Affilias more like Nominet.

- Cerf: And Affilias continues to be open to additional participants. Reluctant to set arbitrary conditions; don't want to micromanage. Should let business models play themselves out. This seems a pretty good arrangement.

- Dyson: Affilias is open. Not sure that enhances Affilias's quality.

- Murai: Competing with .com requires technical ability. Need to emphasize this, or competition can't exist.

- Cerf: Can't have competition among incompetents. A collection of registrars might well want to assure themselves that their registry works properly. Registrars will invent new features to attract registrants, but all registrars need a reliable registry. And this registry is separate from the one run by NSI.

- Touton: Tucows to be the registry, based on experience as "sub-registry" for .com et al.

- Cerf: Put this in the basket.

- Fitzsimmons: Had Esther's concerns when I read through the Executive Summary. But ownership structure seems appropriate. Have seen similar models work. Tucows is a strong choice. Can put this in the basket for now.

- Touton: Affilias into basket.

5. Touton: IODesign a small company with limited resources. They anticipated a period of exclusivity, especially during land rush period, to collect \$35/domain to fund growth of business. Performance numbers about the same. But Affilias and Neustar offer thicker higher-service registry that IOD doesn't initially plan to implement.

- Cerf: Internal oscillation. Have some sympathy for IODesign as pioneers. But concerned about viability of the proposition. Sounds like this only works for them if they're combined registrar/registry. But we primarily want registry proposals. That they "might" be able to get a protocol developed is troubling; software can take longer to develop than anyone expects. Getting multiple registrars in place could be a significant hurdle. Causes me to hesitate.

- Roberts: Ambler deserves credit for work done. But the economic model proposed is exactly what NSF did with NSI six years ago. The absence of competition in the proposal troubles me.

- Pisanty: Separating IOD's registry from registrar, size of technical team, finances – all being corrected on the fly. Trying to adjust to perceived needs rather than having a stable well-thought-out plan.

- Touton: Evaluation team tried to focus on application. Board can place greater weight on revisions, or even request revisions. But some revisions may so fundamentally change the business model as to be of great concern. Proposal may become incoherent as a result of some kinds of changes.

- Dyson: All else equal, favor the little guy. But IOD's business model seems unrealistic to me. Has loyal customers, but how will that work at \$35 a head if other options are available.

- Kraaijenbrink: IOD goes against everything we've worked on the last two years – they join registrar and registry, and they have a high price. Amazed to see this application submitted.

6. Dyson: Discuss name.space. Some free speech strings. Those who want .sucks domains probably have good reasons. We do believe in providing namespace for a variety of purposes.

- Cerf: What about the technical aspects of the proposal? Who runs the registry? What software? Assets and resources? Business model troubles me.

- JD: Financial statement looked at all TLD strings jointly. Marketing plan was a paragraph. Too few details about rollout, human resources. Big picture comments only.

- Kraaijenbrink: Problem is that they want to add 100 TLD strings. But we have to select a "limited number" of strings.

- Touton: Name.space yesterday sent us a note, saying they'll engage Andersen Consulting, have mirror and backup facilities, etc.

- Dyson: We can negotiate with them. Their suggestion of cross-subsidizing makes some sense.

- Touton: Name.space's note doesn't mention intellectual property protections.

- Cerf: Reluctant to allocate more than one TLD to any applicant.

- Dyson: .sucks is a good counterpoint to commercial sites like .biz, .shop, etc.

- Cerf: Why do you need multiple strings to operate .sucks? Proposition remains uncertain. And we've been surprised to learn that strings seemingly of no value in fact have significant value.

- Dyson: Proposals outsourcing to NSI or Tucows are stricken?

- Cerf: One TLD string per applicant. Could conceivably assign multiple strings to a single registry (resulting from different applicants).

- Fockler: When we have tentative selections, we'll look at the matrix and see how this works out.

- Dyson: But who will fund free speech? Not governments. Name.space is commercial but supports freedom of speech. See examples of pornography. Commerce and freedom of speech can go hand in hand.

- Fockler: Sounds like a focused future proposal in this area would be well-received, and Esther could market it.

- Fitzsimmons: Don't associate .soup, .toys, etc. with freedom of speech. Our agenda shouldn't be to specifically request or encourage free speech. If such an application comes along and it meets other criteria, then we'll consider it.

- Cerf: Proposal from name.space is to run a commercial operation with a variety of TLDs (.sucks being one of them). But shouldn't judge the proposal based on indication of applicant to support freedom of speech. Determining factor is whether their operation is viable and will function.

- Wilson: Create a parallel basket, and put name.space in it.

- Dyson: Ask Name.Space what their preferred strings were?
- Fockler: Tried to do that yesterday, but couldn't get a concise answer from them.
- Dyson: Could instruct staff to negotiate on those terms.
- Cerf: Categorization is not dispositive for decisions today.
- McLaughlin: Had hoped that applicants would respond to evaluations, and Name.space did. Advise taking a hard look at Name.space's letter to Touton, which substantially changes the application.

#### VII. GAC Report

- A. Roberts: Intro of Paul Twomey and GAC
- B. Twomey: [link: [communiqué presented](http://cyber.law.harvard.edu/icann/la2000/archive/gac-communique.htm) - <http://cyber.law.harvard.edu/icann/la2000/archive/gac-communique.htm>]
- C. [link: [Communication re new TLDs presented](http://cyber.law.harvard.edu/icann/la2000/archive/gac-tlds.html) - <http://cyber.law.harvard.edu/icann/la2000/archive/gac-tlds.html>]
- D. Questions
  1. Cerf: GAC appreciates the technical side effects of introducing new character sets into DNS? Must be clear that ICANN is not responsible for technical standards; that's IETF's job. GAC would be misguided to look to ICANN on this subject, but GAC could participate in IETF process.
    - A number of member states have asked WIPO to study the question of protections for a range of names that do not currently receive protection (place names, personal names, etc.). Basic point is to clarify state of IP protection on these names.
  2. Blokzijl: Focused on second-level domains. What about third-level domains?
    - Still thinking about it.
  3. Fockler: Interesting to watch language evolve.
  4. Roberts: Some ccTLDs have chosen an economic model that looks like "worldwide commercial."
    - Serious jurisdictional issues here.
    - Cerf: Don't want to repeat the US situation of congress passing laws that don't apply to itself.

#### VIII. Further Discussion of New TLDs – Personal Group of General Purpose TLDs

- A. Kraaijenbrink: .name is strong and has international support.
  1. General agreement.
- B. Cerf: Recommend including JVC & Sarnoff
  1. Dyson: Agree.
  2. Fockler: Agree. We're talking about .iii here.
  3. Touton: Sense a feeling that it should go into basket.
- C. Dyson: Would like to discuss .pid.
  1. Cerf: Numbers to the left of the .pid?
  2. Had classified .pid as "message routing." There's a domain name server that provides an IP address. At that IP address, there's a server that does something useful. DADA would serve only the registry function. "The final step" (server running at that IP) is left up to the registrars.
  3. Dyson: Creates a nice competitive world for many kinds of forwarding services?
    - Would be done at registrar level. Hard to evaluate this from the proposals.
    - Dyson: But it will rely on competition.
    - Roberts: Proposes real-time indirect addressing, without any testbed. And none of existing accredited registrars have anything remotely like this.
  4. Cerf: Could be tested in a SLD rather than being granted a TLD?
    - Dyson: Some such tests already done by others.
  5. Cerf: Feels incomplete.
  6. Neuhauser: Technical description was not one of the stronger statements.
  7. JD: Hybrid business plan. But the other two personal applications you've already selected are stronger.
    - Dyson: Focus on Italy. Or world? Credible as a world player?
    - JD: Unclear.
  8. Kraaijenbrink: Not developed enough yet. Consider it at some point in the future. These ideas are to be tested.
  9. Cerf: This could be straightforward to implement, depending on how you envision it. Registry doesn't have to care what service runs at the destination IP.

**10.** Murai: Concerned with adding new semantics to gTLD space. Should not overload the DNS. DNS is the only distributed global database on the Internet so far. So while we can think of many ways of using it, we shouldn't overuse it. Shouldn't try too much at once.

**11.** Pisanty: Agree with Murai. Did not feel that enough protection in place against hoarding. Dispute resolution procedures may be inadequate. Risk of registration of entire white pages is troubling.

**12.** \$18 million of startup funding.

**D.** Touton: Other entrants from Personal Group?

**1.** Touton: Telnic dedicated primarily to Voice Over IP applications, although not associated with telephone numbers.

- Cerf: Helpful to be able to call someone via DNS even if no way to enter the alpha strings.

- Kraaijenbrink: If we award .tel now, we'd block future uses of .tel. Letters from ITU and IETF suggest that we shouldn't take a decision on .tel at this time.

- Schink: .tel is premature at this time.

**2.** No Telnic in basket.

**IX.** General Purpose TLDS – Restricted Content Group

**A.** Touton: Present here are .kids and .xxx.

**B.** Fockler: Looked at this category and the next together. These are the challenges of a restricted group. Would like to see one, but would end up with one in the next group (Restricted Commercial).

**C.** Kraaijenbrink: Not convinced that .xxx would protect children. But impressed by .KIDS Domain. Would put that into basket, but with a proviso that their structure for registry policy must be both transparent and strict.

**D.** Dyson: We shouldn't promise this in the first place. And this would be more than we can deliver. Creating .kids domain sends a message that you can rely on DNS for content restrictions. Problematic if we then can't deliver.

**E.** Kraaijenbrink: Only facilitates, doesn't promise. Worth considering.

**F.** Cerf: Can't oppose doing something for kids. But Parry Aftab speaks eloquently against this. And other ways to achieve the same objective – portals, with online use limited to sites linked by the portal. So end up disinclined to do this.

**G.** Kyong: Agree with Dyson.

**H.** Dyson: Rely on a filter? Questions of effectiveness.

**I.** Kraaijenbrink: Browsers have integrated features to do this. But if we're expanding the namespace, I believe this could be helpful.

**J.** Roberts: These applications would be "roadmaps to content." Content of this TLD involves social values difficult to take a position on.

**1.** Kraaijenbrink: Would form a trust among these information suppliers, and back it up with contracts between registrant, registrar, registry. Point to content but not regulate content. Responsibility of registrant to assure that content is appropriate.

**K.** Cerf: Fiduciary responsibility to be careful here.

**L.** Wilson: This is in my parallel basket.

**M.** Fitzsimmons: .KIDS is best in class. This may make sense on a long-term basis. But can't place it in a proof-of-concept batch for reasons already mentioned.

**N.** Touton: GAC may be able to provide helpful advice here.

**X.** General Purpose TLDs – Restricted Commercial Group

**A.** Touton: Candidates in this group?

**B.** Cerf: .fin sounds better after suggestion of forming a sponsoring organization.

**C.** Dyson: Like .fin because it doesn't seem too earth-shaking. Not sure where it fits in with central banks, etc. Who defines who's a bank and who isn't? Relevant national regulations.

**D.** Fockler: RegistryPro proposal seemed able to test restricted TLD concept without much harm, etc.

**1.** Kraaijenbrink: Agree.

**2.** Fitzsimmons: Agree.

**3.** Dyson: Agree.

**E.** Kraaijenbrink: Understood .fin to request "shelving" for later decision.

**F.** Schink: Propose .travel.

**1.** Schink: Much online interest in travel. Need more trust in making reservations, etc. TLD

could be a safe haven here.

2. McLaughlin: Staff struggled with how to evaluate these two (.travel and .fin). Hard to know how to interpret the opposition. Had hoped not to receive opposition. Concerned that perhaps not enough consensus-building done in advance. Understand that tight timeframe made this hard, and relevant communities are huge. But haven't been able to give Board much information about representativeness of these two. Board could say "authorize negotiations with one or both of these, pending show of further support from community."

3. Cerf: Certainly true for .fin. But understood the IATA representative to say that millions of people supported them.

- McLaughlin: Convinced that IATA is serious about satisfying the relevant community. But these are difficult decisions, and we didn't think we were well-equipped to decide here.

4. Dyson: Employees of organizations don't always identify with their employers. Just as companies may not represent their workers, IATA is a trade association that may not share the interests of its members. Industry is in transition, and IATA may not represent the interests of all its members. We're not here to do everything that might make sense if we fully investigate it; we're choosing proof-of-concept domains that don't have these kinds of problems.

5. Wilson: Turbulence in the industry makes it premature to assign .travel.

6. Schink: Does Dyson's comment apply to all international organizations, or just IATA?

- Dyson: Mostly concerned about IATA.

7. Cohen: Trying to identify the strong applications that have to do with proof of concept. Maybe we'll be able to accept this at some point in the future, but it doesn't fit the model for what we're doing now. That should be the end of its consideration.

**G.** Wilson: Look at .LAW?

1. Cohen: Yes, it fits the proof of concept model. Should look at it.

2. Kraaijenbrink: .LAW might be redundant with .PRO. And .LAW is US-oriented; things are different elsewhere.

3. Neuhauser: Modest technical plans to suit a modest scale of registration. No particular objections, but small starting point. Own software, not yet tested in a large way. Among the weaker applications from a technical perspective. But could take a risk with it – a weaker application doing more modest things, but probably an acceptable risk on balance.

- Cerf: The .MD software?

- Yes.

4. Not clear that any US or non-US bar association involved at all. If anyone will give out a .LAW address, these seem natural sources of support.

- Touton: Similar criticism against RegistryPro.

- But they'll seek certification and work with bar associations.

5. Some challenges with .LAW are well-solved in .PRO's application. RegistryPro application has a detailed plan for how to make determinations re who is a lawyer, etc. But .LAW application says only "have made a proposal to American Bar Association and have continuing discussions." Presents some problems from a staff standpoint. At least RegistryPro's plan is more detailed.

- Cerf: Will not exclude anyone from future considerations. Should move on to next alternative.

6. Wilson: Understand reservations. But this is attractive to me because it creates immediate competition with .PRO. And .LAW would have educational institutions, court reporters, etc. An interesting vertical cut.

7. Cerf: Put this in your basket?

**XI.** Special-Purpose TLDs

**A.** .Museum

1. Touton: In the basket.

**B.** Dyson: .AIR.

1. Kyong: How can we give out .AIR? (Seems like a public resource or something?) Too big. Give .AIRLINES or .AIRPLANES instead?

2. Cerf: If the string were more precise, less concern here? A reasonable proposal except for this concern that "AIR" is too generic a word.

3. Kraaijenbrink: A good proposal for a specific sector.

4. Kyong: Would go along with that if the staff negotiates for a more specific string.

5. Kraaijenbrink: We could think of a more generic term? ".AERO"

6. Pisanty: Fewer questions here about representativeness.
- C. Cerf: .CO-OP**
1. Cerf: Term is international. Many members. Looks good.
  2. Schink: Support this if properly administered by an international body.
  3. Pisanty: Policy to be set internationally. That's good. But does this proposal get us into tricky trademark problems?
  4. Kraaijenbrink: Difference between .co-op and .coop? Which should we delegate? (Both requested.) Agree with Pisanty that Board of the TLD administrator should be international. Also, note that co-ops less and less important in Europe.
  5. McLaughlin: Proposed registry operator located in UK – Poptel.
  6. Touton: Into basket.
- D. Schink: .HEALTH**
1. Kraaijenbrink: Oppose .HEALTH at this time. Its registry policy is not yet clear. Similar problem to .kids. Trying to control content through agreements with registrants. Support the idea, but further development necessary before we can delegate this.
  2. Cerf: Respect WHO. But don't understand how they'd achieve their objective (quality information about health) with mechanisms proposed. Pursue this idea at a later date.
  3. Touton: No consensus to put it in the basket.
- E. Pisanty: Let's discuss .UNION.**
1. Kraaijenbrink: Same reservations as .HEALTH.
  2. Dyson: Favor .UNION but want to make sure it works with others.
  3. Fockler: Need international scope and further consultations and support. Should condition negotiations on this.
  4. Kyong: Representativeness of this organization (or organizations) in question on international scope.
  5. Schink: Understand concerns. Want to check whether we have opportunity to ask GAC for guidance here.
  6. Cerf: Like the idea of going through our basket to request GAC comment.
  7. McLaughlin: Note that ICFTU not a governmental organization. Not proposing to exclude unions that aren't members of their federation. Questions of definition (is a company-owned union a union?).
  8. Pisanty: This is an organization of union-confederations, not of unions themselves.
  9. Touton: Put it in basket? Some no's. Put it on Linda's list?
- XII. New Services TLDs – Telephony-Related Group, Message Routing, and Other Group**
- A. Cerf: Re phone numbers, ITU wants phone numbers only in certain portions of DNS space. Need to think carefully about this to avoid problems including potential hijacking.**
1. Touton: Group One does not put a forward-facing telephone number in the DNS address. Lawyer said these domains could be used for telephone devices. And numbers coincidentally the same as telephone numbers could be registered, but that didn't make these telephone numbers.
- B. Wilson: Look for strongest new-services related applicant, then decide? That might affect our approach to the ITU's comments.**
1. Cerf: Yes, we'll definitely go back through the basket.
- C. Kraaijenbrink: SRI International (.GEO)**
1. Cerf: Questions of protocols used by .GEO proposal.
  2. Dyson: A heavyweight, specific way of organizing the world by geography. They're asking for a public resource position to manage everything managed by geography. But is SRI the appropriate body to be doing this task, which perhaps should be worldwide? They're trying to be the central repository. And any privacy issues? Only distributes data that is put in there, so maybe no concern?
    - McLaughlin: Clear to SRI is build a way of referencing geographic information. Other efforts possible. Don't see this as a monopoly, and anticipate some additions. Re privacy, have some ideas and plans, and an advisory body.
  3. Murai: Concept has been discussed in various contexts beyond DNS. Could be provided via DNS using other information within DNS. Still need to discuss this with IETF, IAB, GIS experts, others. Now is not the time to do this.
  4. Cerf: Agreed that there are other ways to do this. But if this isn't irrevocable, we could at least look at the experiment. Difficulty of building reverse-lookup table makes this proposal

appealing.

5. Murai: Not confident that this should be done via the namespace as a gTLD.

6. Cerf: Other technologies might be more efficient for searching the database. But this won't be damaging. And if this does pose a problem, we could readily tell SRI "don't do that because it hurts the 'net.'"

7. McLaughlin: Does this interfere with other proposals?

- Murai: No.

- Cerf: Sufficient interest in this to let the experiment go forward?

8. Roberts: Proponents have invested technical effort, funds in this effort.

9. Fockler: Sounds like we could learn a lot from this, so I'd put this in my basket.

10. Fitzsimmons: One of most intriguing entries. Can understand concerns about scalability.

Favor this only if acceptance is subsequent to technical reviews, perhaps even ongoing at a few designated points in the future.

11. Dyson: Put it in the basket last. Cool to have, but not inherently necessary. Could be accomplished just as well without its own TLD.

12. Fitzsimmons: May learn a lot from the resulting other uses as a result of .GEO.

13. Touton: In basket.

**D. Cohen: Group One**

1. Cerf: Received conflicting information about the nature of the numbers.

2. Touton: "... the fact that a number may register a name coincidentally to a phone number has no more significance than in any other TLD." Suggests no restrictions to prevent telephone numbers from being registered.

- Wilson: If that's our main concern, could we make this something to negotiate? (i.e. Group One to block phone number registrations?)

3. Cerf: Registration with intention of using the string like a phone number is what causes the problem.

- Touton: Projected revenue of 80% from telephones is of some concern.

- Dyson: They said that their domains are convenient to use from a telephone.

4. Cerf: In light of uncertainty here, shouldn't approve a telephony-related TLD.

**E. Nokia**

1. Kraaijenbrink: Need more substance in the proposal. Don't favor this as yet.

**XIII. Moving forward**

**A. Roberts:** Comment on where we are. We've progressively promoted applications to subsequent rounds. This is the fourth round. Let's call what we just finished the semi-final round. Now we need to promote the semifinalists to a final list for instructions to staff for limited, controlled introduction.

- Wilson: Fine, so long as we preserve diversity. Must not have all finalists from the same country, of same size, etc.

- Roberts: Agree. We've been keeping track of this.

**B. Review of List**

1. Fockler and Dyson: Review .UNION? It was close.

2. Cerf: There are many that some of us might want to add.

3. Touton: Anything to remove? Remember, we can't accept everyone in this first round.

4. Cerf: Want to assure that the applications we choose this time have a good possibility of being successful.

**C. Touton:** What should go into final selection?

1. Cerf: Don't want to take anything out of that list?

2. Dyson: It is a broad and diverse list. Have questions about one or two. Overall, it does what we intend. A good selection of a broad and wide-ranging applicants. Nothing that's "other-centric" (i.e. non-US-centric).

3. Everyone comfortable with JVTeam's position on the list?

- Yes.

- Cerf: JVTeam seems to have three. Not prepared to vote for all three.

- Touton: Which to take out?

**D. Touton:** Review of list

1. Confirmation that "everyone OK" with each?

- Uncertainty on .AIR/.AERO. Change to .AERO only.

- Murai: .GEO could be accommodated in any namespace.
  - Touton: Note that this is the third JVTeam proposal on the list.
  - Dyson: Replace it with Name.space!
  - Touton: Delete it for this proof-of-concept round?
  - Murai: They can continue to operate without a TLD.
2. Wilson: Geographic regions?
    - Additions of geog information to list.
  3. Touton: Specify particular TLDs, or leave it up to staff for negotiations?
    - Kraaijenbrink: Must delegate strings. For Affilias, .web. For Global Name Registry, .name. Must be specific.
    - Cerf: Agree with ultimate goal of assigning only one string. Should review secondary lists too.
    - Fockler: Thought we chose .web and .name, respectively, already. Could have conflicts when we revisit others, though.
  4. Wilson: Did not understand that putting items in the basket meant assigning .web to Affilias.
  5. Roberts: Find .iii unacceptable as a string for TLD space. It's unpronounceable. It has no mnemonic value. It's confusing. It says nothing about meaning.
    - Kraaijenbrink: But it is a joint venture between Sarnoff and JVTeam. Maybe they'd be happy with .per instead? That was JVTeam's request.
    - Touton: The three-letter abbreviation for Peru is PER. GAC has advised against delegating the three-character strings that correspond to country-codes.
    - Cerf: So where are we, if .per is untenable?
    - Roberts: Would delete .iii from the list.
    - Kraaijenbrink: Have eight viable proposals. Ready to make decisions.
  6. Cerf: Still interested in Wilson's list.
  7. Dyson: How serious is the .per country-code problem? Lots of such problems?
    - Touton: Approximately 240 such problems.
    - Dyson: Other choices?
    - Touton: .idi, some others.
    - McLaughlin: Could resolve this with some back-and-forth?
- E.** Dyson: .UNION? Name.Space?
- F.** Wilson: .KIDS? .LAW? Name.Space?
- G.** Schink: These are just private lists? Or a fallback solution?
1. Touton: Want to take a second look at these.
- H.** Kraaijenbrink: Might buy .KIDS, but not Name.Space, not .LAW? There's consensus to add little more.
- I.** Cerf: Still interested in IOD. But if rest of Board disagrees, I'll stop. They're worked with .WEB for some time. To assign that to someone else given that they're actually functioning makes me uneasy.
1. Wilson: Agree with Vint.
  2. Could grant Afilias .info or .site instead?
    - From responses to questions to Afilias: "Afilias believes .web is most likely to succeed as a viable and immediate alternative to the current gTLDs, and thus would most successfully constitute a true proof-of-concept. ... would strive to make its operation of either the .web, .info, or .site TLD a success."
  3. Cerf: Concerned about trademarks?
    - Touton: No US trademark right in .web.
  4. Fitzsimmons: Appreciate risk taken. But have to be careful of preregistration. The wrong decision here might set up the wrong incentives and precedents, encouraging people to set up registries in advance of applying to ICANN.
    - Touton: This sometimes happens with port numbers, etc. It's an activity to be discouraged.
  5. Broad consensus with respect to any of the five additional TLDs? Name.Space, IODesign, .UNION, .KIDS, .LAW.
    - McLaughlin: Determination of who's a union? An independent body. Reviewed comment forum, and there were no union organizations opposing the application. AFL-CIO favored this. Board must decide how representative the comments in favor were.
    - Cohen: This is a good proof-of-concept. Technically sound. Representative.

- Kraaijenbrink: Don't know if it's representative. Don't know registration policy. It might be delegated in the future, but not in this batch.

- Touton: Board members who haven't spoken on this subject? Show of hands? Five favor addition to main list. Five against. No consensus.

**J. Review of applications – straw polls**

1. JVTeam (.biz): All in favor, but Murai abstains
2. Afilias (.web): Eight in favor. Three abstentions.
3. Global Name Registry (.name): Consensus.
4. Sarnoff/JVTeam (.iii): Six in favor. Dyson: Change string?
5. RegistryPro (.pro): Consensus.
6. MDMA (.museum): Consensus.
7. SITA (.aero): Consensus.
8. NCBA (.coop): Consensus, with two abstentions.

**K. Touton: Change the string for Sarnoff/JVTeam (.iii) to increase support?**

1. Wilson: Yes. But not sure it's our job to suggest the string.
2. Touton: Say "get one string, require approval of Board before execution of agreement."
  - Wilson: Yes, but Board shouldn't delegate approval.
  - Propose ".idi, .iii, .one, or some other string." Section E2 of Sarnoff/JVTeam proposal.
  - Dyson: .ONE seems OK?

- Sims: Application has changed dramatically since it was made. String is apparently not acceptable to a number of members of the Board. Application actually only requested ".i."

Accordingly, Board might postpone this application to a later date.

3. Touton: Support .iii proposal in basket?

- Little support. Remove from basket.

4. Cerf: Why we changed our minds? Would love to find something else, but want the applicant to find it, not for us to do so.

- Dyson: Sure. Let's negotiate with them on the subject of the specific string.

- Cerf: But proposal has not even been reported to us as a combined proposal. Take Sims's comment to be a caution that we haven't seen a proposal from the joint group.

5. Touton: A one-page sheet was distributed yesterday re how to combine the two extensive proposals.

- Cerf: Would like to keep them on the list, but subsequent to negotiation that we approve.

6. Kraaijenbrink: How many votes to have? How many recounts? First time, six for it. Now, two for it. Isn't it out of order now to have another vote?

- Cerf: We didn't vote on my specific proposal, to remand the string decision to negotiation.

Should vote on that.

7. Touton: Straw poll on Sarnoff/JV Team, for negotiation of TLD string.

- Wilson: Is this within our procedures?

- Sims: This would raise at least some claims re sticking to process.

- Touton: Agree. The joining of two applications may not be thought fair either. Other applicants may complain that they weren't permitted to change their application after submitting it.

- Straw poll: No one in favor.

**XIV. Resolution?**

**A. Touton: Any director not prepared to vote for a resolution selecting these proposals with these strings?**

**B. Sims: String before the board for the Afilias application is .web, not .info or .site or anything else. Let there be no confusion here.**

**C. Roberts: As I recall it, discussion to get Afilias into the basket considered .web.**

1. Cerf: Continue to be concerned about assigning .web to Afilias. Would be more comfortable if we assigned them a different string and reserved .web.

2. Kraaijenbrink: Have discussed and considered the Afilias proposal on .web. We should award them .web, knowing that IOD has been in operation as an alternative root with .web for some time. Fully aware of what we're doing here.

3. Fockler: Would be comfortable with voting on the whole package.

4. Roberts: Support for changing the string restriction?

5. Touton: Straw poll for continuing to include Afilias with .web?

6. Sims: Board's decision must be a consensus decision. Just want to be careful.

7. Cerf: Board support for reserving .web and awarding Afilias .info?
  8. Sims: Afilias with the .web string is currently on the list. How many directors want to leave it on the list as it is? Six. How many are opposed to having Afilias awarded .web? Three. Rest abstain. Is that consensus?
  9. Sims: Award .info to Afilias (instead of .web)? Eight in favor. Two opposed. More of a consensus.
  10. Cerf: Recommend that Afilias be awarded .info.
  11. Schink: Do this for every applicant?
    - Sims: No, this is the only one that was a close call.
  12. Sims: Afilias on the list with .info? Nine in favor. Consensus.
    - Note that Afilias proposed this is an alternative – E2, paragraph 3.
- XV.** Logistical notes: Please be quiet during and after the vote. Logistical meeting afterwards.
- XVI.** Resolution
- A. [Resolution read and presented] [link: <http://www.icann.org/minutes/prelim-report-16nov00.htm#SelectionofNewTLDProposals>]
  - B. Move to accept resolutions read.
  - C. Unanimously accepted.
- XVII.** Other Business
- A. Proposed resolution: Thanks to departing directors. [link]
  - B. Crew: Thanks to stakeholders for never ignoring us.
  - C. Dyson: Increasing diversity on Board is important and valuable. Sad to leave. Looking forward to staying in touch.
  - D. Roberts: Vote? All in favor. Passes unanimously.
- XVIII.** Motion to Adjourn
- XIX.** Ad-Hoc Group - Kraaijenbrink
- A. Should keep Comment Forum up until March. Report to be prepared well in advance of next Board meeting so that public comments can be reported at the next Board Meeting.
- XX.** Status of ccTLD Negotiations? - Abril
- A. Roberts: Working on it. Staff will have a report to Board via email within a week.
- XXI.** Meetings - Roberts
- A. March 10-13 (Saturday through Tuesday) in Melbourne.
  - B. Crew: Will start working on that shortly. Will be happy to welcome everyone. I'll be on host committee. Other events nearby.
  - C. Stockholm, Sweden – June 1-4, 2001 – prior to, same venue as INET 2001, Stockholm Conference Center.
- XXII.** Other notes
- A. InfoDev fellows, please see McLaughlin.
- XXIII.** Motion to Adjourn Board Meeting
- A. All in favor.

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## CONTACT INFORMATION

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**EXHIBIT JJN-27**

# New gTLD Draft Applicant Guidebook: Analysis of Public Comment

18 February 2009

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# **New gTLD Draft Applicant Guidebook: Analysis of Public Comment**

## **I. INTRODUCTION AND EXECUTIVE SUMMARY**

### **Background**

Since it was founded in 1998, one of ICANN's key mandates has been to create competition in the domain name market. In addition, the Joint Project Agreement that ICANN has with the U.S. Department of Commerce says: "ICANN shall maintain and build on processes to ensure that competition, consumer interests, and Internet DNS stability and security issues are identified and considered in TLD management decisions, including the consideration and implementation of new TLDs."

The policy making process in the ICANN model is driven by people from around the world. Those discussions have involved representatives of governments, individuals, civil society, the technology community, business, and trademark lawyers. The consensus they came to, through discussions at the Generic Names Supporting Organization (GNSO), one of the many groups that coordinate global policy in ICANN, was that new gTLDs were needed and could be introduced.

The current new gTLDs project has been in the study and planning stages for more than 3 years. See <http://gnso.icann.org/issues/new-gtlds/>. Its origin goes back even further – to the first two rounds of top-level domain applications held in 2000 and 2003. Those rounds were used to shape the current process.

In June 2008 the ICANN Board adopted the GNSO policy to introduce new gTLDs and directed staff to continue to further develop and complete a detailed implementation plan, continue communication with the community on the work, and provide the Board with a final version of the implementation proposals for the Board and community to approve before the new gTLD introduction process is launched.

In October 2008, a Draft Applicant Guidebook, with six explanatory memoranda was released and a consultation period of 76 days was held on the first draft. In addition to the comment period, there have been face to face consultations held at ICANN meetings and special consultations. Over 300 comments were received via the written public comment process and hundreds more via face to face discussion at ICANN meetings and other events.

### **Overview of the Analysis**

ICANN conducts numerous public comment periods. They can be found here: <http://www.icann.org/en/public-comment/>.

In 2008 more than 50 comment periods were held. This process shapes policy direction and effects change to important technical, contract, and policy implementation documents. While ICANN relies heavily on this process, many have suggested that it is often difficult to understand how comments have shaped outcomes and if not, why not.

For the first comment period, ICANN has introduced a detailed analysis of comments received so far. The comments were divided into thirteen major categories and then subdivided into sub-categories. An analysis was written to address issues raised in the categories and sub-categories. The analysis identifies commenters and provides a summary of issues with which commenters are associated, and then provides an explanation of the proposed position regarding the issues raised. Therefore, each category is divided into the following sections:

- A summary of the key points made in that category,
- A summary of the analysis where a synopsis of comments and sources is listed,
- A listing of the issues raised by that set of comments,
- An analysis balancing the issues raised by the comments,
- A proposed position that is reflected in the Applicant Guidebook for additional discussion.

### **Issues Requiring More Discussion to Address Concerns**

The following overarching issues need more examination and discussion before they can be changed in a future draft Guidebook. They remain unchanged in this version of the Guidebook. This does NOT imply that the concerns expressed have not been understood or are being disregarded; it only indicates that these matters require more substantive discussion before changes to the Guidebook can be made.

Those issues are:

#### **a. Security and Stability**

##### Scaling

While there is always opportunity for more study, the concern regarding security abuses scaling with more TLDs is ultimately better dealt with through pragmatic implementation approaches than a set of predictions around which many would disagree.

Many clearly feel more work is needed on implementation of registrant protection and end user confusion, and these questions need to be raised again. Are there implementable and practical mechanisms to avoid the need for purely defensive registrations at the second level? Is there such a need in an expanded name space? Can registry or registrar mechanisms be put in place to make new gTLDs desirable from both a confusion avoidance and protection viewpoint? ICANN staff will be actively soliciting feedback on these topics over the next 60 days, and share with the community options for improvements in these areas in the next several months.

In addition, given that the near coincident changes planned for introduction into the root zone - IPv6 records, DNSSEC, IDNs, and new TLDs – have not been analyzed for their combined impact on root zone operations, the ICANN Board has requested the Security and Stability Advisory Committee and Root Server System Advisory Committee to jointly conduct a study analyzing the impact to security and stability within the DNS root server system of these proposed implementations. The study will address the capacity of the root server system to cope with a stressing range of technical challenges and operational demands that might emerge as part of the implementation of proposed changes.

## **b. Malicious Conduct**

### Abuse

Several commenters expressed concern that expanding the number of TLDs would also expand malicious behavior on the Internet.

One approach to addressing this would be to conduct a study (really a forecast) of expected behaviors with an expanded TLD name space.

Many clearly feel more work is needed on implementation of registrant protection and end user confusion, and these questions need to be raised again. Is there such a need in an expanded name space? Can registry or registrar mechanisms be put in place to make new gTLDs desirable from both a confusion avoidance and protection viewpoint? ICANN staff will be actively soliciting feedback on these topics over the next 60 days, and will share with the community options for improvements in these areas in the next several months.

## **c. Trademark Protection**

Many comments noted that an issue of concern was trademark protection and particularly protection from what they saw as frivolous and expensive defensive registrations at the second level, both at the registry start-up time and on an ongoing basis. Are there implementable, practical mechanisms to avoid the need for purely defensive registrations at the second level?

ICANN intends to conduct a series of discussions with all relevant parties relating to proposed enhanced protections for trademark holders. ICANN is also in discussions with several Intellectual Property organizations around the world to coordinate setting up several conferences to propose some additional solutions to these issues.

If additional trademark protection mechanisms are agreed upon and included in the new gTLD implementation, the aim would be to reduce costs to trademark holders, and increase and build more confidence in protection measures.

## **d. Demand/Economic Analysis**

Many comments indicated that ICANN should commission an economic analysis of the effect of increasing the number of gTLDs before proceeding. ICANN will release a study on the dynamics of the domain system in broad as well as a study specifically related to the impact of increase in gTLDs in the near future. ICANN will post that study for public comment and discussion prior to the next iteration of the Draft Applicant Guidebook.

## **Major Changes in the Draft Applicant Guidebook**

This draft of the Guidebook has changed in many ways that clarify language and expand on concepts. These changes are outlined in the Analysis and reflected in the red-lined revised version of the Guidebook posted with the Analysis. In addition, the major areas of change are outlined below.

### **a. Compliance**

ICANN will revise the audit rights provision in the agreement included as part of the updated Applicant Guidebook to more closely align with the provisions in the current Registry Agreement, which cover compliance with the fee arrangements, monthly reporting specifications and technical and functional specifications. The scope of ICANN's audit rights will be clarified and limited to cover only the covenants of Registry Operator.

For Registry Operators who are repeatedly problematic, ICANN can bring action in front of an arbitrator and request the award of punitive damages. In addition, ICANN will clarify in the proposed Registry Agreement that ICANN may request that an arbitrator sanction the Registry Operator for noncompliance issues, including operational sanctions such as an order temporarily restricting a registry operator's right to sell new registrations if appropriate.

#### **b. Registry/Registrar Separation**

The revised Guidebook includes a limited lifting of restrictions on registry-registrar cross-ownership that could include the following:

- Maintain separation between the registry and registrar functions (with separate data escrow and customer interface);
- Registries continue to use only ICANN-accredited registrars;
- Registries should not discriminate among registrars;
- With a limited exception, a registrar should not sell domain services of an affiliated registry (this limit may be up to a threshold of 100,000 domain names, although the registrar may continue to manage its existing base once the threshold is met)
- Reasonable notice should be provided before any pricing changes are made on domain renewals.

This model would support small, targeted registries (including community-based applicants or single-entity TLDs), and recognizes that limited cross-ownership may provide economic benefit and competitive benefit in the domain name market.

#### **c. Financial Considerations**

##### Annual Registry Fee

It is proposed to reduce the gTLD annual registry fee base amount (not minimum) to \$25,000 per year (\$6,250 per quarter). For registries with 50,000 or fewer second-level registrations, no further fee would be charged. For registries with more than 50,000 registrations, the registry would pay \$0.25 per transaction-year. This approach better accommodates a diversity of registry models, registries in start-up phase, and smaller community registries, while ensuring reasonably expected future costs can be covered by the fees. Volume registries will pay total fees in line with current ICANN registry contracts. The proposed gTLD Evaluation Fee remains \$185,000. No additional cost estimates or policy decisions indicate that the fee should be altered. However, the cost estimates will continue to be evaluated as the launch date approaches. If any significant cost estimates are altered due to more information becoming available, then the fee could be adjusted accordingly.

#### **d. Geographical Names**

The Draft Applicant Guidebook is amended to make it easier to identify the different elements of geographic names.

It has also been amended to reflect that a country or territory name in any language will require evidence of support, or non-objection from the relevant government or public authority.

The definition of meaningful representation is also amended to take out the reference to official languages.

The requirements of the letter of support will be augmented. In addition to demonstrating an understanding of the string being requested and what it will be used for, the letter should also reflect that the string is being sought through the gTLD process and the applicant is willing to accept the conditions under which the string will be available, i.e. sign a contract with ICANN, abide by consensus policies, pay fees etc.

ICANN intends to hold further consultations with the Governmental Advisory Committee, ccNSO and others to discuss these issues.

#### **e. Last Resort Contention Resolutions: Auctions**

Auctions are intended to be the mechanism of last resort for contention resolution.

Proceeds from auctions will be returned to the community via a foundation that has a clear mission and a transparent way to allocate funds for projects that are of interest to the greater Internet community. One use of funds would be to sustain registry operations for a temporary period in the case of registry failure. Other uses include outreach and education and DNS stability/security projects.

#### **f. General Communications and Timeline**

The proposed timeline that estimated the launch of the application round in September 2009 is under reconsideration. It will depend on the resolution of the overarching issues raised by the community in response to the initial draft Applicant Guidebook. There will be a third draft version of the Guidebook. It is unlikely that the application round will open before December 2009.

It is very important to take the time to resolve the overarching issues raised as a result of the publication of the first draft Guidebook. DNS stability, user protection and trademark rights must not be undermined by the introduction of new TLDs. It is equally important to continue to refine other community issues within the process and complete as much implementation work as possible so that when the overarching issues are resolved the new gTLD process will be robust and timely and effectively be able to commence. In that regard, the community will see several activities going forward while the overarching issues are addressed. For example, ICANN will continue to work on locating panels that will evaluate aspects of the applications. A communications program that will focus on communicating existing proposals for the application process as well as informing the community about changes will commence immediately.

## **II. GENERAL COMMUNICATIONS AND TIMELINE**

### **Summary of Key Points**

- There was strong commentary from a variety of sources concerned that the timeline for the launch is too aggressive considering there are overarching questions remaining.
- A third draft version of the Applicant Guidebook will be necessary to provide sufficient time to address a set of overarching concerns raised in the public commentary.
- Other program elements are being pursued so that when the remaining questions are resolved, a robust, effective, timely process will be in place ready to launch.
- A comprehensive communication plan is being implemented presently.

### **Summary of Input**

#### **Program language**

The new gTLD process should be addressed in other languages and the consultation period of 45 days is too short. *A. Al-Zoman, SaudiNIC (2 Dec. 2008); J. Shea, APTLD (15 Dec. 2008).*

Language Barrier: the whole process (including consultations, documentations, forms, communications, people involved) is done in English. Non English speaking communities would be put in behind because of this. *A. Al-Zoman, SaudiNIC (2 Dec. 2008).*

#### **Timelines - four months communications period; launch; next round announcement**

Demand Media supports the introduction of new gTLDs, the timely review of public comments, prompt issue of the final version, and swift progress to the bid submission stage. Recommends that the four month global communication phase begin with the publication of the revised Applicant Guidebook in February 2009. *Demand Media (17 Dec. 2008).*

The four-month awareness campaign for new gTLDs should be brought in earlier so application process can begin earlier. *Cairo Public Forum (6 Nov 2008).* Move Guidebook awareness campaign forward to January 2009. *Cairo Public Forum (6 Nov 2008).* The Global Awareness campaign should begin after the New Year in January 2009 to avoid needlessly holding up applicants that are prepared and ready to submit their applications on the given day in Q2 2009, as anticipated in the timeline. *R. Andruff (20 Nov. 2008).*

We urge the ICANN Board to not delay new gTLD application process in order to make changes to the Guidebook. *Cairo Public Forum (6 Nov 2008).*

The provision stating that ICANN will begin the next application round within one year of the close of the application submission period for this round is too vague and conditional in light of the GNSO Implementation Guideline recommendation. The intent was that at the beginning of the first round there would be a definite announcement of the start of the second round. *C. Gomes (18 Nov. 2008).*

## **Global awareness, further consultation and information availability**

ICANN should organize regional and sub-regional workshops to raise the awareness of the gTLD launch. *F. Purcell, Ministry of Communications and Information Technology* (6 Nov. 2008)

Publication of a revised, more detailed schedule of events/milestones prior to application opening: with only seven or eight months to go before application opens, certainty over the pre-launch timetable would be to the advantage of many. A timeline that is regularly updated showing all the steps in the process such as when the second Draft Applicant Guidebook is due, when comment periods open and close, what events the ICANN team have planned, key events in the Communication Campaign, would be useful. *S. Metalitz (IPC, COA)*.

ICANN should commit to use best efforts to raise awareness of and support solutions to the acceptance issues created by use of outdated length parameters or other erroneous formatting criteria. *RyC*.

There should be significant time between application rounds. *INTERNET COMMERCE COALITION* (15 Dec. 2008)

## **Issues**

The community feedback in relation to the New gTLD Program communications and timeline can be categorized in 3 different levels: (1) Program language; (2) Timelines, including: four months communications period; launch; next round announcement; and (3) Global awareness, further consultation and information availability.

### **Program Language**

Why is the New gTLD Program mainly in English? Why is ICANN not making the New gTLD program available in other languages giving an unfair advantage to English speaking applicants?

Why is the Public comment period only 45 days?

### **Timelines - Four Months Communications Period; Launch; Next Round Announcement**

Why does ICANN not start the 4 months communications period now to prevent further delays in the timeline?

Can ICANN announce the exact date the next round of applications will start?

### **Global Awareness, Further Consultation and Information Availability**

What will ICANN do to increase awareness from a global perspective?

Can ICANN provide a detailed timeline from now to launch, including all additional public comment periods?

## **Proposed Position (for this version of the Guidebook)**

### **Program Language**

ICANN has considered the development of a multilingual Program, nevertheless, it has reached a conclusion that the first application round should be in English due to the cost and time it would take to develop a truly multilingual Program. ICANN is making informational materials available in the 6 United Nations Languages (in alignment with Policy implementation guideline O). A multilingual Program is under consideration for future rounds.

### **Timelines - Four Months Communications Period; Launch; Next Round**

The four months window between the publication of the final applicant guidebook and beginning of the application round is reflected in the GNSO in the implementation guideline E:

“The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.”

The terminology “4 months communications campaign” has generated some misunderstandings and led to erroneous conclusions the 4 months are the only outreach activity ICANN plans on doing. ICANN communications campaign has been going on since the Policy approval with the intent to increase awareness about the New gTLD Program around the world.

The 4 months between final applicant guidebook and application round proposed by ICANN are specific activities being developed with the intent to explain in details the application process around the world. ICANN believes this step important considering the evolving process and changes of the applicant guidebook from now to final version.

The proposed timeline is under reconsideration and will depend on the resolution of the overarching issues raised by the community in response to the proposed draft applicant guidebook. ICANN staff is committed to a timely resolution of these overarching issues through further evaluation and consultations with the community and experts.

It is very important to take the time appropriate to resolve the overarching issues raised as a result of the publication of the first draft Guidebook. DNS stability, user protection and property rights cannot be deleterious way by the introduction of new TLDs. In order to do that, it is certain that ICANN will publish a third draft version of the Applicant Guidebook. That is because there will be substantial change between the second and third version of the Guidebook and that change should be made available for public comment. The requirement for a third version of the Guidebook means that the first applications cannot be taken until December 2009 at the earliest.

It is equally important to press other issues through to resolution and complete implementation work in these areas so that when the overarching issues are resolved, the new gTLD process will be robust, timely and effective. In that regard, the community will see several activities going forward while the overarching issues are addressed. For example, ICANN will continue to work to locate panels that will evaluate aspects of the applications. The time required to locate adequate resources for these tasks is uncertain.

ICANN intends to announce the timeline for the second New gTLD applicant round when the final applicant guidebook is published. At this point, ICANN cannot make a precise calculation when the second round can begin without first finalizing the retention of the panels, finalizing several of the processing steps and analyzing different potential issues regarding pending application.

## **Global Awareness, Further Consultation and Information Availability**

ICANN is updating the calendar of global consultations and outreach activities for 2009. These activities include, for example, events specially developed for the ICANN Meetings, additional consultations with ICANN supporting organizations, participation in events with the Intellectual Property and business leaders, governments, technical community, registries and registrars, and consumer organizations.

ICANN also plans to improve the quality and availability of online information through the ICANN website.

### **Analysis**

#### **Program Language**

ICANN received few comments regarding the fact that the new gTLD Program is mainly in English, although some informational materials have been available in 6 UN languages. The issue comes mainly from regions that are non-English speaking and the overall concern is that English speaking applicants have an unfair advantage.

The Public Comment period is only 45 days and this is not enough time for the global audiences to prepare a response.

#### **Timelines - Four Months Communications Period; Launch; Next Round**

ICANN has received comments urging the launch not to be delayed and suggesting shortening the 4 months communications campaign or starting it earlier in order to expedite the launch.

There was also strong commentary from a variety of sources voicing concern that the timeline for the launch is too aggressive considering there are many unanswered questions ICANN still needs to address and the global current economic crisis.

A few indicated that ICANN needs to announce a precise date for the second round when the information about the first round is available.

## **Global Awareness, Further Consultation and Information Availability**

ICANN has been conducting and participating in a series of outreach and consultation activities with the community. Some of the activities to date include the Public Forum during the ICANN Cairo meeting, clarification and update meetings with the GNSO, ccNSO, GAC, RYC, and Registrars. ICANN will continue to consult with the Community to address the few overarching issues. A schedule of events will be made available to the community via ICANN website in March.

### **III. APPLICATION PROCESS**

#### **A. APPLICATION PROCESS: GENERAL REQUIREMENTS**

##### **Summary of Key Points**

- The Guidebook will be updated to clearly indicate which parts of the application submissions will be held confidential. Essentially, answers to all financial questions and a portion of the security plan will not be published.
- The “stated purpose” of the TLD in the application will not be used directly in the evaluation but that information might be useful in resolving formal objections to applied-for strings.
- The documentation requirement for “good standing” will be made more flexible if possible to accommodate different cultures, regions, and business models.
- A limitation on communications between applicants and evaluators is intended to balance the need for the evaluators receiving complete information against the need for a finite, timely process.

##### **Summary of Input**

The proposed new gTLD process forces ICANN to be a regulatory body for the TLD allocations. Hacker suggests that proposed strings be meaningful with regards to purpose. Under Hacker’s proposal, applicants would describe the purpose for the proposed gTLD and justify why the submitted TLD name is necessary in the first place. ICANN should require proposed TLDs to include a well-defined organizational definition. *Hacker* (14 Dec. 2008).

A financial sector gTLD should be implemented from a top down approach to ensure that no unsponsored gTLDs are issued, and that if issued, such gTLDs are managed within an industry and regulatory framework. *FDIC* (15 Dec. 2008).

Given the large amount of sensitive information collected in the application, this needs to be clearly defined. We recommend that ICANN only list the party placing the application and the gTLD that the party is applying for. *DHK* (15 Dec. 2008).

The full and complete application should be posted (subject to the confidentiality protections of Module 6). *Bank of America* (15 Dec. 2008); *FairWinds* (15 Dec. 2008).

What constitutes “proof of good standing,” and how will start-up businesses satisfy this requirement? What happens if governments do not issue such certificates?” *C. Gomes* (18 Nov. 2008).

Why must evaluation requests be made solely through TAS? Why would only one exchange of information be permitted, and why would evaluators not be obliged to request further information or evidence if it is needed? *C. Gomes* (18 Nov. 2008).

## **Issues**

Several comments had to do with providing justification for a TLD application. Should ICANN act as a "regulatory body for the TLD allocations" (taking the organizational structure and purpose into account in deciding which TLDs should be allocated)?

Question 1: Should ICANN take the purpose of the TLD into account when conducting the evaluation of an application?

There were a number of comments asking ICANN to disclose what sections of information would remain confidential and what would be publicly available.

Question 2: When should ICANN differentiate between confidential and public information in the AG?

Question 3: "What constitutes "proof of good standing," and how will start-up businesses satisfy this requirement? What happens if governments do not issue such certificates?" – C. Gomes

Question 4: Why is only one exchange of information allowed during each of Initial Evaluation and Extended Evaluation?

## **Proposed Position (for this version of the Guidebook)**

Question 1: As indicated in the Analysis, ICANN has a technical mandate, not a mandate to act as a reviewer of business plans (i.e., a venture capitalist). As such, ICANN should continue to concentrate its evaluation process on the technical, operational, and financial capabilities of applicants. The stated purpose of the TLD may be taken into account as evidence in support of other areas. A TLD whose registrants are the sausage makers of Europe does not require the same infrastructure as a TLD whose registrants are the sausage eaters of Europe. Also, the purpose may become important if an applied-for string is a trademark that is also a generic word, because the purpose of the TLD may play a role in determining the outcome of an infringement of rights objection. The stated purpose will then also be used in later right ownership disputes, if they occur.

Question 2: The criteria questions in the Draft Applicant Guidebook will be clearly marked as public or confidential for the revised Draft Applicant Guidebook.

Question 3: Recognizing that practices in different regions vary and the requirement for a process that must accommodate governments, start-ups, and well-established entities, the current Guidebook attempts to be flexible regarding the requirements for good standing. ICANN is receiving seeking further guidance from KPMG, a big four accounting firm, on how to provide appropriate flexibility in defining "proof of good standing." Provided ICANN agrees with their analysis, these further details should be included.

Question 4: Based on the Analysis, the limit of one communication for Initial Evaluation and, if necessary, one communication in Extended Evaluation, should be maintained. ICANN has determined it is the proper balancing act in preventing a prolonged review process, while allowing for certain clarifications. It is believed that the questions and criteria are sufficiently straightforward so that a competent application will require no extra communications. The allowance for one communication during Initial Evaluation and one during Extended Evaluation

is meant to balance providing for complete communications and providing a certain end date to the evaluation. In addition, the communication will continue to be made through TAS only. This will provide a standard methodology that will help organize the tasks of evaluators, as well as ensure all communications and actions are captured in an historical record.

## **Analysis**

Question 1 above asks that as ICANN acts as an evaluator of business and marketing plans, whether ICANN should place a value on the intended offerings of an applicant. ICANN has thus far refrained from focusing on these elements and instead has focused on ensuring that applicants are technically, operationally, and financially capable of running a registry. This focus is for the purpose of “preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet,” which is an element of ICANN’s Core Values. (<http://www.icann.org/en/general/bylaws.htm#I>). The stated purpose of the registry can become important for other reasons during the evaluation process. This might be the case in dispute resolution procedure where the proposed purpose of a TLD can be used to help determine if an applied-for name is a community label or might abuse a registered trademark.

ICANN primarily intends to focus on technical, operational, and financial capabilities. Additionally, the GNSO, in recommendations in its Final Report (<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>), emphasizes the technical and financial capabilities of the applicants, not the intended purpose of the string.

In regards to Question 2, the majority of the application information will be made public. The financial section and one question of the technical section will remain confidential. This will be clearly marked in the evaluation questions and criteria.

The final two questions pertain to both TAS and the evaluation period. For Question 3, the definition of “proof of good standing” should be expanded. How a newly formed entity would be able to provide this information can be discussed (i.e. proof of good standing for the individual entities that make up the new entity). The current definition was derived through discussion with outside consultants, Deloitte and Gilbert & Tobin, as part of a broader scope of work. Work will continue to determine if the current wording can be improved, taking into account the public comments. The test of good standing generally requires some form of official documentation but must make allowances for both start-up entities and well-established firms and take into account variance across different cultures and regions.

Regarding Question 4, the reasoning for only one communication is to meet the objective of establishing an efficient and predictable review process. The ideal situation is that the applicant criteria are absolutely predictable and every applicant is aware of their requirements. The reality is that because ICANN anticipates receiving applications with varying attributes, the criteria cannot be designed in absolute terms. As a result, ICANN chose to avoid creating an ongoing Q&A session where evaluators “coach” an applicant into completing an application correctly. The one communication is a compromise that reduces the bottlenecking issue that would likely exist if an ongoing dialogue was allowed to occur, but does allow for some level of rectification. The requirement to have all communications made strictly through TAS is to ensure that every action and communication is captured in an historical record.

## **B. APPLICATION PROCESS: LIMITED APPLICATION PERIOD**

### **Summary of Key Points**

- Limiting the application round is an effective way to reduce the risk of over-burdening the evaluation process but leads to issues of fairness and potential gaming.
- Therefore, it is not planned to limit applications in the first round.
- Application windows designed to reduce risk of over-burdening the evaluation process raise the same issues but evaluation windows could be used in the event that many times the anticipated number of applications are received.

### **Summary of Input**

Some of the public comments suggested that ICANN follow a limited or phased implementation approach to the new gTLD program. For example, for the first round of the new gTLD process, one commenter suggested that ICANN impose a limit on both the number of applications it will accept and the number of new gTLDs that it will approve (e.g., no more than 100 applications evaluated on a first-come, first-served basis). *Go Daddy* (15 Dec. 2008). Another commenter suggested that ICANN start with processing 50 sponsored or community-based TLDs. *MARQUES* (15 Dec. 2008). Multiple application windows within each TLD round were also proposed as a way of providing a stable timeline and to avoid a “Big Bang effect” leading to resource bottlenecks and delays and uncertainties regarding future rounds. *W. Staub, CORE* (26 Nov. 2008).

Many other commenters suggested that ICANN phase the start of the program, including limiting the initial application period to certain types of applications (e.g., community-based, sponsored, IDN ccTLDs) and assessing some preliminary results before moving forward with a broad launch of the gTLD program.

See, e.g. Open community-based gTLDs first to speed process *PuntoGal* (13 Dec. 2008). Only community-based gTLDs with registrant verification mechanisms should be allowed before better rights protection mechanisms are developed for unrestricted gTLDs. *Rodenbaugh* (16 Dec. 2008). Prioritization system should be announced for orderly review of gTLD applications; it is more important that the application and approval process for new gTLDs be done right than be done fast. *ICA* (16 Dec. 2008) Consider scaling back to only those IDN or geographic-based gTLDs supported by a significant community demand. *U.S. COC* (15 Dec. 2008); *CSC* (15 Dec. 2008) Do a phased rollout of sponsored gTLDs and IDNs first; need to develop more safeguards before broader rollout. *ITT* (15 Dec. 2008) Reconsider and delay program pending more global demand studies, and/or scale back the launch to only “sponsored” community TLDs that have broad support from the affected community. *News Corporation* (16 Dec. 2008); Allowing a round of IDN ccTLDs first would remove bulk of current calls for expansion and allow new gTLD processes to be more thoughtfully developed. *MarkMonitor* (15 Dec. 2008); *P. Tattersfield* (15 Dec. 2008).

While studying economic justification and risks for broader gTLD program, ICANN may proceed with safe, orderly phased rollout of “fast track” country code IDNs and community/sponsored domain names provided that appropriate safeguards are in place. *AT&T* (15 Dec. 2008); *USTA* (15 Dec. 2008); *NAM* (15 Dec. 2008). Expansion of the domain name space should be limited to market differentiated, sponsored (“community-based”) gTLDs. *INTA* (15 Dec. 2008). ICANN

should first focus on IDN TLDs with documented demand from users that employ non-ASCII scripts. If after the IDN TLD launch ICANN can show a strong need for more gTLDs only then should it consider them. *Time Warner* (15 Dec. 2008). Supports fast track ccTLD IDNs introduction but in general while IDNs are promising they need more study before their deployment. *INTERNET COMMERCE COALITION* (15 Dec. 2008)

### **Issues**

The comments suggesting that ICANN first conduct a phased or limited application period for the gTLD program raise the following key questions:

1. Is there a way to fairly limit the application round and thus limit the number of new gTLDs added to the root?
2. Is there a way to divide the rounds into different windows to increase efficiency in evaluating the applications?

### **Proposed Position (for this version of the Guidebook)**

The commenters' suggestions that ICANN conduct phased or limited application periods relates to both the issue of DNS stability – i.e., whether the DNS will scale to handle all of the new gTLDs, how many applications can be processed competently and quickly, and also the issue of fairness, in allowing a certain group to precede all others.

As stated in the DNS Stability section of this summary and analysis, the ICANN Board has requested that SSAC and RSSAC jointly conduct a study that takes into account the combined impact on the DNS of new TLDs (country code and generic), IDNs, IPv6 records, and DNSSEC. The final resolution of the key questions above regarding phased or limited application periods will be informed by the outcome of that study.

The other concern mentioned in comments related to ICANN's ability to process applications in a consistent and efficient manner. ICANN is undertaking preparations for operational readiness as the opening of the application round approaches. Best efforts will be made to ensure that sufficient resources are allocated to the program that anticipates processing several hundred applications but is modeled in a way to scale upwards quickly if necessary.

While limiting the number of applications was carefully considered as an effective way to "guarantee" program robustness, issues of fairness will inevitably arise if a first round is limited to a certain group; whatever group is given preference will enjoy a first-movers advantage. In addition, preference to a certain group may lead to "gaming" activity as applicants attempt to qualify under whatever limiting factors ICANN attempts to introduce.

In summary, there does not appear to be a way to fairly limit rounds and the efficiency gains from a smaller application pool are not a significant enough advantage to alter this position. Pending the outcome of the DNS study, at this time no change is being recommended that would establish a limited application period; the round will not be limited and any and all qualified applications would be accepted.

### **Analysis**

Regarding question 1, ICANN concluded that there does not appear to be a way to fairly limit the number of applications in a round. A first-come, first-served process would encourage the development of automated computer scripts to apply as soon as the application period opens, rewarding those who enter the most applications or those that could write the best script. ICANN concluded that it was preferable to refrain from establishing limits that would encourage such behavior and instead consider any qualified application.

As some of the comments suggested, there are ways to limit an application round – e.g., by brand owners, IDNs, geographical names, non-controversial names, sponsored or community-based names, among others; however, limiting the round in any significant way inevitably raises issues of fairness. Whatever group is allowed to apply first will naturally have an advantage. In addition, limiting rounds to certain groups also creates potential “gaming” incentives and concerns – *i.e.*, applicants taking all steps within their power to qualify under whatever methodology is established. A number of parties isolated IDNs as a candidate for an early application round. However, the same fairness issues exist, as well as the potential for ASCII squatting (registering an IDN TLD in an early round and then attempting to claim the ASCII equivalent in a later round).

Given the difficulty in introducing limited rounds because of fairness issues and the threat of “gaming,” it makes it very difficult to justify limited rounds because of efficiency gains in evaluations.

Regarding question 2, setting up multiple application windows in a single round might create a first-movers advantage similar to what would exist in a limited application round. For the same reasons indicated for not limiting the round, application windows would not be suitable for considering different “types” of applications first or considering applications on a first come, first served basis. ICANN will take measures to allocate adequate resources to handle evaluations in a predictable and efficient manner. However, setting up “evaluation windows” might be a suitable way to address a situation where, say, ten times the number of applications anticipated are received. The evaluations might be broken into sets that are selected by lot. If there are contending applications, then all contenders would be grouped into the same set.

Background Resources: Two previous limited new gTLD rounds have been conducted (2000 - <http://www.icann.org/en/tlds/app-index.htm> and 2003 <http://www.icann.org/en/tlds/stld-apps-19mar04/>) which were used as a “proof of concept.” These rounds lead to the successful addition of 13 new gTLDs into the root. Based on the success of the two “proof of concept” rounds, the GNSO developed the new gTLD Policy Development Plan (<http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-28mar06.pdf>) and eventually the GNSO Final Report on new gTLDs (Part A: <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm> and Part B: <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-part-b-01aug07.htm>).

A cautious, limited expansion of the DNS was warranted to better understand the impact of additions to the root zone. Towards this purpose, an ICANN staff paper on root zone impact of new TLDs was published for public comment in February, 2008 (see <http://icann.org/topics/dns-stability-draft-paper-06feb08.pdf>). The paper came to the conclusion that “there is not currently any evidence to support establishing a limit to how many TLDs can be inserted in the root based on technical stability concerns.” As noted above, ICANN has requested additional study of not only the impact on the DNS of new gTLDs, but also IPv6 records, DNSSEC, IDNs, and new ccTLDs. Further detail can be found in the DNS Stability – Security and Stability paper.

## **IV. FINANCIAL CONSIDERATIONS**

### **Summary of Key Points**

- Significant, thoughtful comment was received regarding the Applicant Guidebook and accompanying explanatory memorandum on Financial Considerations: including proposals of alternative models.
- Annual registry fees are reduced to a \$25,000 base in the revised version of the Applicant Guidebook. The calculation of the variable fee component was simplified to 25 cents a registration.
- Recalculation of processing costs resulted in no change to the \$185,000 processing fee. However, a refund mechanism is clearly defined for applicants that voluntarily exit the process.
- Handling surplus funds, if they occur, is discussed.

### **Summary of Input**

Cost Recovery Basis-Application Evaluation Fee. Considering the fact that the new gTLD process is supposed to be implemented on a cost recovery basis, why is it that an applicant that applies for more than one string is required to pay the same evaluation fee for each application? Otherwise, this will result in applicants for multiple gTLDs subsidizing other applicants' fees. *C. Gomes* (18 Nov. 2008).

Application Evaluation Fee-Impact on Developing Nations. Paying \$185,000 as an application evaluation fee may not be possible for a very large number of businesses and communities living in under-developed and developing countries. ICANN may divide the evaluation fee criteria on the basis of developed, under-developed and developing countries especially in context with a community-based gTLD. This would not only encourage more participation for new gTLDs but will also improve the end-user confidence in ICANN's regarding promoting internet resources. *N. ul Haq, Pakistan Telecommunication Authority* (14 Dec. 2008).

Brand Owner Costs-Defensive Registrations. USTA is concerned about the costs associated with the new gTLD process. They are concerned that brand owners will be forced to defensively register to protect their brands. *USTA* (15 Dec. 2008).

More Transparency Needed. Thank you for explaining the principles and high level estimation approaches that you have used to arrive at the proposed fees. It provided a good high level overview. However, in the name of transparency, I believe the internet community needs more explanation and greater visibility into the actual cost estimations and assumptions behind the application and recurring fees. This is especially important since cost recovery is the principle governing the fees. *A. Martin* (16 Dec. 2008).

Bundled Services Included in Fee Calculation. In determining the 5%, ICANN proposes to include all bundled products or services that may be offered by Registry Operator and include or are offered in conjunction with a domain name registration. This expansive definition goes well beyond any contractual terms with existing registries, and would create an unequal playing field among registry operators. *CentralNIC* (13 Dec. 2008)

Refund Details. Details on refunds are missing from the Applicant Guidebook, and if the community has to wait until the Final version of the Guidebook, it may be too late to comment. *K. Koubaa, Arab World Internet Institute* (8 Nov. 2008).

Fee Level; Deterrence Factor. The RFP presents a reasonably well-detailed case justifying the \$185k Evaluation Fee. We agree that the process is unique and unprecedented, with considerable scope for unexpected costs. In our experience there will almost certainly be unanticipated complexities, therefore, we think it is prudent to have a fee that is high enough to cover these costs. On the balance we think \$185k is an acceptable, one-time fee for serious applicants. We recommend that refunds only be provided in rare cases and that the amount of refund be determined on a case by case basis. *Demand Media* (17 Dec. 2008).

To deter frivolous applications, the gTLD evaluation fee should be higher for non-community-based applications (e.g., \$500,000; do not allow payment by credit card); excess fees can be used to reduce the dispute resolution fee; need to clarify fees relating to dispute resolution and keep low the barriers for filing objections. *Bank of America* (15 Dec. 2008). *SIFMA* (12 Dec. 2008). *G. Kirikos* (24 Nov. 2008).

Fee Structure Transparency. ICANN must articulate a clear rationale for the proposed fee structure as well as a transparent mechanism, that includes community agreement, for the disposition of excess revenues, should there be any, given ICANN's status as a non-profit entity. *U.S. DOC-NTIA* (18 Dec. 2008); *CentralNIC* (13 Dec. 2008). *A. Martin* (16 Dec. 2008); *eCOM-LAC* (8 Dec. 2008); *C. Gomes* (18 Nov. 2008); *SIDN* (10 Dec. 2008) ("cost recovery" goal is not supported by high fees charged which create entry barriers and limit innovation). *J. Neuman* (26 Nov. 2008) (fee/cost recovery issues require explanation). *V. Bertola* (19 Nov. 2008). *D. Younger* (5 Dec. 2008) (cost recovery policy if used needs to be applied uniformly and subject to community consensus; ICANN overfocuses on commercial and its own revenue streams and has not addressed fee and cost concerns of needy and noncommercial applicants or needs of developing world). *Hacker* (14 Dec. 2008) (suggests changes to fee structure). *MARQUES* (15 Dec. 2008). *FairWinds* (15 Dec. 2008); *ANA* (15 Dec. 2008) (how do the fees affect existing gTLD fee structures).

## Issues

There are many comments regarding financial considerations for the new gTLDs. Many comments expressed concerns about the size of the fees, while others expressed satisfaction with the underlying support and methodology for the calculation of the \$185,000 evaluation fee. (Note: all \$ amounts are expressed in US Dollars throughout this document.) Many comments expressed concern with the amount, the structure, and the lack of clear support for the annual registry fee. The comments can be grouped into the following issue areas:

- 1) Fees may be too high. Many comments suggested that both the \$185k Evaluation Fee and the annual registry fee are too high for various reasons such as:
  - Applicants have financial hardships and can't afford the fees (e.g., some in developing nations),
  - Applicant's have a business model that is not aligned with paying such fees. (e.g., community based, not-for-profit, down-stream revenue)
  - Applicant's have applications which are believed to cost less to process than other applications (e.g., applicants who apply for more than one string).
  - Cost estimates are too high.

- Program development costs should not be included especially if already covered in budgets from prior years.
  - Some comments expressed concern with the uncertainty of the amount or even the uncertainty of the possibility of further fees such as registry services review, dispute resolution, and comparative evaluation fees or thought the costs should be included in the \$185k Evaluation Fee.
- 2) Need more support for the fees. Although many comments supported the \$185k evaluation fee amount and the methodology used to determine the evaluation fee, some requested more information on the details of the evaluation fee development. The annual registry fee development was frequently mentioned as not being well supported in the documents provided.
  - 3) Annual registry fee structure is problematic as described. Many comments focused on the challenges of a “% of revenue” structure for the annual registry fee and reiterated that the minimum registry fee level was problematic as well. Others commented that the structure as proposed would be a challenge to registries in the start-up phase, or community registries.
  - 4) Clarify refunds. Many comments expressed the need to know the amounts and methodology of refunds available to applicants. This information was not covered in the initial cost considerations paper.
  - 5) Clarify how surplus funds will be handled. Several comments requested more clarity on how surplus funds, if any, will be handled.

## **Analysis**

### **1) Fees may be too high.**

As described in the cost consideration paper <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>, the determination of the new gTLD evaluation fee is based upon the following principles:

- The new gTLD implementation should be fully self-funding (costs should not exceed fees; existing ICANN activities regarding technical coordination of names, numbers and other identifiers should not cross-subsidize this new program).
- The new gTLD policy requires a detailed and thorough implementation process to achieve its goals; this process is inherently costly.
- Since this is a new program, it is difficult to predict costs or volumes with certainty. A detailed costing process has been employed, and costs are in line with historical precedent.
- If all cost-related estimates are accurate, there will be no net increase to ICANN’s funds as a result of evaluating new gTLD applications; fees will just equal costs. After some time, there will be a careful assessment on whether the actual costs exceeded the estimates (shortfall) or whether the costs were less than estimated (surplus). If there is a surplus, the excess funds will not be used for ICANN’s general operations, but rather will be handled in accordance with community consultations.
- In addition to the one time evaluation fee, other fees will be paid directly to providers based upon the requirements of certain applications for technical issues or disputes.

- For those new gTLD applicants that are delegated a registry, annual fees will be assessed in accordance with contract terms and the overall ICANN budget process.

Although the evaluation fee, at \$185k, may be burdensome for certain organizations that are considering applying for a new gTLD, the evaluation fee was developed based upon a policy of revenue-cost neutrality, conservatism, and a detailed cost estimating exercise. The impact on a specific applicant or a class of applicant, by policy, is not a factor in the development of the evaluation fee. When specifying the fee, it was also understood that new registries would require additional investment of, at a minimum, \$500k in addition to the application fee to begin registry operations so that, by some measure, the fees are not an unreasonable fraction of the entire investment. It is also anticipated that with time, greater efficiency and greater certainty, evaluation fees would likely be reduced over time. It may make sense for entities to wait until subsequent TLD rounds to make an application.

Some applications may have lower processing costs than others; they may not require extended review; they may not require technical or other reviews, and they may not require much staff or consultant time to answer questions and process the evaluations. Some, such as organizations with multiple strings, may not need discrete applicant evaluations repetitively for each string. Despite all of the possible reasons a particular application may cost less than another application to evaluate, it is difficult, if not impossible, to determine which applications will require more or less resources. Applications fees are set based upon the estimated average cost of all applications based upon principles of fairness and conservatism. Singling out certain applications or types of applications as lower cost than others is contradictory to the principles of fairness and conservatism.

The GNSO policy recommendations allow for different pricing for different applications. Although the evaluation fee is proposed to be \$185k in all cases, individual applicants may pay different amounts due to refunds and due to other fees. Applicants that choose to withdraw an application can pay significantly less. If an application requires dispute resolution or extra technical evaluation, the application may pay significantly more.

ICANN is a not for profit organization and is dedicated to deliver its services as efficiently as possible. ICANN is not established to grow revenue. The \$185k evaluation fee is based upon the estimated costs associated with the new gTLD program. ICANN will continue to evaluate the cost estimates. If further research or adjustments to the evaluation process or cost estimating methodology changes the costs estimated to evaluate the applications, suggested changes to the pricing will be proposed.

If the actual costs for evaluating the applications end up being less than the \$185k Evaluation fee, then the surplus funds will not be used as part of ICANN's general funds. Instead these funds will be distributed in accordance with consultation from the ICANN community.

## 2) Need more support for the fees.

As described in the cost consideration paper, the \$185k evaluation fee was based on detailed analyses of specific tasks and steps needed to be performed during the evaluation. These costs will be described in additional detail in the next version of the cost considerations paper. Key questions that will be addressed include:

- What are the activities that need to be performed for each phase of the application evaluation?
- How are historical costs factored into the development costs?

- What is the impact of the assumptions used for the number of applications?

### 3) Annual registry fee structure is problematic as described.

The initial draft of the Applicant Guidebook posted on 24 October 2008 proposed that annual registry fees for new gTLDs would be the greater of \$75k or a percentage (suggested 5%) of the registry transaction revenue. These initial fees were based upon the general terms and practices with the existing ICANN contracted gTLD registries. Although the annual registry fees are not to be based upon the direct costs to support the new gTLD program or the costs to support gTLD registries in general, the \$75k fee roughly reflects the costs of a half to three quarters full time equivalent staff member or contractor.

The percentage of revenue structure suggested in the first draft of the guidebook was developed to reflect the impact of a registry on ICANN's operations. Thus a registry with large revenue streams could require more of ICANN's resources for support, and a registry with more revenue could more ably support ICANN's operations than a registry with less revenue. The five per cent number was selected based upon the range of fees paid by current gTLD registries.

Going back to ICANN's multi-year financial review in ICANN's Delhi meeting, it has been anticipated that ICANN's future fee structure will create a financial surplus when the new gTLDs are operational. Thus, it was forecasted that fees for existing registries/registrar and new registries/registrar could be reduced in future budget cycles to reduce or eliminate excess surplus. As documented in the Delhi meeting, future financial years were assumed to have fee reductions, but the specific source of that reduction was not determined (registrar, registry, other).

Many of the comments indicated that the size of the proposed new gTLD annual registry fees would, in effect, prevent diverse business models for new gTLDs, and effectively raise the question should some of the future fee reductions be recognized in the start-up phase of these new registries.

Many comments raised concerns with the percentage of revenue structure including:

- How does one determine revenue? Is it the revenue of the subsidiary running the gTLD? Is it the revenue of the entire organization? How does one adjust if unrelated business revenue is included? How does it adjust for premiums charged for other services?
- How does one verify the revenue numbers? How would audit features/rights be established?
- How does one capture revenue from auctions?

Other revenue structures were considered such as that considered in the chart below:

## Fee Structure – Alternatives for Registry Fees

Structure	Description	Advantages	Disadvantages
Flat Fee	One set amount	Simple	High volume (high costs) not captured
Tiered	Stepped fees for levels of transaction	Fairly simple	Unfair within a tier
Percentage	% of registry's revenue, net income, or other measure	Successful registries pay fair share	Revenue difficult to measure
Transactions	Fees charged for each domain contracted (transaction year)	Familiar. Similar to registrar and most registry contracts	Reporting complexity. Fluctuations not predictable.
Hybrid	Transaction fees with a minimum "floor" fee.	Could accommodate traditional and new model registries	
Age	Tiered pricing based upon years established	Allows startups to get established.	Contrary to ICANN's cost basis pricing. Is age fair measure of success
Type of gTLD	Tiered pricing based upon community or open TLD	Reflects historical trends and alliances	Fairness

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Based on comments received, the criteria used to evaluate a proposed fee structure should better fit with start-up and community registry needs, encourage diversity of registries, be simpler to determine than a revenue-oriented approach, yet maintain consistency with ICANN's current agreements in terms of overall fee structures. Given that future fee reductions have been forecast by ICANN, one consideration now should be to reduce new gTLD registry fees, while assuring, in general, costs associated with them can be covered.

#### 4) Clarify refunds, amounts and methodology.

The first draft of the new gTLD applicant guidebook, posted on 24 October 2008, mentioned that refunds of a portion of the \$185k evaluation fee could be refunded in certain situations depending on the point in the process at which the withdrawal of an application is made. The draft also mentioned that details would be provided when the application process is launched.

Details of the refund amount and timing are to be posted as part of the next draft of the applicant guidebook. In general, the refunds are roughly based on the principle that all anticipated costs are on expended on an application that is withdrawn before final processing is completed. It is also designed to encourage unsuccessful or problematic applications to be withdrawn. The refunds allow an applicant to withdraw an application any time prior to completion of the evaluation. The amount of the refund will vary depending upon the stage at which the application has been evaluated.

#### 5) Clarity on how surplus funds, if any, will be handled.

In order to comply with the principle of being fully self-funding and avoid cross-subsidy of the new gTLD program by existing ICANN registry or registrar fees, the fees for evaluation are to be segregated and to be used for the new gTLD program only. They are not for general purpose ICANN uses. This requires two important finance actions to ensure compliance with the

revenue-cost neutrality principles as well as adherence to ICANN's principles of accountability and transparency:

- 1) Report on cost accounting. There must be careful cost reporting performed that captures all relevant costs for the new gTLD program. As described in the cost evaluation paper, the \$185k evaluation fee was developed based upon new gTLD development costs initially estimated at \$12.8 million (and assumed to be amortized over the first several hundred applications) plus fixed and variable application evaluation costs, initially estimated at \$100k per application. Each of these costs and the underlying details of the costs are to be captured and presented in an easily understood and reviewable manner.

At some point in the future, currently thought to be in two to three years, the costs will be collected and the new gTLD application round will be deemed closed. The total costs expended will be subtracted from the total of all fees including application and evaluation fees collected by ICANN, less any refunds paid out. This net amount, if positive, will be the new gTLD application round surplus. If negative, the net amount will be the new gTLD application round deficit. If there is a deficit, future rounds will pay a portion of the fee.

- 2) Dispose of surplus. If the net amount from the new gTLD application round is a surplus, the funds will not be contributed to the general ICANN funds. Instead they will be disposed of in a manner consistent with the community's feedback and the policy recommendations. ICANN's multi-stakeholder model for decision making will be employed to ensure that all decisions regarding the underlying guiding principles, amounts, recipients, timing, and manner of disposition of surplus funds, if any, will be handled in accordance with the communities' wishes. Since the amount of any possible surplus is difficult to forecast (other than the current financial forecast of zero), it is hard to determine in advance how such a surplus should be used. Undoubtedly, this would depend in part on the magnitude of any surplus.

### **Proposed Position (for this version of the Guidebook)**

#### 1) Fees may be too high.

##### Retain gTLD Evaluation Fee of \$185k.

The proposed gTLD Evaluation Fee remains \$185k. No additional cost estimates or policy decisions indicate that the fee should be altered. However, the cost estimates will continue to be evaluated as the launch date approaches. If any significant cost estimates are altered due to more information becoming available, then the fee could be adjusted accordingly.

No discounts will be made available in this round of the new gTLDs as there is concern with gaming and possible added complexity in the first round. Discounts may be considered in future gTLD rounds.

##### Reduce gTLD annual registry fee.

Reduce gTLD annual registry fee to base amount (not minimum) to \$25,000 per year (\$6,250 per quarter). For registries with 50,000 or fewer second-level registrations, no further fee would be charged. For registries with more than 50,000 registrations, the registry would pay \$0.25 per transaction-year. This approach better accommodates a diversity of registry models, registries

in start-up phase, and smaller community registries, while ensuring reasonably expected future costs can be covered by the fees. Volume registries will pay total fees in line with current ICANN registry contracts.

No direct support for applicants.

As noted in the cost considerations paper (<http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>) ICANN will not directly subsidize the application processing fee or other fees in the first round. ICANN will endeavor to help applicants with need to identify organizations that may be willing to sponsor or grant funds to such an applicant. A subsidy in the first round would add another layer of complexity along with other first round uncertainties. Additionally, there are potential abuses associated with subsidies that must be anticipated and protected against. These will be explored in preparation for the second round.

2) Need more support for the fees.

As described in the cost consideration paper (<http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf>), the \$185k evaluation fee was based upon detailed analyses of specific tasks and steps needed to be performed during the evaluation. These costs will be described in more details in the next version of the cost considerations paper. Key questions that will be addressed include:

- What are the activities that need to be performed for each phase of the application evaluation?
- How are historical costs factored into the development costs?
- What is the impact of the assumptions used for the number of applications?

3) Annual registry fee structure is problematic as described.

The fee in the revised version of the Applicant guidebook is reduced and more direct. If the transactions are less than 50,000, the annual registry fee is proposed to be structured as

- a flat annual fee of \$25,000 (billed at \$6,250 per quarter),

If the transactions are more than 50,000, the annual registry fee is proposed to be structured as

- a flat annual fee of \$25,000 (billed at \$6,250 per quarter, plus
- \$0.25 per transaction-year.

4) Clarify refunds, amounts and methodology.

Depending upon the stage of the application's evaluation processing, refunds for 20%, 35% or 70% of the evaluation fee will be available. Refunds will be made available to applicants whose applications do not proceed through the entire evaluation process. The amount of the refund will be generally based on an amount of the estimated evaluation costs not expected to be spent on the particular application. Any applicant can apply for a refund by submitting a request for a refund along with a request to stop processing the application. Any application that has not been successful is eligible for a 20% refund. The following table summarizes each of the refunds available.

#	Description of Refunds Available to Applicants	Percentage of Evaluation Fee	Amount of Refund	Considerations
1	After public posting of strings	70%	\$130K	Applicants who perceive themselves to face considerable contention or dispute can withdraw at this point. Collect some fee from all applicants to avoid frivolous applications, and cover possible future risks of all applications.
2	After initial evaluation	35%	\$65k	Applicant has failed initial evaluation or has the same considerations as above, and recognizing some significant amount of costs have already been expended.
3	After any later phase of evaluation	20%	\$37k	Applicants who fail extended evaluation or lose may exit at this point without having spent the entire processing fee.

5) Clarity on how surplus funds, if any, will be handled.

1) Report on cost accounting: When the new gTLD round is deemed as closed, as well as periodically throughout the first-round process, all costs will be captured and reported on in a detailed and readily accessible manner. The total costs will be compared to the total fees collected, less any refunds and a report of the deficit or surplus will be posted. The report will be available for the community and will be reviewed by an independent accounting firm. (While most costs will be apparent at the “end” of the round, the full realization of risk costs may take up to three years. An estimated final cost will accompany each report.)

2) Use of surplus, if any: A process will be developed and implemented to engage the community in the disposition of the surplus, if any. This will include likely recipients of the funds as well as clarity on the principles (e.g., application of funds against future rounds), amounts, timing, and manner of disposition of the surplus funds, if any.

**Appendix: Additional Comments on Financial Considerations**

**High Cost of Fees**

Impact on non-profit groups, smaller entities, developing nations. They are also concerned that the proposed (US) \$75,000 registry annual fee is too high for a not-for-profit community registry: “Our proposal would be that community TLDs pay a small percentage of their annual surplus/profit to ICANN – up to a maximum ceiling of (US) \$10,000 per year. Should a community TLD be taken up in large volumes (on a par with strings such as BIZ) then there may be a case for a revision of the annual fee beyond the (US) \$10,000. *dotSCO* (15 Dec. 2008); *dotCYM* (15 Dec. 2008) (fees too high for community bids and fail to address possible bilingual

requirements). *PuntoGal* (13 Dec. 2008). *J. Evans* (12 Dec. 2008). *NIC Mexico* (9 Dec. 2008). *NCUC* (15 Dec. 2008) (fees too high). *M. O'Connor* (14 Dec. 2008) *Lovells* (15 Dec. 2008).

ICANN should look at impact of high fees and other financial requirements on cities. *Connecting.nyc* (15 Dec. 2008). ICANN should consider charging lower fees for smaller registries. *Anonymous*.

Should the fee requirements apply to all types of entities (for-profit and non-profit)? *Y.E. Shazly* (2 Dec. 2008).

There should be reduced fees for non-profits and associations. An association or non-profit prevailing on an objection should be reimbursed its objection costs and attorneys' fees. *ASAE* (10 Dec. 2008) ICANN should clarify whether there is an application fee waiver for humanitarian corporations. *R. Romano* (7 Dec. 2008); *N. ul Haq* (14 Dec. 2008) (adjust fees downward for developing world).

Uses of Fee Money; Flexibility. The new gTLD fees are too high (e.g. annual and application), and ICANN must state how it intends to use the annual fees to protect the stability of the Internet. *RC* (15 Dec. 2008). *MarkMonitor* (15 Dec. 15 2008) (fees are high, should be adjusted for particular circumstances). *Smartcall* (4 Dec. 2008) (allow some flexibility in operation of the application fee to allow entities more opportunity to obtain gTLD). *Arab Team* (15 Dec. 2008). *Lovells* (15 Dec. 2008).

Cost Recovery Justification Needed. Considering the fact that the new gTLD process is supposed to be implemented on a cost recovery basis, why is it that an applicant that applies for more than one string is required to pay the same evaluation fee for each application? It is clear that evaluation of the string itself is going to result in some costs but presumably most of the rest of the application would be identical and require no additional costs at all. It certainly seems reasonable that all applicants pay a proportional share of general evaluation costs to the extent that their applications are mostly unique and it is understandable that it might be impractical to have a different application fee for every applicant, but it would be relatively easy to determine portions of the application fee that could be deducted in cases where no new evaluation activity would be required. Otherwise, this will result in applicants for multiple gTLDs subsidizing other applicants' fees. *C. Gomes* (18 Nov. 2008).

*Microsoft* (Guidebook comments, 15 Dec. 2008) (ICANN should not seek to recover from applicant fees funds to cover new gTLD program developments costs (reported \$12.8 MM); an escrow system should be used for \$60K of the application fee and drawn against, with potential for some refunds; in general excess funds should be refunded to applicants).

Application Evaluation Fee-Annual Fee Impact. On Application fees, "the proposed ICANN fees serve as a significant deterrent to corporations considering whether to apply for a new TLD for their brand. Specifically, the recurring annual fee (the greater of \$75,000, or 5% of the registry transaction revenue) is high, in the light of the probability that corporate owned TLDs may not have large numbers of second level registrations, thereby causing the per domain fee to be significantly higher than currently charged by ICANN." *MarkMonitor* (15 Dec. 2008).

Application Evaluation Fee-Economic Impact. Paying \$185,000 as an application evaluation fee may not be possible for a very large number of businesses and communities living in under-developed and developing countries. ICANN may divide the evaluation fee criteria on the basis of developed, under-developed and developing countries especially in context with a

community-based gTLD. This would not only encourage more participation for new gTLDs but will also improve the end-user confidence in ICANN's regarding promoting internet resources. *N. ul Haq, Pakistan Telecommunication Authority* (14 Dec. 2008).

ICANN should announce in advance if any adult extensions will be permitted, without requiring applicant to pay \$185,000 to find out. *WMI* (13 Dec. 2008). Why not define a fee based on an envelope of domain names which makes it possible for smaller gTLDs to stay in good shape and offer stable and functional services? *ISOC*.

A project to serve a mono-lingual demographic is inherently cheaper under ICANN's draft rules, than a project to serve a multi-lingual demographic. Registry applicants should be permitted to apply for transliterations in IDNs without additional costs. *E. Brunner-Williams. ANA* (15 Dec. 2008) (how do the fees affect existing gTLD fee structures). ICANN should clarify if there is only one \$100 registration fee for each application. *INTA* (15 Dec. 2008). *Grainger* (15 Dec. 2008) (the workings of the \$100 fee for accessing the application system must be clarified).

Fee Impact on Community-Based Applicants. There are concerns that \$185,000 for the application fee is too high for community/city TLD applicants. Closer to (US) \$50,000 would be welcome. *dotSCO* (15 Dec. 2008). See also *NIC Mexico* (9 Dec. 2008). *NCUC* (15 Dec. 2008). *dotCYM* (15 Dec. 2008). *Lovells* (15 Dec. 2008). *Anonymous*.

They are also concerned that the proposed (US) \$75,000 registry annual fee is too high for a not-for-profit community registry.

Our proposal would be that community TLDs pay a small percentage of their annual surplus/profit to ICANN – up to a maximum ceiling of (US) \$10,000 per year. Should a community TLD be taken up in large volumes (on a par with strings such as BIZ) then there may be a case for a revision of the annual fee beyond the (US) \$10,000. *dotSCO* (15 Dec. 2008).

Comment: community-based cityTLDs should pay application fees not more that \$ 50,000 and not more than \$ 10,000 minimum annual fees. *dotberlin* (4 Dec. 2008).

We recognize that the application process to ICANN should be cost based, and that registrars should be contributing annually to ICANN's ongoing costs. However, the purpose of opening up the GTLD space should be to encourage a range of new TLDs that meet a range of community as well as corporate requirements. The initial application fee of \$185,000 plus the annual fee of \$75,000 may be far too high for legitimate, smaller communities (or communities of interest) who would otherwise benefit from their own TLD. ICANN should give consideration on how those community interests could be addressed, either through a discount of those fees or a special grants program for such communities. *ISOC-AU*.

Excessive Fee Impact-Proposed String: Fee Imposition Requiring Applicants to pay an \$185,000 fee for multiple transliterations of a proposed string is unconscionable. Allowing a second entity to secure the rights to a transliteration of a string is contrary to the confusingly similar aspect of the Guidebook. Allowing applicants to have the ASCII string and IDN translations would permit applicants to offer users a full package of services, and promote the stability of the internet. *R. Andruff*.

The \$185,000 application fee should permit application for more than one string (up to five in order of preference). In the alternative, if 1 string is limited per application, then unsuccessful

applicants should be given the option of participating in the second round without submitting a new application fee. *Smartcall* (4 Dec. 2008).

ICANN may consider allowing applicants to apply for up to x (x being a reasonable number like 5 for example) gTLD strings with one application with a mandate to reduce it to one after string contention check. ICANN may charge a "change fee". ICANN may charge "change fee" if such action leads to extra work for ICANN and to discourage frivolous changes. *I. Vachovsky* (16 Nov. 2008).

Multiple fees should not be charged for applications that are basically for one string (e.g. Milano and Milan; fee should not be more than \$50K) *.koln* (15 Dec. 2008).

Brand Owner Costs-Defensive Registrations. USTA is concerned about the costs associated with the new gTLD process. They are concerned that brand owners will be forced to defensively register to protect their brands. *USTA* (15 Dec. 2008). Corporations are concerned about the high application fee of \$185,000 and the \$75,000 annual fee, when they are registered names purely for brand protection purposes-there is also a high cost for those wanting to apply for their brand in multiple languages or for multiple brands in the same industry sector (e.g. brands of cars). *Melbourne IT* (15 Dec. 2008). The \$75,000 annual fee is too high for most brand owners to consider defensive registrations of TLDs, but possible for a large trade union and its membership. *E. Brunner-Williams*.

Closed gTLDs-Lower Fees/Economies of Scale. Reduce the annual fee for a "closed" gTLD for when a trademarked name has been approved, but not yet requested to be in the DNS - e.g. small holding fee \$5000 per year - allow a lower application fee for a "closed" gTLD where the applicant has a trademark on the gTLD string, as costs for reviewing and risk is likely lower. Recommend \$90,000 for "closed" gTLDs - offer a variable annual fee based on the number of approved applicants. E.g. \$75,000 per year if less than 100 new gTLDs, \$50,000 per year (100-200), \$40,000 (200-500), \$30,000 (greater than 500). This is because ICANN will obtain economies of scale with more gTLDs, and the costs of managing compliance for "closed" gTLDs will be lower (as there are no third party registrations at the second level). For "closed" gTLDs - for applicants that apply for multiple names that are trademarks for the same legal entity (e.g. product names), provide a 10% discount on application and annual fees for each additional name, up to a maximum of 50% of all fees. This can be justified as ICANN staff can have a single interface with the applicant for multiple names, and the cost of reviewing multiple applications will be lower as most of the content of each application will be the same except for the string being applied for. - allow a discount for multiple applications for names that have the same meaning in different languages (e.g. travel in Arabic or Chinese). *Melbourne IT* (15 Dec. 2008).

Single enterprise gTLDs. ICANN should adopt a tiered structure for the application, registry and annual fees, and discount fees equitably for single enterprise gTLDs ("seTLD"). Some of the fees have not been justified and seem excessive. Fees should be steeply discounted for multiple applications filed by the same seTLD application; the annual "tax" fee has not been justified and should be heavily discounted for seTLDs due to their narrow use of the registry compared with open, unrestricted gTLD registries (e.g., the .museum registries fee levels seem appropriate). *Client B* (15 Dec. 2008).

The \$185,000 application fee outlined in the Applicant Guidebook is too high. Particularly with regard to transliteration i.e. paying the same fee over again for an approved TLD in a different language. (RA)

The \$75,000 annual registry fee outlined in the Applicant Guidebook is too high (MF, DK, R1, SR, RA, AP, MB, JB, AM, IA, TH)

The \$75,000 annual registry fee: It may have the effect of restricting applicants (MF, DK, R1, SR, AP, IA)

The \$75,000 annual registry fee: the costs will be passed onto consumers (RA, AM, TH)

The \$75,000 annual registry fee: does not account for smaller communities (SR, JB)

If a new registry makes under \$1million it should be waived the annual fees (MF)

Allow non-profits to pay a percentage of the annual registry fee for the first two years of running a new gTLD (TH)  
(See *Cairo Participation Key*)

### **Need Support for Evaluation Fee**

Evaluation Fee Does Not Ensure Fair Consideration. Applicants are required to acknowledge that the initial fee of \$185,000 is paid only "to obtain consideration" of an application. Applicants are not entitled to expect that the \$185,000 fee will buy them even reasoned or fair consideration. *RyC* (6 Dec. 2008).

Transparency: Estimated First Round Applications. ICANN should provide more transparency in how it arrived at the cost estimates and fees in the new gTLD process, as well as its estimates for number of expected applications in the first round. He also recommends that ICANN be consistent in its terminology on "phases", "steps," and "tasks". *A. Martin* (16 Dec. 2008). Thank you for explaining the principles and high level estimation approaches that you have used to arrive at the proposed fees. It provided a good high level overview. However, in the name of transparency, I believe the internet community \*needs more explanation and greater visibility into the actual cost estimations and assumptions\* behind the \*application and recurring fees\*. This is especially important since cost recovery is the principle governing the fees and fairness and transparency seem to be higher priorities than cost-minimization. *A. Martin* (16 Dec. 2008).

Fees need to be reflective of ICANN's true costs. *NeuStar* (15 Dec. 2008).

Expected quantity of applications: Because your cost model depends significantly on this number, can you describe in detail your data points and sources for your 500 applications estimation, especially the "report from a consulting economist" There is some inconsistency and I am slightly confused with your use of the terminology of "phases," "steps," and "tasks." (See Pg 8, "Expected value is determined by estimating the likelihood that each of the 75 steps will actually be executed for the pool of applications, then multiplying that likelihood times the cost."). This leads me to the question: at which of these levels (either phases, steps, or tasks) do you assume and assign probabilities that the application would pass through. For example, did you assume 80% of applications would pass through the Initial Evaluation step, or did you get more granular and assign probabilities at the task level where appropriate? Can you provide the internet community with the full list of tasks, as well as your assumptions with regard to what probabilities you assigned to each task, which you consider predictable? How are efficiencies factored into the accounting of individual tasks or steps? Presumably certain steps would not take the fully estimated time if repeated for all 500 applicants or done in batches? Please

explain. At what points in the application process (and which individual tasks) are you using consultants whose hourly rates are presumably more expensive than those of internal staff? *A. Martin* (16 Dec. 2008).

Cost Basis for Single Company gTLD Registry. This reasoning does not apply to company registries without registrar model, the Charles River Model I, as the TLD operator can define the cost of a registration to be zero, rendering percentages ineffective. However, it also seems inappropriate to have higher charges for large number of second level entries as they will not cause additional work for ICANN. To prevent applicants that wish to copy the .com model from applying for this category, restrictions must be defined. Category C domains have to be registered for free and services associated with C domains may not generate revenue for anyone except the operator. I would like to reiterate our offer of support in working on this important question by whatever means you consider helpful. We can think of no more important part of the guidebook to get correct than this, as without the .org revenue, or the NANPA revenue, the unrestricted "stars" of the 2000 new gTLD round would be economic failures, *M. Faure, CORE.*

Cost Basis-Evaluation Fee: The fees associated with the proposed TLD submission process seem to be the least coherent portion, yet this proposal section has the most justification. The initial submission fee of \$185,000 is one example of the incoherency. The fee is intended to go toward ICANN's operational costs. However, the proposal does not identify which operational costs are currently covered. Are salaries, services, and base overhead currently not being funded? *Hacker* (14 Dec. 2008).

ICANN should provide more details on the costs and fees associated with each type of Extended Application described in 2.2. *NICMexico* (9 Dec. 2008).

ICANN needs to be more specific regarding its fee structure. *BITS.*

### **Need Support for Annual Registry Fee**

Equitable Issues. Why should the new gTLDs pay \$75,000 during their start up periods when the following existing TLDs all pay \$10,000 or less -- .cat, .jobs, .coop. aero, .museum, and .travel? *CentralNIC* (13 Dec. 2008). What is the basis for the fee of the greater of 5% of transaction revenue or \$75,000? Please provide more explanation and detail regarding the principle of having this fee be the same across all new TLDs. Is this to cover only variable costs? How many TLD are assumed to be designated (how many applications make it through the entire process? What type of services are you assuming you will provide? Do you assume you will provide the same level of service that will require same amount of staff labor or technical investment for each type of TLD? Won't some, for example corporate trademark TLDs used for internal purposes, require significantly less work on the part of ICANN? *A. Martin* (16 Dec. 2008). The annual fee is too high (should not be more than \$25K). *.koln* (15 Dec. 2008).

Cost Recovery Analysis. ICANN states that the application fees are calculated on cost recovery only. The 500 applications that ICANN itself estimates to be submitted in the first round, at \$185k per application, will mean a \$ 95M revenue for ICANN. This roughly equals 1000-1500 man years of work (or 300 to 500 man years when consultants are used). First of all, it seems unrealistic to assume that all preparatory work done so far, together with the manpower necessary to evaluate the five hundred applications will take 100 persons ten years, so the goal of "cost recovery only" does not seem to be supported by fees charged. *SIDN* (10

Dec. 2008). *Microsoft* (Guidebook comments, 15 Dec. 2008) (ICANN has not justified the annual \$75K registry “tax” fee).

### **Fee Structure – Annual Registry Fee**

Unequal Impact. In determining the 5%, ICANN proposes to include “all bundled products or services that may be offered by Registry Operator and include or are offered in conjunction with a domain name registration.” This expansive definition goes well beyond any contractual terms with existing registries, and would create an unequal playing field among registry operators. *CentralNIC* (13 Dec. 2008).

ICANN should consider charging lower fees for smaller registries, and should consider a maximum fee in the event that the variable component results in an unexpected windfall to ICANN. In any event, the Guidebook should be revised to clarify that the 5% threshold does not apply to non-domain related registration services or revenue. *MarkMonitor* (15 Dec. 2008).

Clarifications Needed-Cost Recovery and Revenue. Section 6.1 states that the average price of registrations “include all bundled products or services that may be offered by Registry Operator and include or are offered in conjunction with a domain name registration”. 1. Please explain exactly what was meant by ICANN in this statement. 2. Please explain how this relates to ICANN collecting fees from registries as a “cost recovery” mechanism which was cited as the purpose of collecting fees. 3. Please explain how this relates to ICANN as a non-profit organization as opposed to a for-profit revenue sharing arrangement. 4. Please explain why ICANN is not protected with a minimum as it relates to cost recovery. In other words, in most for-profit commercial arrangements, there is EITHER a minimum OR a rev share but not both. It appears that ICANN wants to have “it’s cake and eat it too.” 5. How does this comport with the GAO study on ICANN several years back which talked about ICANN's cost recovery mechanism as opposed to taxation on income? *eECOM-LAC*.

The GNSO policy on new gTLDs recommends that ICANN take a consistent approach to registry fees, but in no way mandates that ICANN impose a one-size-fits-all model. Registry operators strongly reject this model. The proposed mechanism seems to abandon any cost-recovery obligations and, in the end, amounts to a revenue share. *RyC* (6 Dec. 2008).

In addition, ICANN has also not shown why it deserves five percent of any fees generated by services that may be completely unrelated to the domain name registration other than perhaps that they are offered as part of a package. *Neustar* (15 Dec. 2008).

Registry Pricing. Pricing is not a stability or security issue and thus not within the bounds of the picket fence. It is a matter on which each registry is free to agree via contract, but it is not an appropriate matter for Consensus Policy. To the extent registry fees depend upon pricing by registries, there is no justification for calculating such prices on the basis of all bundled products or services. *RyC* (6 Dec. 2008).

### **Fees, as Proposed, are Reasonable**

On the Application fee, Demand Media finds it to be an acceptable, one-time fee for serious applicants. They note that ICANN should spend surplus fees in a way that promotes and assists new gTLDs and reductions in fees for new gTLDs. The RFP presents a reasonably well-detailed case justifying the \$185k Evaluation Fee. We agree that the process is unique and unprecedented, with considerable scope for unexpected costs. In our experience there will

almost certainly be unanticipated complexities, therefore, we think it is prudent to have a fee that is high enough to cover these costs. On the balance we think \$185k is an acceptable, one-time fee for serious applicants. *Demand Media* (17 Dec. 2008).

### **Clarify Refunds—Amounts and Methodology**

Refund Details Needed. Confirming and publishing a complete table of fees including details of refunds as soon as possible *IPC, COA*. Will a refund will be granted if ICANN determines that an applied for string is too similar to a Reserved TLD String [or an existing TLD]. In addition, she asks if it is possible to get a pre-application determination from ICANN on whether a proposed string would be too similar to a Reserved TLD string. *F. Hammersley* (24 Nov. 2008).

Details on refunds are missing from the Applicant Guidebook, and if the community has to wait until the Final version of the Guidebook, it may be too late to comment. *K. Koubaa, Arab World Internet Institute* (8 Nov. 2008).

The statement that refunds may be available to applicants who withdraw at certain stages of the process is too vague. A specific refund policy with guidelines that applicants can be aware of up front would be a very good idea. *C. Gomes* (18 Nov. 2008). ICANN should provide specifics of the refund policy in the next round of RFPs. *CentralNIC* (13 Nov. 2008).

Competing Applications; Withdrawals. If multiple applicants apply for the same gTLD .example, obviously only one applicant can be awarded with the gTLD. Will the other applicants receive a refund or a partial refund or be able to use the application fee to apply for an alternate or different gTLD? *B. Gilbert*.

It is desirable for all parties that an application facing opposition or contention can be withdrawn as gracefully as possible. To achieve this, applicants must be able to apply in a context where the possibility of withdrawal is a reasonable option. They must also be able to withdraw without losing face and without a substantial monetary loss. Negotiations between contenders should be encouraged, and their outcome should not be affected by the financial burden of a failed application. Finally, ICANN should facilitate withdrawal before any money has been spent on evaluation or objections. Full proposal made. *W. Staub, CORE*.

Refund Policy and Speculative Filings. We understand the motivation for those who want the RFP to provide an explicit promise of partial refund, or some form of graceful withdrawal period. In practice, however, any commitment by ICANN of this nature will cause ICANN to be inundated with a very large number of speculative proposals. We recommend that refunds only be provided in rare cases and that the amount of refund be determined on a case by case basis. *Demand Media* (15 Dec. 2008). The Guidebook states that, "ICANN reserves the right to reject any application that ICANN is prohibited from considering for a gTLD under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant." CADNA believes that the application fee itself, if nonrefundable, can deter attempts to register frivolous TLDs. *CADNA* (15 Dec. 2008).

Under 1.5.5, refunds should not be available. Applications for a new gTLD are a serious matter, and shouldn't be a game of trial and error, with refunds if unsuccessful. Section 3's refund policy is very unclear, and in particular seems to leave the door open for full refunds in all cases of refusal. It must be made clear that full refunds should not be the norm by tweaking the language. *G. Kirikos* (24 Nov. 2008).

Clarity on how surplus funds, if any, will be handled.

Articulate a clear rationale for the proposed fee structure as well as a transparent mechanism, that includes community agreement, for the disposition of excess revenues, should there be any, given ICANN's status as a non-profit entity. *US DOC-NTIA* (18 Dec. 2008). Is that already decided that ICANN is going to spend it or can it eventually be used to reduce registration fees for detailed deregistrants in general? *G. Kirikos* (24 Nov. 2008).

Evaluation Process – Financial considerations

Under 1.2.3 (5), Demand Media asks for clarification on funding of on-going operations in the event of registry failure. *Demand Media* (17 Dec. 2008).

**Other Fees**

Please specify if there are any additional costs after passing initial evaluation and clearing all objections (if any), prior to the TLD been added to the root zone. *NIC Mexico* (9 Dec. 2008).

RSTEP Review Fee. What is the basis for a \$50,000 RSTEP review fee? What criteria will be applied to determine whether an applicant will be required to pay additional fees and when will these fees need to be paid? An excessive fee for new registry services will discourage innovation and competition in providing services for registrants, users and the community as a whole. *C. Gomes* (18 Nov. 2008).

The RSEP process supports ICANN's core functions, and should be treated as an integral part of ICANN's operations, and not as an adjunct, pay-as-you-go service. It imposes a fee on innovation, creates a free-rider problem, and to the extent that registries with limited resources (i.e., smaller, community based registries) are the source of innovation, it reduces the likelihood that the community will enjoy the benefit of such innovation. Why do the Registry Operators have to pay for the RSTEP process under the new agreement? *RyC* (6 Dec. 2008).

Will an extended review by the RSTEP entail an additional fee? Is it possible that the RSTEP might not be able to respond in a timely manner? If so, how would applications be prioritized and how would communications with affected applicants occur? *C. Gomes* (18 Nov. 2008).

Extended Evaluations. Why are requests for extended evaluations only allowed in four circumstances? What if ICANN gave applicants the option of extended evaluations in other areas at their expense? *C. Gomes* (18 Nov. 2008).

The objection filing fee. I find it morally wrong to even suggest an objection filing fee. I am of course talking about the rights of those that haven't got the money. Are ICANN telling them that they don't have any rights. Remember that they didn't ask for there rights to be violated. If anything. This fee should be funded by the evaluation fee. If you do not take this into account. Then I'm afraid that you are going see a lot of, later one, lawsuits. *A. Rosenkrans Birkedal* (10 Nov. 2008). Per the draft, in situations where an objector files a protest, both the objector and the applicant must pay a fee to cover the costs of resolution (i.e. "Objection Filing Fees"). Once ICANN resolves the objection, ICANN will refund the fees of the successful party paid. We suggest ICANN clarify how it will handle the requirements for filing fees in situations wherein it consolidates two or more objections. It is not clear if each objector must pay a full fee or if ICANN will divide the Objection Filing Fee equally between the each "consolidated" objector. *BITS*. Requiring the applicant to pay a fee every time a response is filed seems excessive and also could be administratively challenging in terms of paying and collecting fees. Will dispute fees be reduced when objections are consolidated? *C. Gomes* (18 Nov. 2008).

The total sum of the fees should cover all forms of the conflict resolution. Individuals wishing to voice opposition to a TLD should not be required to submit any fees. What is the fee for extended review? (If it's not decided yet, why not, and when will that be decided)? *Anonymous*. ICANN should consider small economies when the dispute fees are finalized. *F. Purcell* (6 Nov. 2008).

### **Processing of Fees**

We do not believe a six figure Evaluation Fee should be payable by credit card. A serious applicant will have the funds on hand to make this payment. *Smartcall* (4 Dec 2008). It is ridiculous that ICANN would even consider payments by credit cards to be acceptable, given the ability of people to do chargebacks months after a transaction. Only irrevocable forms of payments should be allowed, namely wire transfers. *G. Kirikos* (24

## **V. DNS SECURITY AND STABILITY**

### **Summary of Key Points**

- Consideration of issues where the introduction of new TLDs might affect DNS stability and security should continue to be studied.
- This is especially true given the near coincident introduction of new gTLDs, IDNs, DNSSEC and IPv6.
- Strongly associated with these issues to be studied are security-oriented concerns that the introduction of new TLDs will lead to increased instances of malicious behavior.

### **Summary of Input**

Public comments emphasized that ICANN must ensure that introducing a potentially large number of new gTLDs, including internationalized TLDs, will not jeopardize domain name system (DNS) stability and security. They urged that ICANN must assess threats to the DNS from the new gTLD rollout, and also must consider the potential in the future for events such as destabilizing registry failures. Some commenters suggested that ICANN conduct research on DNS stability issues before start of the first gTLD application round. A number of commenters urged ICANN not to move forward with the new gTLD program because of threats to DNS stability and security, and warned that the new program will create a new wave of malicious activity, including spam and phishing.

See *U.S. DOC-NTIA* (18 Dec. 2008) (ICANN must ensure that introducing a potentially large number of new gTLDs, including internationalized TLDs, will not jeopardize DNS stability and security). *ITT* (15 Dec. 2008). *G. Kirikos* (24 Nov. 2008). *Bank of America* (15 Dec. 2008). *P. Tattersfield* (15 Dec. 2008). *SIIA* (15 Dec. 2008). *FairWinds* (15 Dec. 2008). *AT&T* (15 Dec. 2008) (ICANN must assess threats to the DNS from new gTLD rollout and, at a later stage, how it will deal with registry failures). *SIDN* (10 Dec. 2008) (do research on stability issues before start of first application round). *R. Fernandez* (16 Dec. 2008) (ICANN should reject agreement; it removes all certainty and assurance for registrants). *WMI* (13 Dec. 2008). *NAM* (15 Dec. 2008). *SIFMA* (12 Dec. 2008). *Contessa* (11 Dec. 2008). *Microsoft* (Guidebook comments 15 Dec. 2008) (opposes new gTLD introduction, likely to threaten DNS security and stability). *Arab Team* (15 Dec. 2008) (not enough focus on stability and impact on other countries and communities). *L. Parsons* (29 Oct. 2009) (opposes because will increase phishing and confusion); *R. Robertson* (4 Dec. 2008); *D. Buzzard* (31 Oct. 2008).

### **Issues**

The comments addressing DNS stability break down into two main questions:

#### **Scaling: What are the technical scaling issues associated with new TLDs?**

- How can ICANN demonstrate confidence that the name system (root servers, resolvers) will scale to handle new TLDs?
- How large can the root zone be?

#### **Security Impact: Will security-oriented abuses of the DNS systematically increase with an increased number of TLDs and a new set of registry participants?**

- With evident problems in misuses of the existing DNS (squatting, pharming, phishing, malware), will increasing the number of TLDs significantly increase these misuses?
- Has adequate thought been given to the requirements and behavior for new TLD operators?

### **Proposed Position & Analysis (for this version of the Guidebook)**

#### **Scaling**

Proposed Position: The ICANN Board has requested the SSAC and RSSAC to jointly conduct a study analyzing the combined impact to security and stability within the DNS root server system of the proposed implementation of new TLDs (both country code and generic), IDNs, IPv6 records in the root zone, and DNSSEC. The analysis is expected to address the implications of initial implementation of these changes occurring during a short time period. ICANN must ensure that potential changes in the technical management of the root zone and scope of activity at the TLD level within the DNS will not pose significant risks to the security and stability of the system. The study is also expected to address the capacity of the root server system to address a stressing range of technical challenges and operational demands that might emerge as part of the implementation of proposed changes.

Analysis: The public comments' concern about the impact of new gTLDs on the root zone and whether this issue has been studied adequately has been raised against the backdrop of other recent and planned changes to the DNS, all in roughly the same time frame, including: the recent addition (in December 2007) of IPv6 records for authoritative root servers to the root zone, and the planned addition of DNSSEC, IDNs, and new country code TLDs. While a [new gTLD issues paper](#) discussed scaling the root zone, to provide adequate confidence in the technical support for scalability, the simultaneous impact of all of these changes should be considered.

Background resources: In addition to the [new gTLD issues paper](#), the following provides background on ICANN's efforts to understand the potential security and stability impacts of these changes individually:

The RSSAC and SSAC jointly issued an analysis of adding IPv6 records for the authoritative root servers in 2007 (see <http://www.icann.org/committees/security/sac018.pdf> and IANA's report at <http://www.iana.org/reports/2008/root-aaaa-announcement.html>). The addition of IDNs to the root has been the subject of significant advance planning, and an extended real-world testbed (see for example SSAC's report at <http://www.icann.org/committees/security/sac020.pdf>, and IANA's report at <http://www.iana.org/reports/2007/testetal-report-01aug2007.html>). DNSSEC has benefited from extensive root zone test bed experience and been extensively analyzed though not specifically for the all the events proposed to occur in the root zone (see for example <http://www.net.informatik.tu-muenchen.de/~anja/feldmann/papers/dnssec05.pdf>, and the RSTEP report on PIR's DNSSEC implementation at <http://www.icann.org/registries/rsep/rstep-report-pir-dnssec-04jun08.pdf>). Finally, an ICANN staff paper on root zone impact of new TLDs was published for public comment in February, 2008 (see <http://icann.org/topics/dns-stability-draft-paper-06feb08.pdf>).

## Security Impact

Proposed Position: Further comments on the issue of security impact are expected. Many public commenters clearly feel more work is needed on security and particular issues relating to it, including implementation of registrant protection and avoiding end user confusion. These questions should be explored further. For example, are there implementable, practical mechanisms to avoid the need for purely defensive registrations? Can registry or registrar mechanisms be put in place to make new gTLDs desirable from both a confusion and protection viewpoint? While there is always opportunity for more study, the concern regarding security abuses scaling with more TLDs is ultimately better dealt with through pragmatic implementation approaches than a set of predictions around which many would disagree in any event. ICANN staff will be actively soliciting feedback on these topics over the next 60 days, and share with the community options for improvements in these areas in the next several months.

ICANN staff believes that the concerns about security impact are being reasonably assessed in the currently proposed study and are consistent with GNSO policy recommendations and principles and also with ICANN's mission to ensure DNS stability and security. That study will solicit the opinion of the broad DNS technical community. Wide consideration has been taken of a broad range of issues, including: intentional and unintentional confusion at the TLD level; balancing introduction of new business models with compliance mechanisms and assurances of ongoing business stability of new registries; and the intent to create choice and competition. The new gTLD policy development process is focusing on how policies could be implemented that would minimize confusion to end-users, and costly defense to brand holders.

Analysis: The public comments have shown that there are a variety of security-oriented concerns that could be associated with new TLDs. These include:

- Potential confusion of new TLDs with existing, or other new TLDs, either in Latin script or in IDNs. This has been a major focus of the policy development behind both new TLDs in general, and IDNs specifically. Many elements of the implementation plan are designed to specifically address this issue. For example, there are two "stops" in application evaluation process to test that applied for string might result in user confusion due to their similarity with existing or other applied-for strings. There is also a stop to test whether an applied for string might infringe on a trademarked label or inappropriately appropriate a community label. New TLDs for communities, brand holders, industry associations, online communities and unique applications will all be evaluated within an environment intended to be more structured, more predictable, and more protected than today's second-level registrations.
- Possible misbehavior of new registries— through inexperience or other causes. The guidebook criteria for new registry operators are intended to address some of this concern. New registries are asked to complete sections on business and technical capabilities, and there is a particular focus placed on the ongoing continuity of the registry (both in terms of ongoing operations, and in the worst case, continuing to run for a period when business models fail).
- Confusion at the second level. That is, expanding the number of TLDs will expand the number of locales at which abusers of the system could register second-level names intended to dupe end-users. For entities facing both direct cost and possible indirect cost in loss of confidence in a name or brand, this is a pressing matter. Some have studied the costs of brand protection at the second-level. While there is not complete agreement

on the data, the general point is unarguable. There is a substantial amount of resource spent by brand holders and others defending look-alike second level names. While there are no studies to show this would expand with an expanded namespace, it is an important concern.

There have been suggestions that new TLDs would actually aid brand identity, for example see [this article proposing new thinking for global branding on the Internet](#). Many Internet users already pay close attention to the TLD, and look first to it – not the second level name – as the indicator of site validity. A user in France might well first look at .fr sites for those providing most local and linguistic relevance. In a world where there are many generic TLDs, the carefully-protected and rationally-considered TLD suffix could become more relevant than the second-level name for users, leading to less confusion, and ultimately less need for defensive second-level registration.

## **VI. STRING REQUIREMENTS**

### **A. STRING REQUIREMENTS: IDN AND TECHNICAL**

#### **Summary of Key Points**

- The three-character requirement will be the subject of additional community discussion and consultation to determine if a consistent exception can be made for ideographic or other script sets.
- The new IDN specification is not sufficiently mature to adopt the suggestion made by the Unicode Technical Committee (UTC) but progress on the protocol will be monitored with an eye toward updating string requirements in the near term
- The Guidebook asks that applicants take reasonable steps to identify string compatibility issues, not guarantee that all applications are compatible with the applied-for string.

#### **Summary of Input**

String compliance with IDNA technical protocols. The reference to the existing IDNA standard (RFC 3490) should be altered to refer to the new IDNA technical standard, on the presumption that the current standard will be superseded. Language should also be more emphatic that the list of restrictions in the guide is not complete. *UTC* (14 Nov. 2008). Add additional language regarding in-progress IDNA protocol revisions to make it clear that the protocol revision is expected to succeed, but the text is still subject to change. *UTC* (14 Nov. 2008)

Directionality of characters in string. “Must consist entirely of characters with the same directional property” is wrong and should be struck. Valid IDNs according to the in-development revised IDNA protocol would be limited by this restriction. *UTC* (14 Nov. 2008)

Prohibiting mixing characters from different scripts. The language that requires strings be limited to a single script is overly narrow, and does not address scripts deemed “Common” and “Inherited”, which are given to characters that are used within multiple scripts, such as numerals. *UTC* (14 Nov. 2008)

Documenting properties of the string. The language on specifying the language used by the label should be altered to reference BCP 47 rather than ISO 639-1. *UTC* (14 Nov. 2008). The language on specifying the script used by the label should be altered to bring the section “in line with the use of script in 2.1.1.3.2 String Requirements”. *UTC* (14 Nov. 2008). The language on specifying the discrete Unicode code points in the application should be more explicit on the notation used. It should be U+ notation, “for example, for the label “öbb”, the list would be: “U+00F6 U+0062 U+0062”. *UTC* (14 Nov. 2008) The reason for the requirement that the proposed TLD’s pronunciation by supplied is unclear. Very few registrants will be able to supply the pronunciations correctly using the International Phonetic Alphabet, and there are likely to be multiple pronunciations depending on the part of the world. *UTC* (14 Nov. 2008) The requirement to provide an IDN table may mean provide a reference to a table, rather than provide the complete table. The format required of the table is not clear. *UTC* (14 Nov. 2008)

Avoiding string compatibility issues. With respect to making “reasonable efforts” to ensure there are no rendering and operational issues with the selected string, it is not clear what reasonable

efforts are, and it sounds like “this is asking the applicant to change all the program applications that use the domain name, which is clearly impossible.” *UTC* (14 Nov. 2008)

Eligible string preclusions. The requirement for a minimum of three characters does not work for scripts where one character can represent an entity. *W. Tan* (8 Dec. 2008); IDN variant implementation needed for Chinese, Japanese and Korean TLDs. *J. Seng* (8 Dec. 2008). It is not clear why hexadecimal representations of numerals are prohibited. *A. Baumgart* (5 Dec. 2008) Inquiry relating to whether there is a prohibition on new TLDs that commence with the characters of a ccTLD (i.e. .FR blocking .FRANCHISE). *J.C. Vignes*.

## **Issues**

The issues raised in these sections can be narrowed down to:

Regarding the technical requirements for TLD strings, there are questions on unclear language, or suggestions on improvements to the language, with a view to improving the clarity of the document.

Can changes to restrictions be made in order to better match equivalent standards documents?

Can changes be made to reflect the suitability of certain restrictions or obligations?

## **Proposed Position (for this version of the Guidebook)**

String compliance with IDNA technical protocols: ICANN staff will continue to monitor the dynamics of the IDNabis working group, and will continue to consult on the latest status and the viability of the proposed new standard, and identify the likelihood it will be resolved prior to the launch of the first round. If this is still a reasonable prospect then the proposed change of language is appropriate.

Directionality of characters in string. The current language should be retained; however, the comments provided will be re-evaluated should the IDNabis standard be used as the reference standard.

Prohibiting mixing characters from different scripts. The current language is required as ICANN policy is to allow certain exemptions where scripts can be mixed.

Documenting properties of the string. Limit the technical details in the Guidebook on how script and language properties are formally provided, as they are operational details that are better in the scope of IANA Root Zone operational procedures, which are outside the scope of this document. Explain that these are informative properties, not evaluative, and make the phonetic description optional.

Avoiding string compatibility issues. Make the language clearer that “reasonable efforts” means that the applicant make a good faith effort to ensure that common applications do not have unexpected problems caused by the domain.

Eligible string preclusions. Number of characters in a string:

In the initial release of the Applicant gTLD Guidebook ICANN suggested that gTLD strings need to be minimum three (3) characters long.

In return comments have been received representing the fact that for example there are single and two character combinations in the ideographic writing systems that represents the name of cities, concepts and otherwise generic terms. This concern is understandable and additional information is being made available to inform community feedback on the topic. ICANN will also conduct additional consultations on this topic in order to reach a resolution before the launch of the new gTLD round.

In preparation of the initial suggestion of a minimum of 3-chars, ICANN took into consideration various analysis, including the work done by the Reserved Names Working Group:

- Single and two-character U-labels on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case by case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be available for allocation in the DNS. This is notwithstanding the rule that the ISO-3166 list will continue to be reserved and as such all two character ASCII strings (i.e., LDH-labels) will remain reserved at the top level and second level of a domain name, although registries may propose release of two character strings at the second level provided that measures to avoid confusion with any corresponding country codes are implemented. Single and two character labels at the second level should be available for registration, provided they are consistent with the IDN Guidelines. (<http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>)

At the same time, considerations need to be made to ensure that also confusion (and not just clashes) with the ISO-3166 list and associated IANA function for allocation of ccTLDs is not jeopardized. Confusability with existing ccTLDs and any future ccTLDs allocated through the IANA function by use of the ISO3166 list was viewed as increasing if strings with less than three character combinations are allowed. Further, avoiding such confusability is not planned for in the gTLD applicant Guidebook and needs to be if the 3-char suggestion is to be changed.

Additional considerations have to do with the concept of character and how to count characters on a global scale. Since the concept of a 'character' can remain hard to define, ICANN decided to go with the definition described at: <http://www.icann.org/en/topics/idn/idn-glossary.htm#C>. As is illustrated there, this creates some complications when moving to Internationalized TLDs due to the reason that in some writing systems, such as the ideograph system, a character can represent an entire concept or word. Specifically, it has not been possible to find a way of counting characters across all languages and scripts that creates an identical concept of numbers, this includes an incapability of counting the characters represented in the U-label, the Unicode code points, or other ways. The only way one can count characters in a unique way for IDNs is by counting the characters in an A-label and the shortest string available as an A-label is seven (7) characters long. It also does not appear that it is the length of the A-label that concerns the community members, although it is the length of the A-label that creates problems for the usability of domain names under such TLDs in various applications software. As such ICANN has determined to count the number of characters in strings that are applied for by counting their immediate code points as identified by Unicode.

While some specific examples of what appears to be reasonable (less than 3-char) strings can be made, for example in the ideographic writing system, it is not straightforward to

define (based on all received feedback so far) a globally implementable rule or set of rules that will identify when a string with less than 3 characters should be allowed. One could imagine that such strings could be allowed by a script by script basis, but a closer look at Unicode, which is the classification of scripts that ICANN is using, shows that there even is an inconsistency within a script as to when less than 3-chars appears to be reasonable. As such, at that time of writing ICANN did not find it possible to select for example some characters from the ideograph system over other writing systems with good reason. And simply going through all (approximately 100.000) characters in Unicode today also did not seem to be a scalable practice.

ICANN will conduct additional consultations as to what categorizes a good set of rules and requirements for when a string of less than 3-characters should be allowed, if such change should be made in the implementation of this program. Simply stating that it should be analyzed on a case by case basis does not provide ICANN with sufficient details of how or based on what such decision should be made. It further does not give enough indication to a potential applicant as to whether their string will pass such case-by-case analysis or not.

## **Analysis**

String compliance with IDNA technical protocols. The comments from UTC suggest that the references to RFC 3490 (the current IDNA standard published in 2003) be replaced in favor of references to the in-progress IDNA standard. The emphasis should be shifted to the revised IDNA standard being at the final stages of standardization and being the more appropriate document to refer to. Whether this is appropriate really comes down to the probability of whether the IDNA standard will be revised by the time the next round opens. The prospect of this varies from month-to-month. The current standard was included in the document as it is a stable reference, and for most cases they will be equally compatible between the current standard, and the new standard.

Directionality of characters in string. The proposed new language improves the section to better match the intent of the restriction, but is predicated on the new IDNA standard revision being adopted. As per the previous section, RFC 3490 is being retained as the reference for the moment, however this may evolve in the future and the restrictions modified accordingly.

Prohibiting mixing characters from different scripts. The proposed new language would prohibit some classes of mixing characters for which exceptions have been made. These are description in Section 3 of the existing IDN guidelines available at <http://www.icann.org/en/topics/idn/idn-guidelines-26apr07.pdf>

Documenting properties of the string. Most of the comments provided by UTC in this section revolve around an enhanced description of the IANA Change Request Template that is employed today, which reads:

- IDN Specific Information
- 10. English translation of string...: test
- 11a. Language of Label (ISO 639-1)...: ru
- 11b. Language of Label (English)....: Russian
- 12a. Script of Label (ISO 15924)....: Cyril
- 12b. Script of Label (English).....: Cyrillic

13. Unicode code points.....: U+0438 U+0441 U+043F U+044B U+0442 U+0430  
U+043D U+0438 U+0435

This section has several purposes:

First, in order to assist in day-to-day handling of delegated top-level domains by ICANN's IANA function, a methodology of generating an English-based reference was devised that can be used as an alternative to either the "A-label" and "U-label" notations for the purposes of dealing with IANA. For example, the IANA code for .испытание is "test:ru-Cyrl". This code indicates the domain means "test", written in "Russian", expressed used "Cyrillic". This code is broken into <meaning>:<bcp47tag>, whereby the meaning is the English meaning (or a similar reference) of the string; and the BCP 47 tag is a reference to an IANA registry of scripts and languages. The BCP 47 registry in turn is based upon two different standards, one for scripts (ISO 15294) and one for languages (ISO 639-1).

Second, in Part 13 the Unicode code points are requested as a simple cross-check. The elements could be automatically derived from the U-label or A-label itself, but because the meaning of the label may not be immediately evident, this provides a cross-check such that IANA can automatically detect transcription errors of the other labels.

Finally, there may be public interest reasons for IANA to classify the strings based upon their script and language properties, for example, an ability to review the root zone database for all of the strings that mean "test", or all the strings that are written in Russian.

Accordingly, the requirements are *informative* as opposed to *evaluative*. When stored in the IANA root zone database, they are considered meta-data that is additional to the central data for a top-level domain, but plays no direct role in processing or evaluation. An additional requirement was suggested by the applicant guidebook for the label, which is to provide a description on pronunciation. This would possibly aid IANA staff in understanding what a label was that a person while performing customer service tasks such as answering enquiries. It was not considered to be a property that is assessed as part of the qualification criteria.

With respect to providing IDN tables, it is the intent of ICANN to obtain the entire IDN table, not just a reference to it; because the goal is for it to be lodged in the IANA Repository of IDN Practices. It is a fair point that the formatting expectation be explained; however it is not clear whether this should be explicit in the document or merely by reference. IANA's website has submission guidelines already, although it is likely to change in the short-to-medium future to a more useful format (specifically, XML rather than HTML formatting). This timing of that is independent of the new TLD programs.

Avoiding string compatibility issues. ICANN staff did not have a strong vision of what specific actions would be considered "reasonable" when developing this requirement, as the provision is designed to detect any problems that can't be fully predicted or articulated in advance. The idea was to have language that could be pointed to in the event there are labels that were an egregious abuse (for example, the triggered properties that could be knowingly used for phishing attacks). It was not envisaged that applicants would need to undertake their domain would work in every browser, rather to make some effort in good faith to ensure there are no reasonably discoverable issues in popular software.

Eligible string preclusions. The restriction on 1- and 2- character top-level domains stems from the current split in ASCII top-level domains. There, two-letter top-level domains are restricted solely for ISO 3166-1 country codes (either current or future). Single letter domains, both in the

top-level and in the second-level within gTLDs, were reserved against possible registration in the early 1990s for possible future expansion purposes.

The guidebook states that for new gTLDs “applied-for strings must be composed of three or more visually distinct letters or characters in the script, as appropriate”. Concern has arisen from communities that use ideographs to express their language that single characters can often denote whole words, and therefore concepts need to be expressed in less than three characters to be practical.

The hexadecimal restriction is designed because most Internet software does not distinguish between IP addresses and domain names. Instead, in most software a generic “Internet address” field is provided which can accept either, and the software must analyze and decide whether it is an IP address or domain name. Hexadecimal is a legitimate method of representing IP addresses, and a domain name that matches a possible IP address would cause confusion and unexpected results.

**Example: Using hexadecimal in an application:**

```
$ ping 0xd04dbc67
PING 0xd04dbc67 (208.77.188.103) 56(84) bytes of data.
64 bytes from 208.77.188.103: icmp_seq=1 ttl=59 time=1.70 ms
```

**B. STRING REQUIREMENTS: RESERVED NAMES**

**Summary of Key Points**

- For the next version of the Applicant Guidebook, no changes will be made to the Reserved Names list, but this position might change after additional consultation.
- Requests by certain rights holders that the reserved names list be augmented to include famous trademarks will also be discussed in additional consultations.

**Summary of Input**

Technical/Infrastructure Names. Create a mechanism that provides for the expansion of the gTLD reserved names list, as appropriate, technical or infrastructure-related names. *U.S. DOC* (18 Dec. 2008). Add the following names to the Reserved Names list: ARPA, IN-ADDR, IP6, and RIR. Develop a process for releasing reserved domains to the appropriate entity. Develop a process for adding or removing names from the Reserved Names list.” IANA-related infrastructure names should be protected at all levels; the reserved names list has omitted significant Internet infrastructure names. *ARIN* (8 Dec. 2008). ICANN should specify criteria for the reserved names list, with transparent justification for each name on list; develop challenge and removal procedures; and clarify if they are reserved in ASCII but not IDN equivalents. *Rodenbaugh* (16 Dec. 2008) (these issues are of special concern to globally famous trademark owners to whom ICANN does not extend Reserved Names protection). ICANN should add other terms commonly found in Internet URLs (e.g. HTTP and HTTPS) to the Reserved Names list. *INTA* (15 Dec. 2008).

Government and NGO Names. On 2.1.1.2, ICANN should not reserve its own names without offering the same opportunity to governments and non-governmental organizations. *NYC* (13

Dec. 2008); AT&T (15 Dec. 2008) (consider the reserved names list concept for country and geographic names).

Trademarks. See citations in Trademark Protection section, under "Top Level Reserved Names List".

Reinstate Protection. "Reinstate the existing protection for Reserved Names." ARIN (8 Dec. 2008).

## **Issues**

There was little direct feedback about the Reserved Names list itself, as presented in Draft Applicant Guidebook, with the exception of a comment from ARIN, which proposed the addition of ARPA, IN-ADDR, IP6, and RIR to the list. Feedback focused on the lack of any provisions for trademark owners. Comments from groups/companies such as Nike, ISOC, and the Internet Commerce Coalition requested the inclusion of trademark names on the Reserved Names list since ICANN was choosing to protect its own interests.

- 1) What type of categories should the Reserved Names list include?
- 2) Should the 2<sup>nd</sup> level Reserved Names schedule in the base agreement be reinstated to what is generally reflected in current agreements?

## **Analysis**

The top-level Reserved Names list, which will prevent applicants from applying for certain names, was created for the new gTLD program based largely on the existing 2<sup>nd</sup> level Reserved Names schedule. This decision was reached as a result of the work conducted by the Reserved Names Working Group (final report available here: <http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>), which recommended that existing names on the second or perhaps even third level Reserved Names schedules should be included on the top level list. However, they suggested that additional work should be performed to provide justification for the names or categories of names included on the list. In carrying over the 2<sup>nd</sup> and 3<sup>rd</sup> level Reserved Names schedule to the top level, ICANN has decided upon a conservative approach as it is far more difficult to recover a TLD than it is to block a TLD from being registered in the first place.

ICANN has identified three options:

Option 1: Reduce list to technical and structural terms and have ICANN and its supporting organizations use the standard objection procedures used by others to protect their names, in order to show that there is no preferential treatment.

Option 2: Include technical, structural, and ICANN related names, which would leave the list as it is presented in the Draft AG. Potential additions include the suggestions from ARIN.

Option 3: Include all elements of option 2, but also provide a provision for other entities, like trademark owners and geographical names holders.

Option 1 presents arguably the most defensible position to the general Internet community (i.e. limit the RN list to names that require technical or structural protection). ICANN would demonstrate that it is not placing its interests above other organizations. However, this position is subject to objection from the SOs, ACs, and other entities supporting ICANN. They will likely

contend that not reserving names like RIR, IETF, or GNSO could lead to security concerns via phishing and spoofing if one of these names was obtained by a malicious operator. In addition, if one of the ICANN related entities wished to protect their name against an applicant (for IETF or AFRINIC for instance), they would have to use the very same objection mechanisms that ICANN designed. This has the potential to open up questions of impartiality.

Option 2 presents the status quo (relative to the Draft AG), and thus the most conservative option, since there was only limited feedback on this topic. The external objections to this option will likely be similar to what was received in public comments for the Draft AG. The perceived message being conveyed is that ICANN is protecting its own interests without taking trademark owners and other entities into account. However, as mentioned above, it is far easier to prevent a name from being registered by placing it on a RN list than to recover that name from a registry operator.

Option 3 is dependent upon a solution being developed for rights holders, like trademark owners. ICANN is undertaking significant consultation on this subject to determine what methods of protection will be extended for the protection of rights holders. Please see the separate paper that discusses Brand Protection for further information on this topic.

Regarding the second issue posed above, the principal concern is that existing infrastructure and software is designed to accommodate the existing names on the 2<sup>nd</sup> level schedule. While exact details were slim on what types of technical complications may arise from having something like lacnic.newgtld registered, presumably this may affect registrar software and search/filter functions. However, these issues can likely be addressed by software modifications.

### **Proposed Position (for this version of the Guidebook)**

Issue 1: The recommendation for the revised Applicant Guidebook is Option 2 (the status quo), as the consultative work with the community regarding trademark owners still needs to be undertaken. In addition, going forward, further work should be initiated to determine under what conditions ICANN-related entities should have continued inclusion on the list.

Issue 2: Unless a more compelling technical argument can be produced, the schedule currently included in the base agreement should be left unchanged.

## **VII. GEOGRAPHICAL NAMES**

### **Summary of Key Points**

- The implementation model seeks to achieve the objective of the GNSO to protect against abuse of community labels, and anticipate criticism of governments and possible objections to geographic names,
- The applicant guidebook is amended to:
  - make it easier to identify the different elements of geographic names,
  - reflect that a country or territory name in any language, will require evidence of support,
  - augment the requirements of the letter of support.
- No additional protections for city and abbreviated names were added to the revised Guidebook as those terms are many in number and often have generic connotations.

### **Summary of Input**

The ccNSO states that the Applicant Guidebook lumps together country names, territory names, and other geographical names like sub-national names and city names. *ccNSO* (14 Dec. 2008). The ccNSO suggests a definition for how to distinguish ccTLDs and gTLDs and notes “Until the introduction of IDNs, the number of characters in the TLD is how we have been able to visually separate the two categories. So how do we identify what is a ccTLD in the post- IDN world where we can no longer use that visual mechanism?” *ccNSO* (14 Dec. 2008). The ccNSO believes the current language preempts the ccTLD IDN PDP, by opening up for country names and abbreviations in Latin scripts and in non-Latin scripts that are not yet official languages of the country, to be entered as gTLDs while the ccTLD policies have yet to be developed. *ccNSO* (14 Dec. 2008).

The Applicant Guidebook does not establish a process to authenticate, or for a panel to consider challenges to, governmental statements of support or non-objection that may be presented by applicants. The ISO3166-2 standard is not comprehensive. *NYC* (13 Dec. 2008)

On 2.1.1.4.1, [of the applicant guidebook] the ISO 3166-2 standard is mostly inapplicable to new gTLDs. *NYC* (13 Dec. 2008) The reference to “city name” is too restrictive and should be expanded to include “city name or abbreviation”. *NYC* (13 Dec. 2008). The capital city requirement from the Explanatory Memorandum of 22 October 2008 is not included in the draft Applicant Guidebook. *NYC* (13 Dec. 2008)

The four enumerated grounds for objection do not provide sufficient grounds to safeguard the interests of national, local, and municipal governments in the preservation of geographic terms that apply to them. Suggested costs for dispute resolution will be too onerous for governments. The contention process for geographic names should be specified. Any application for a geographic term should be considered community-based. The right of governments to object should be explicitly stated. *NYC* (13 Dec. 2008). The Geographic Names Panel decision should be posted and communicated to the relevant GAC representative and relevant sub-national government entity. IDN applicants should be required to indicate whether the proposed string corresponds to a geographic term. *NYC* (13 Dec. 2008)

The objection procedure for governments is not clearly defined. It is not clear whether a geographic objection would constitute a “morality and public order objection.” Any fees associated with a government objection should be minimized. *NYC* (13 Dec. 2008)

This comment is on geographic names (particularly state names). Craig writes that he is considering applying for a string that is a State Name, has made inquiries with the relevant state government, and believes it almost impossible to get a letter of approval or non-objection. Craig says that the users and businesses in the state he has contacted have expressed support, and he wonders whether the benefit of the people who live in the state is considered (by ICANN). *D. Craig* (17 Nov. 2008).

Craig also argues that states have State.gov, and can restrict the registration policies in the .GOV space (he also writes that .GOV should be open to other governments to use). He wonders if he can make a case that a string corresponding to a state name, that case & the benefit to the local population should be considered in the evaluation. *D. Craig* (17 Nov. 2008)

The current language in 2.1.1.1 “co-mingles immediate and important issues like gTLD applications for strings that look like country codes, and non-immediate and possibly non-important issues potentially posed by gTLD applications for well-known terms referring to place names which pre-exist all present governments.” *E. Brunner-Williams* (6 Dec. 2008)

The restriction on sub-national or continent names should be removed, section 2.1.1.4 [of the applicant guidebook] should be moved to a secondary materials reference, and ICANN should test for collision with a ccTLD Fast Track string. *E. Brunner-Williams* (6 Dec. 2008)

Demys is requesting clarification in the geographical names process on whether a string is a sub-national place name, on the basis that there appears to be ambiguity. This is important for common abbreviations of sub-national place names. *Demys* (14 Dec. 2008). An example presented is .lancs, a term not found in ISO 3166-2. This is a common abbreviation for Lancashire, and on a less rigid test might be held to “represent” Lancashire. Demys asks how this will be handled in practice. *Demys* (14 Dec. 2008)

Demys also notes that the test of “meaningful representation” applied to country and territory names is not applied to IS3166-2 sub-national place names. *Demys* (14 Dec. 2008). It says in the Draft Module 2 2.1.1.4.1 that in order to apply for city TLD, “documents of support or non-objection from the relevant government(s)” are required and they “should include a signed letter of support or non-objection from the Minister with the portfolio responsible for a domain name administration, ICT, foreign affairs or the Office of the Prime Minister or President of the relevant jurisdiction.” *Interlink*.

If Interlink were to apply for dotTOKYO, do we need the documents from both Ministry of Internal Affairs and Communications and Tokyo Metropolitan Government? Or do we just need Ministry of Internal Affairs and Communications to support our application? *Interlink*.

ICANN should revise this Module to minimize disputes with governments on geographic and country names. *F. Purcell, Ministry of Communications, Information and Technology* (6 Nov. 2008)

This includes a representation of the country or territory name in any of the six official United Nations languages (French, Spanish, Chinese, Arabic, Russian and English) and any of the country or territory's local languages. *Unicode Technical Committee (UTC)* (13 Nov. 2008). It is

quite common for a country or territory to have more than one language, so that needs to be accounted for. *UTC* (13 Nov. 2008).

Applications for any string that represents a subnational place name, such as a county, province, or state. These could be, for example, as listed in the ISO 3166-2 standard. *UTC* (13 Nov. 2008). The ISO 3166-2 standard is not complete, and is not freely available. Including the comma may imply to the reader that it is required, that the sentence is to be read as: "Applications for any string that represents a subnational place name (such as a county, province, or state) listed in the ISO 3166-2 standard." *UTC* (13 Nov. 2008).

Applications for a city name, where the applicant clearly intends to use the gTLD to leverage from the city name. *UTC* (13 Nov. 2008). City names are very ambiguous - look at the number of "Paris" cities that exist. If Paris, Texas gets there first, what happens? Should there be some qualification necessary to disambiguate city names instead? *UTC* (13 Nov. 2008)

We strongly urge ICANN to adhere to GAC principles in general and in particular the following: (a) New gTLDs should respect the sensitivity regarding terms with national, cultural, geographic and religious significance. (b) ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities. *APTLD* (15 Dec. 2008)

A 'geographical term' is terribly broad and thereby offers protection even beyond what I believe the GAC requested. *C. Gomes* (18 Nov. 2008). The GNSO recommended that a dispute process be used and that governments and GAC should have standing to file a dispute. The guidebook indicates that ICANN will ensure that appropriate consideration will be given to government interests. This is contrary to the GNSO recommendation. *C. Gomes* (18 Nov. 2008).

Applicants for a Geo -TLD need to represent on which legal framework their application is based and that the use of the proposed string is not in violation of the legal framework in the country in which the applicant is incorporated. The applicant also needs to represent if and how the relevant government/s and/or public authority/ies have to respond to requests of ICANN on support or non-objection. Additionally, the fees are too high for many cities and countries who may have very small user bases. *dotberlin* (4 Dec. 2008); *J. Evans* (12 Dec. 2008); *Plaid Cymru* (15 Dec. 2008); *PuntoGal* (13 Dec. 2008).

dotSCO raises issues with the geographic considerations in the Guidebook. They note that SCO is not a three-letter code in ISO 3166-2 nor does it clash with a country name on the ISO 3166-1 list. "The difficulty for us, and indeed all other applicants, is that the criteria of a string which could 'represent a sub-national place name' in ISO 3166-2 could potentially catch any string that anyone could think of." *dotSCO* (15 Dec. 2008).

Giving governments control over ccTLD space may stifle competition. *Cairo Public Forum* (6 Nov 08).

Government support concern: ICANN should reverse its adoption of the GAC position on prior approval for any geo-gTLD and revert to the GNSO position providing standard objection rights to governmental entities. Any suggestion that governments have any ability to object to second level geo-domains on any grounds outside the scope of the UDRP should be rejected outright. *ICA* (16 Dec. 2008). Some country names have well-used and general meanings in the English language. Requiring TLDs that are country names to have government support or non-objection

makes it unlikely that certain communities will be able to secure logical TLDs (e.g. china, turkey). Some territory names are geographic indicators for specific products (e.g. champagne), but the government support/non-objection requirement makes it unlikely that producers of such products can secure those corresponding TLDs. Having multiple applicants for the same city name TLD resolve the contention themselves is odd; there are numerous potential applicants for city name TLDs. *INTA* (15 Dec. 2008).

## **Issues**

### **Process**

Can the presentation of geographic names in the guidebook be improved to distinguish between the differing elements, i.e. Country or territory names, sub-national, city names?

- Will there be a process to deal with possible string collisions for strings sought under the IDN ccTLD Fast-Track and new gTLD processes?
- What is the objection procedure, i.e. would an objection regarding a geographic name be considered under 'morality and public order'?
- How does an applicant know what level of government support is required for a geographic name.
- Should the decisions of the Geographic Names Panel be posted and communicated to the relevant GAC and sub-national entity?

### **Country and territory names**

- Will allowing country and territory names in the new gTLD process create confusion between what is a ccTLD and a gTLD?
- Should the number of languages representing a country or territory name be expanded to include all languages.

### **Sub-national names**

- Can there be a clear comprehensive list, for defining sub-national names, such as the ISO 3166-2 list?
- Will the meaningful representation test be applied to sub-national names?
- How will common abbreviations for sub-national names be handled?
- How will abbreviations be considered in the context of geographic names?

### **City names**

- Is the issue of city names ambiguous, where they are shared by multiple cities or may be a generic term?
- Should the city name definition be expanded to include abbreviations?

### **Government interests**

- Is the consideration of government interests, as currently written in the guidebook, contrary to the GNSO recommendation?
- Are the interests of national, local and municipal governments adequately protected through the objection process?

## **Analysis**

### **Process**

Can the presentation of geographic names in the guidebook be improved to distinguish between the differing elements of country and territory names, sub-national names, and city names?

- Yes. The applicant guidebook will be amended to make it easier to identify the different elements of geographic names.

Will there be a process to deal with possible string collisions for strings sought under the IDN ccTLD Fast-Track and new gTLD processes?

- An application for a geographic place name, as described in the applicant guidebook, requires the evidence of support, or non-objection from the relevant government or public authority. There can only be collisions in circumstances where this documentation is provided for applications for a string in both the gTLD and ccTLD fast track process. Secondly, if the evaluation of an application for either an IDN ccTLD or gTLD string is complete before a contending application is lodged, the successfully evaluated TLD will not be removed from the root zone.

What is the objection procedure, i.e. would an objection regarding a geographic name be considered under 'morality and public order'?

- The GNSO policy recommendations intend that government interests in geographic names be protected under community based interests. These protections are described in the guidebook and in answers to other questions below.

How does an applicant know what level of government support is required for a geographic name.

- Discussions among GAC members revealed that there is no one standard that applies across the countries of the world about which level of government support will be required for country, territory, place or city names. It will be the applicant's responsibility to identify which level of government support is required.

Should the decisions of the Geographic Names Panel be posted and communicated to the relevant GAC and sub-national entity?

- The results of the evaluation will be publicly posted on ICANN's website at the conclusion of the Initial Evaluation and will also be available to applicants.

### **Country and territory names**

Will allowing country and territory names in the new gTLD process create confusion between what is a ccTLD and a gTLD?

- The solution offered by the ccNSO to not allow country and territory names in the gTLD process until the outcome of the ccPDP, will mean that country or territory names in ASCII at the top level would not be available before August 2011. In considering the comments received on the issue of country and territory names in the gTLD space, the definition of meaningful representation will be expanded to include a representation of a country or territory name in any language to address the ccNSO's concern that "almost all non-Latin and Latin scripts can be entered as a gTLD without any restriction except that the country in question can object." This amendment, combined with the requirement that the relevant government or public authority provide support or non-objection for an application for a country or territory name, ensures that a government is aware of the application.

Further, to overcome concerns that governments have varying degrees of understanding of ICANN and TLDs, the requirements of the letter of support will be augmented. In addition to demonstrating an understanding of the string being requested and what it will be used for, the letter should also reflect that the string is being sought through the gTLD

process and the applicant is willing to accept the conditions under which the string will be available, i.e. sign a contract with ICANN, abide by consensus policies, pay fees etc.

ICANN has received considerable exposure through the World Summit for the Information Society process, and the more recent annual Internet Governance Forum events. This, combined with the work of the GAC, has resulted in governments having a better understanding of ICANN and the domain name system. Through the communication plan for the implementation of new gTLDs, communication will be targeted at governments to ensure that they are informed about the various elements of the program, and its potential application to governments.

Should the number of languages representing a county or territory name be expanded?

- During the meeting between the ccNSO and the GAC in Cairo, members of the ccNSO raised concerns that country names were not protected in all languages, and this has been reiterated in their comments as well as being raised by the UTC. The Guidebook will be changed to provide protection for country and territory names in all languages. Therefore the guidebook will now reflect that applications for any string that is a meaningful representation of a country or territory name listed in the ISO 3166-1 standard, including a representation of the country or territory name in any language, must be accompanied by documents of support or non-objection from the relevant government or public authority.

### **Sub-national names**

Can there be a clear comprehensive list, for defining sub-national names, such as the “ISO 3166-2 Codes for the representation of names of countries and their subdivisions—Part 2: Country subdivision code” for defining sub-national names?

- In the Explanatory Memorandum for Geographic Names, “place names are considered those that represent a sub-national identifier such as counties, states, regions or provinces”. During discussions with the GAC on the issue of place names, the GAC suggested the ISO 3166-2 list as a possible reference list for identifying sub-national names. The City of New York, Law Department, recommended that the guidebook adopt an additional standard, the United Nations Code for Trade and Transport Locations <http://www.unece.org/cefact/locode/service/location.htm> This list is derived from the ISO 3166-1 and 3166-2 codes, however, as the purpose of the list is to identify trade and transport locations, it goes beyond the scope of geographic names as outlined in the draft applicant guidebook and may lead to confusion among applicants.

It is difficult to develop a list that covers all sub-national names world wide; however, the 3166-2 list is considered the most applicable for the introduction of new gTLDs. The list is intended to be used in conjunction with the ISO 3166-1 list, which was selected by Jon Postel as the basis for ccTLDs, in the knowledge that ISO has a procedure for determining which entities should be and should not be on that list. The ISO 3166-2 list provides an independent and dynamic list of names which is consistent with previous ICANN processes. This list, combined with the applicant’s responsibility to identify if a string represents a place name, and that any application may be subject to objections under GNSO Recommendation 20, under which applications may be rejected based on objections showing substantial opposition from the targeted community, is felt to provide reasonable protection for local and national governments.

Will the meaningful representation test be applied to sub-national names?

- It is not the intention to apply the meaningful representation test regarding sub-national names. Similar to city names, the volume of names will make with this difficult to police. It is considered that the objection process provides an appropriate avenue for recourse.

How will common abbreviations for sub-national names be handled?

- It is difficult to define what is meant by a common abbreviation, and therefore there will be no restrictions imposed on such names as part of the process. It is considered that the objection process provides an appropriate avenue for recourse.

How will abbreviations be considered in the context of geographic names?

- Currently, the definition of meaningful representation of a country or territory name includes a short-form designation of the name of the Territory. This could include three letter country codes such as .AUS for Australia and .AUT for Austria. With regard to sub-national names, and city names, the meaningful representation definition does not apply. However, as any string may be the subject of objection, it is the responsibility of the applicant to research possible meanings for a string, and acquire any support they believe necessary to successfully acquire the string, or at least minimize the likelihood of objection. This is consistent with the approach for community applications.

### **City names**

Should the city name definition be expanded to include abbreviations? Is the issue of city names ambiguous?

- As stated in the Explanatory Memorandum on Geographic Name Applications, city names offer challenges because a city name can be a generic term, and in many cases no city name is unique. Given the infinite number of city names world wide, and duplication, identifying and determining if a name is an abbreviation of a city name would be very difficult. Evidence of support or non-objection will be required for capital cities of the countries or territories on the ISO 3166-1 list, and for city names where an applicant declares that it intends to use the TLD for purposes associated with a city name. It is considered that the objection process provides an appropriate avenue of recourse, for strings that may be considered an abbreviation of a city name.

### **Government interests**

Is the consideration of government interests, as currently written in the guidebook, contrary to the GNSO recommendation? Are the interests of national, local and municipal governments adequately protected through the objection process?

- The GNSO recommendations were intended to provide for protection of government interests in geographical and other community labels through recommendation 20 of the Final Report on New gTLDs: “An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.” The implementation model of this recommendation has provided for protection of these interests through the objection and dispute resolution policy. The GAC raised concerns that this mechanism was inadequate, as many governments were not aware of the ICANN process and would therefore be unlikely to object in a timely manner, if at all. In order to achieve the objective of the GNSO to protect against abuse of community labels, and anticipate criticism of governments and possible objections to geographic names, the evaluation process was designed to require evidence of community support (i.e., government approval or non-objection) at the time of application. The amended process as outlined in the Draft Applicant Guidebook requires the application for certain

geographic labels to provide evidence of support or non-objection from the relevant government or public authority. This demonstration of community support, that may be required during the dispute resolution process is now simply required at the application stage.

**Proposed Position (for this version of the Guidebook)**

The applicant guidebook is reorganized to make it easier to identify the different elements of geographic names.

The draft applicant guidebook is to be amended to reflect that a country or territory name in any language will require evidence of support, or non-objection from the relevant government or public authority:

“applications for any string that is a meaningful representation of a country or territory name listed in the ISO 3166-1 standard, including a representation of the country or territory name in any language.”

The definition of meaningful representation is also amended to take out the reference to official languages:

A string is meaningful if, in any language, it is a) the name of the Territory; or b) a part of the name of the Territory that denotes the Territory in any language; or c) a short-form designation of the name of the Territory.

The requirements of the letter of support will be augmented. In addition to demonstrating an understanding of the string being requested and what it will be used for, the letter should also reflect that the string is being sought through the gTLD process and the applicant is willing to accept the conditions under which the string will be available, i.e. sign a contract with ICANN, abide by consensus policies, pay fees etc.

It is intended to offer to hold consultations with the GAC, ccNSO and others to discuss these issues.

## VIII. APPLICANT EVALUATION

### Summary of Key Points

- Several specific questions are answered on various aspects of the evaluation.
- The role of public comment in the process is discussed and there is updated information in the revised Guidebook describing this.
- ICANN continues independent evaluations of the scoring methodology. There are updates in the revised Guidebook to improve objectivity and repeatability; there will be more changes.

### Summary of Input

This section organizes the summary of responses about Applicant Evaluation into the following categories: *Applicant Information, Scoring, Miscellaneous, and Community-Based*.

#### **Applicant Information**

Submission of Updated Information. Applicants should be permitted to supplement incomplete sections. *MarkMonitor* (Module 1, 15 Dec. 2008). *Bank of America* (15 Dec. 2008) (there should be opportunities to amend substantially complete applications).

Subsidiaries/Affiliates. Under Applicant Review, existing entities should be permitted to set up newly formed subsidiaries or affiliates to serve as the registry. *MarkMonitor* (Module 1, 15 Dec. 2008).

Financial Statements Criteria. The requirement for “audited” financial statements in Section 1.2.3 should be reworded to allow applicants to submit the latest “available” audited financials, due to the delays typically associated with obtaining audited statements, and to submit unaudited financials for the latest period. *MarkMonitor* (Module 1, 15 Dec. 2008). ICANN should clarify how newly-formed applicant entities may comply with the financial statement requirements. *INTA* (15 Dec. 2008); *Microsoft* at 9 (Guidebook comments, 15 Dec. 2008).

Good Standing. The required documents under 1.2.3 for “proof of good standing” are insufficient...Given ICANN's history in certifying registrars that later proved themselves to be shams, higher standards are demanded in order to protect the public. Financial statements of newly formed special-purpose companies will be insufficient to detect iffy applications. *G. Kirikos* (24 Nov. 2008).

There should be a clearer definition of the term “good standing” under 1.2.3. ICANN should explicitly describe how it would vet the government authority, notary public or legal practitioner attesting to the good standing to assure its legitimacy and to assure its veracity. ICANN should identify the types of documents it would accept to validate an applicant’s good standing. *BITS* (15 Dec. 2008).

Public Comments. If an evaluator uses public comment as part of the evaluation under 1.1.3 then the evaluator must validate the accuracy of the submitted comment. *Demand Media* at 2 (Module 1, 17 Dec. 2008). ICANN should make available on its website all public comments submitted, provide Evaluators with all public comments, not just summaries generated by ICANN; and include in the next draft Guidebook examples of the type of matters for which the

public comment process is intended. *Microsoft* (Guidebook comments, 15 Dec. 2008). *INTA* (15 Dec. 2008). Clarifications needed regarding role of public comments. *BITS* at 4-5 (15 Dec. 2008). *MarkMonitor* (15 Dec. 2008). *Bank of America* at 5-6 (15 Dec. 2008) (oppositions should be considered only if made by a person with standing; should not subject applications to informal blogging, informal comments). *SIIA* (15 Dec. 2008). *CADNA* (15 Dec. 2008). *IPC* (15 Dec. 2008). *ANA* (15 Dec. 2008)

## Scoring

“Rights” and Other Clarifications Needed. The questions and criteria on legal rights characterize “rights” broadly. There should be more clarification on the type of rights that must be protected at start-up to score “1”. Question 50 in Evaluation refers to an “attached table of numbers” but the table is omitted. Also, there are discrepancies in scoring in the Attachment of Module 2. *Demand Media* (Module 2, 17 Dec. 2008). Were the criteria and scoring sections on Section 3, Scoring, page A-25, Questions 57 & 58 intentionally left blank? If not, what are the criteria and what are the scoring guidelines? *C. Gomes* (Module 2, 13 Dec. 2008).

Abusive Registrations. Increase the criteria for earning a minimum acceptable score on proposed policies to minimize abusive registrations. *NetChoice* (Module 2, 15 Dec. 2008).

Protection Mechanisms. The scoring system for question 31, page A-11 of Attachment to Module 2 should not turn on the detail provided, but on the characteristics of the mechanisms themselves. Applicants should be evaluated based on criteria such as the likely effectiveness of the mechanisms in preventing abusive registrations; the costs imposed on right holders who make use of such mechanisms, including the costs of assembling and documenting claims; and whether applicants are cooperating with other applicants in implementing common mechanisms, or at least common features, such as a single repository of claims information to which right holders can refer in lodging claims with multiple new gTLDs. *eBay*.

Expand Scale. Scoring ICANN should use a larger scale (e.g. a 10-point scale) for scoring evaluation criteria, as the current 0-1-2 scale does not provide enough latitude. *Microsoft* at 9 (Guidebook comments, 15 Dec. 2008). *INTA* (15 Dec. 2008) (use 0-5 or 0-10 at a minimum).

Communication Limitation. (1) The meaning of “one communication round per application” should be clarified. (2) The interface may increase the likelihood of questions, “so it will put a higher burden on the evaluation teams to precisely word their questions and provide as much guidance as possible with regard to the type information needed.” *C. Gomes* (Module 2, 13 Dec. 2008). Evaluators should not be subject to a limit of one request for further information from an applicant. *INTA* (15 Dec. 2008).

Extended Evaluation Panel Choice. If an applicant fails the initial evaluation and applies for extended evaluation, it should have the choice of engaging the same panel that conducted the initial evaluation or a different panel. This affords the applicant a fair evaluation process, if the applicant thinks that the panel is prejudiced. *J. Seng* (8 Dec. 2008).

Proposed Rights Protection Mechanisms-Transparency. ICANN should provide for greater transparency and stakeholder inquiry of an applicant’s proposed mechanism to minimize abusive registrations and other activities that affect the legal rights of others. Stakeholders should be invited to query the applicant about specifics and contingencies regarding their plan for rights protection. ICANN must require applicants to provide substantive responses to these

queries, and to publish questions and responses for public review. *NetChoice* (Module 2, 15 Dec. 2008).

Diverse Business Models; Small Community Participation. When considering an application for a new TLD, purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. ICANN should make the proper adjustments to the RFP in order to actually allow diverse business models and small, but valuable and representative communities, to participate. The process should allow small communities to not only participate in the process with an application, but also have a well balanced and sustainable business without excessive or unjustified burdens. *NIC Mexico* (9 Dec. 2008).

Registry Failure: Continuity; Documentary Evidence. Under 1.2.3.5, the “documentary evidence of ability to fund ongoing basic registry operations for then-existing registrants for a period of three to five years in the event of registry failure” is obviously insufficient, as the number of “then-existing registrants” is ZERO! Reference needs to be made to the projected number of registrants within the applications, and furthermore funds need to be held in escrow by a recognized third party, or some other form of security bond should be in place. Under 1.2.3.5 the bond or escrow of funds to “fund ongoing basic registry operations” is far too small a bond given the negative externalities that can be created by a malevolent Registry Operator. The bond or level of insurance needs to be much higher, perhaps in the order of USD \$10 million. The “documentation of outside funding commitments” also needs to be strengthened beyond simply “documentation” -- security bonds or insurance are stronger than simply words that can be altered. ICANN has no real means to assess the creditworthiness of these outside sources of funding, nor means of enforcing their financial commitments. Given ICANN's poor history in policing Registry Operators (e.g. VeriSign's SiteFinder) and registrars (too many to list!), it's clear that these extra safeguards from insurance companies are essential. *G. Kirikos* (24 Nov. 2008).

ICANN should clarify how an applicant can provide documentary evidence of its ability to fund ongoing registry operations “for then existing registrants” at a time when many applicants won't yet have any registrants. *Microsoft* (Guidebook Comments, 15 Dec. 2008). *Demand Media* (Module 1, 17 Dec. 2008) (1.2.3 (5) should be clarified regarding the funding of on-going operations in the event of registry failure). Registry failure provisions including a deposit to cover transition costs should be included. *INTA* at 4 (15 Dec. 2008). Requirement of having 3-5 years of registry's operational costs is onerous; should consider alternatives such as a pooled registry continuity plan or arrangements between registries to take over in the event of a registry's failure. *Van Couvering* (15 Dec. 2008).

## **Miscellaneous**

RFCs 3730 and 3734 appear to have been updated by 4930-4934. *Demand Media* (Module 2, 17 Dec. 2008).

Confidentiality. ICANN should clarify which portions of the application are to be confidential, and should further specify its methods for maintaining the confidentiality of this information. *Rodenbaugh* at 4 (16 Dec. 2008). *R. Fassett* (5 Dec. 2008) (financial confidentiality concerns). *G. Kirikos* (24 Nov. 2008) (financial questions should not be kept confidential; criminal and background checks should be authorized). ICANN should clarify exactly what information will be placed in public posting; because a great deal of sensitive information will be collected in the application, ICANN should only list the party applying and the gTLD being applied for. Postings

should not be made public until the end of the application window. *DHK* (15 Dec. 2008). *C. Gomes* (18 Nov. 2008) (concern expressed about no assurances by ICANN on keeping data confidential).

DNSSEC. ICANN should require the use of DNSSEC for any proposed new gTLD that is devoted to high trust applications (including but not limited to financial services). This should be a mandatory feature to protect consumers in such environments. *eBay* (15 Dec. 2008). *BITS* at 5 (15 Dec. 2008). To improve security, DNSSEC should be considered. The contract should require the new domain to adopt best available security measures such as DNSSEC, a robust Whois and the current Add Grace Period Limits Policy. *Bank of America* (15 Dec. 2008).

ICANN needs to provide more information about how it will select and monitor outside service providers who will be serving as evaluators. *BITS* (15 Dec. 2008) *INTA* (15 Dec. 2008) (the Guidebook should be amended to provide information about the selection process and criteria for evaluators); *G. Kirikos* (24 Nov. 2008). *SIFMA* (12 Dec. 2008). *IPC* (15 Dec. 2008).

Conflicts Policy. Module 2 should include a conflicts of interest policy for evaluators/examiners. ICANN should publish the names of the examiners and give applicants an opportunity to object. The language should also be narrowed to allow certain contacts with ICANN which are unrelated to the application. *Microsoft* (Guidebook comments, 15 Dec. 2008). The conflicts policy should also ensure that no party involved with consideration of an application has a conflict regarding prior or current work with the applicant or a party that might be adverse to the application. *INTA* (15 Dec. 2008).

Financial Crimes, Fraud, Breach of Fiduciary Duty Questions. The application form should contain questions intended to ascertain if the applicant or any of its officers, directors or managers has been convicted of financial related crimes, fraud, breach of fiduciary duty, or has been disciplined by any government for such offenses. *Microsoft* (Guidebook comments, 15 Dec. 2008). *G. Kirikos* (24 Nov. 2008) (financial requirements must create big barriers to malevolent entities securing a gTLD). The background of applicants, their principals, and their senior officers should be subject to review, perhaps through the use of a form similar to the Sponsoring Organization's Fitness Disclosure. *BITS*.

Suggestions on Scoring and Evaluation Criteria. The Guidebook should specify (and rate) at least the following: General registration policies, and special ones, if any (types of registrations or registrants, if distinction is made); Specific mechanisms for the TLD launch (sunrise, special allocation mechanisms; land rush, etc); Compliance/enforcement procedures, if any, and dispute resolution procedures; Special services (not necessarily in the New Registry Services meaning) offered and/or planned. *A. Abril i Abril* (Module 2, 15 Dec. 2008).

## **Community-Based**

Closed Branded gTLD. Based on the criteria for "community-based gTLD." A "branded" gTLD for which the brand owner is the applicant, that brand owner will operate for its own benefit, and for which the brand owner will restrict the population (which could range from merely the applicant itself to its divisions and personnel to its manufacturing and distribution channels) would be considered a "community-based gTLD." If ICANN does not intend to allow the "community-based gTLD" designation to apply to corporate, branded gTLDs, it should so state and provide a detailed explanation as to why not. In some instances, such as branded gTLD, it is conceivable that the applicant may be the only established institution representing the community and the requirements for written endorsement of the application should reflect that

possibility. *Microsoft* (Guidebook comments, 15 Dec. 2008). Operators of closed, branded gTLDs should have the flexibility to decide to stop operating the gTLD if they so choose. In such circumstance, it would be inappropriate for a third party with no rights in the brand to operate the gTLD. *Microsoft* (Guidebook comments, 15 Dec. 2008)

Financial Services gTLDs. The “written endorsement” requirement for community-based gTLDs is insufficient, because ICANN cannot consider one institution representative enough of a community. The threshold for a community-based gTLD should be significantly higher. A select group of industry associations (or regulatory agencies) should act as a consortium designated as the “community” to make decisions regarding the approval of any gTLDs whose names suggest they offer financial services or to endorse any applicants of such gTLDs. *BITS* (15 Dec. 2008). New gTLDs could create new rounds of financial fraud and increased costs to financial sector at a time of economic distress. There should be a separate and distinct application process for financial sector gTLDs: (1) top-down approach to ensure that no unsponsored gTLDs are issued and if issued that such gTLDs are managed within an industry and regulatory framework, with no “open” applications and explicit financial industry and regulatory endorsement; (2) subject financial sector gTLDs to community-established governance rules, including laws and regulations established by financial sector regulators. Applicants must show their ability to comply; (3) the objection process for financial sector gTLDs should allow objection on grounds of insufficient governance and include a process for financial regulatory objection; (4) allow financial gTLD ownership to be revocable or transferable at any time in future when the represented community or regulatory body determines and shows that the sponsored gTLD has not satisfied its governance requirements. *FDIC* (15 Dec. 2008). Financial sector does not yet have clear consensus on having a financial services sector gTLD. Fundamental concerns are raised regarding how to ensure only legitimate entities would be granted a financial sector gTLD. ICANN should have application controls and a “community” consortium approach for financial gTLDs. *ABA* (15 Dec. 2008). *Bank of America* (15 Dec. 2008) (further analysis and consensus needed before having financial sector gTLDs)

## **ISSUES, ANALYSIS AND PROPOSED POSITIONS**

### **Applicant Information**

#### **Issues**

Submission of Updated Information: Should applicant be permitted to supplement incomplete sections?

Subsidiaries/Affiliates. Should applicants be permitted to set up newly formed subsidiaries or affiliates to serve as the registry?

#### **Analysis**

Submission of Updated Information: ICANN recognizes that situations change and applicants may need to supplement sections of their application throughout the process, however, ICANN also needs to protect against the possibility of applicants changing their applications for competitive advantage. Material changes in the application information must be reported immediately. A material change after the evaluation would render that evaluation inaccurate.

Therefore, changes to applications are generally not permitted after the evaluation has started, i.e., at the close of the application period.

Subsidiaries/Affiliates: It is not an objective of ICANN to prohibit the formation of new subsidiaries or affiliates by an applicant to serve as the Registry Operator. However, the formation of new entities to resolve string contention, say by agreement between contending parties, is a material change to the application information that must be reported.

### **Proposed Position (for this version of the Guidebook)**

Submission of Updated Information: Applicants will be able to revise and supplement their application until the time when the application period is closed and submissions must be final. After this time, the Guidebook includes a requirement that an applicant notify ICANN in the event of any material changes to the application submitted.

Subsidiaries/Affiliates: It is acceptable for existing entities to set up newly formed subsidiaries or affiliates to serve as the registry. If new entities are formed after the evaluation performed (in order to resolve contention) the evaluation will be performed again, possibly incurring additional fees and possibly in the next round.

## **Financial Criteria**

### **Issues**

Should 1.2.3 be reworded to allow the submission of the latest “available” audited financial statements?

Can ICANN clarify how newly formed applicants should comply with the financial statement requirement?

### **Analysis**

ICANN’s requirements are suitably met in allowing applicants to submit the latest available audited financial statements, provided they are within a date of 12 months of the application and accompanied by interim statements. ICANN intends to update the Applicant Guidebook in line with the comments received to permit applicants to submit the latest available audited financial statements.

Newly formed entities should be permitted to submit pro forma financial statements with supporting data.

### **Proposed Position (for this version of the Guidebook)**

Section 1.2.3 will be revised to allow applicants to submit the latest “available” audited financials and to submit unaudited financials for the latest interim period.

For newly formed applicants, a pro forma balance sheet will be acceptable.

## **Evidence of Good Standing**

### **Issues**

Are the documentation requirements for proving “good standing” under 1.2.3 sufficient to detect sham applications?

Will ICANN clarify: the definition of “good standing,” the validity requirements for governments providing assurances of good standing, and the types of documentation necessary to establish good standing?

### **Analysis & Proposed Position (for this version of the Guidebook)**

The good standing requirement is to independently demonstrate existence and organization of the entity. ICANN must separately evaluate the completeness and accuracy of information submitted in the application in order to approve an application and the possible entry into a registry agreement for a TLD. ICANN is continuing to investigate common practices in the various regions in order to provide further guidance to applicants on this requirement.

The requirement should be flexible to accommodate different systems as well as newly formed and well-established companies. A good standing certificate or the equivalent under local law will be acceptable to reflect the existence of the entity. ICANN recognizes that jurisdictions will vary in custom and the application requirement is intended to be flexible. ICANN will accept submissions with supporting documents or information as to the relevance under local law.

## **Use of Public Comment**

### **Issue**

Should evaluators validate the accuracy of a public comment?

### **Analysis and Proposed Position (for this version of the Guidebook)**

Evaluators will be provided with public comment for use and reference in their evaluation. As part of the procedures for evaluators, they will be asked to apply appropriate judgment and verify comments if necessary.

The Guidebook and other documentation to the evaluators will reflect the ability to perform due diligence in regard to the public comments as required by the circumstances of that particular evaluation.

## **Scoring**

### **Issues**

Can ICANN clarify the type of rights that must be protected at start-up to score “1”?

Can ICANN attach the table of numbers omitted from Question 50 in Evaluation?

Will ICANN resolve the discrepancies in scoring in the Attachment of Module 2?

What are the criteria and what are the scoring guidelines for Section 3, Scoring, page A-25, Questions 57 & 58?

Will ICANN increase the criteria for earning a minimum acceptable score on proposed policies?

Will the scoring system for question 31, page A-11 of Attachment to Module 2 should turn on the amount of detail provided, or on the characteristics of the mechanisms themselves?

Will ICANN use a larger scale (e.g. a 10-point scale) for scoring evaluation criteria?

### **Analysis and Proposed Position (for this version of the Guidebook)**

As part of the updates to the Applicant Guidebook, ICANN is revising the Attachment to Module 2. All questions require a passing score of at least “1”. A series of additional consultations and discussion is being undertaken in order to determine what specific rights protection mechanisms might be included as a requirement in the evaluation. The table of numbers omitted from Question 50 can be included. Questions 57 and 58 are not scored individually but the answers to those questions will be used in combination with answers to other questions in order to score the criteria. For example, the soundness of the financial plan will be evaluated based upon answers to questions about expected revenue, the uncertainty in the projections and how to address major risks in the projections. This methodology is described in the preamble to the evaluation. There will be changes in the formatting of the questions and criteria to make this clear.

ICANN does not intend to adopt a larger scale for scoring evaluation criteria, but is reviewing areas where scoring can be improved to remove subjectivity and provide greater granularity for the applicants. Revisions to the scoring criteria will be posted in the revised version of the Guidebook and ICANN is undertaking independent evaluations of the scoring methodology to verify the scoring model or change it.

ICANN is reviewing the Applicant Evaluation Criteria and Scoring with the suggestions made by Mark Monitor, Chuck Gomes, CADNA, Microsoft, among others, and will be testing modifications to the evaluation criteria and scoring.

### **Evaluators**

#### **Issues**

Will ICANN clarify the meaning of “one communication round per application”?

Will the evaluation team word their questions precisely to provide as much guidance as possible with regard to the type information needed?

Will an applicant be allowed the choice of engaging the same panel that conducted the initial evaluation or a different panel after it fails the initial evaluation and applies for extended evaluation?

Will ICANN allow stakeholders to query the applicants about specifics and contingencies regarding their plan for rights protection?

Will ICANN provide flexible criteria when considering an application for a new TLD?

### **Analysis and Proposed Position (for this version of the Guidebook)**

The revised Guidebook gives some more detail on the exchanges between applicants and evaluators. Essentially, evaluators will ask one series of questions in an evaluation round if the information provided is not sufficiently clear to pass the application. Through a standard channel, evaluators will ask applicants specific questions to obtain the necessary information.

Stakeholders can comment through the public comment process and those comments will be made available to the evaluators. To have stakeholders actively involved in the evaluation through questioning would tend to slow the process and increase costs and decrease objectivity in a way that is unpredictable to applicants.

Whether or not the same panel hears extended evaluation is not definitely determined. Final decisions will be based upon the proposals and rules received from evaluation panel providers. Additional public comment is welcome on this issue.

The criteria are intended to be flexible in order to accommodate different business models as is described in the preamble to the evaluation criteria and scoring section of the Guidebook.

### **Ongoing Registry Operations**

#### **Issues**

Can 1.2.3 (5) be clarified as regards the funding of on-going operations in the event of registry failure?

Will 1.2.3.5, be edited to require further information, such as the projected number of registrants, and to require funds to be held in escrow by a recognized third party, or some other form of security bond?

Will the bond or level of insurance be increased, perhaps to as much as USD \$10 million?

Will ICANN strengthen the “documentation of outside funding commitments” requirement?

Can ICANN clarify how an applicant provides documentary evidence of its ability to fund ongoing registry operations “for then existing registrants” at a time when many applicants won’t yet have any registrants?

### **Analysis and Proposed Position (for this version of the Guidebook)**

ICANN has made clarification to several areas of the questions and scoring criteria. Also, independent evaluations of the scoring criteria are being performed with an eye toward making additional changes that will improve objectivity.

As suggested by Demand Media, Microsoft, INTA and others, ICANN will continue to clarify the evaluation questions on registry failure and continuity, provide additional information on the bond or level of insurance, and on how an applicant provides documentary evidence of its ability to fund ongoing registry operations.

## **Miscellaneous**

### **Issues**

RFCs 3730 and 3734 appear to have been updated by 4930-4934.

Will ICANN reevaluate the “written endorsement” requirement for community-based gTLDs?

Will ICANN provide guidelines for determining which portions of the application are to be confidential, and what methods are used to maintain the confidentiality of this information?

Should DNSSEC be required for any proposed new gTLD that is devoted to high trust applications?

Will ICANN revise the application to require background checks and/or disclosures of past fraud by an applicant, its officers, directors and managers?

Will ICANN provide more information about how it will select and monitor outside service providers who will be serving as evaluators?

Should ICANN develop a conflicts of interest policy for evaluators and allow applicants to view the names of and object to evaluators based on such conflicts?

Will ICANN edit the guidebook to provide more clarity on the issues of general and special registration policies, specific mechanisms for the TLD launch, Compliance/enforcement procedures, dispute resolution procedures; and special services offered and/or planned?

### **Analysis**

These are all good questions and comments that ICANN takes very seriously. ICANN will be confirming updates to RFCs and making the appropriate changes. ICANN will be offering some additional clarity with regard to confidentiality and the application process in general. ICANN believes in encouraging Registry Operators to use the most advanced technologies available to ensure the security of its information as it is fundamental to the security of the Internet. ICANN must also, however, balance these requirements with the constraints applicable to small Registry Operators who do not have and may not expect to have a large user base to justify the cost of certain measures. For these smaller Registry Operators, the requirement to implement these state of the art security measures, DNSSEC for example, could be too financially burdensome as a mandatory requirement. This requirement may change as DNSSEC becomes widely adopted.

### **Proposed Position (for this version of the Guidebook)**

RFCs 3730 through 3734 have been replaced with the most current RFCs 4930-4934 in the next version of the Guidebook.

ICANN will clarify which sections are designated confidential.

ICANN will continue to encourage Registry Operators to implement DNSSEC but for the time being such implementation will remain optional.

Background checks for applicants are a good suggestion, and there are rules for how and when this might be done in each jurisdiction. The evaluators will be provided with a variety of tools to use to verify information in their evaluations.

ICANN will publish information on the selection of evaluators as well as a RFP for such evaluators. The process for selecting evaluators will be open and transparent.

ICANN intends to add granularity in the evaluation questions and scoring, in line with comments and inputs received.

## **Community-Based**

### **Issues**

Has ICANN decided not to allow the “community based” designation to apply to corporate brand owners? Please explain.

Will ICANN consider allowing a [“closed”] branded TLD to cease operations of its TLD without requiring it to turn the operations over to a third party?

Will ICANN consider increasing the number of representative institutions necessary to satisfy the “written endorsement” requirement?

### **Analysis**

#### **Summary of key points:**

The concerns/questions regarding an applicant's freedom to select the type of application and the possibility of multiple representative institutions for a community are already covered in the current approach and no changes of the Applicant Guidebook are foreseen in these respects.

**Community based/Brand Owners:** It is wholly up to the applicant to select the type of application to file. ICANN will not verify nor change the type as such. Whether the application, if declared as community-based, will prevail in Comparative Evaluation for a contention situation is dependent on how well the application scores against the criteria, as detailed in the Applicant Guidebook. No change of the applicant's freedom to select the type of application to file is foreseen for the next version of the Applicant Guidebook.

**Multiple representative institutions:** If the community has a structure with multiple institutions that are representative of different parts of the community, it is wholly appropriate to take endorsement, or lack thereof, from all these institutions into account. Such endorsement is assessed only in a case when the application is in a contention situation that is resolved by Comparative Evaluation. As further detailed in Module 4 and the explanatory memorandum on string contention handling, the evaluation of the Endorsement criterion in such a case is already foreseen to take into account both endorsement and opposition from constituent parts of the

community and can thus address a situation where there are multiple representative institutions. No change of that aspect is foreseen for the next version of the Applicant Guidebook.

**Proposed Position (for this version of the Guidebook)**

Community based/Brand Owners: It is the applicant's choice to designate the application as community-based or open. There is no prohibition currently and none is envisaged for the next version of the Applicant Guidebook. The same criteria will be applied to all applicants in cases where there is a community-based objection and in cases of comparative evaluation.

Multiple representative institutions: The endorsement criterion applies to a case when a contention situation is resolved by Comparative Evaluation, where the endorsement will be taken into account as appropriate for the community addressed.

## **IX. TRADEMARK PROTECTION**

### **Summary of Key Points**

- Comments state that the introduction of new TLDs will increase burdens on rights holders by multiplying opportunities for malicious behavior at top and second levels of the DNS.
- ICANN will continue consultations over the next few months to promote a universal understanding of issues across the rights-holder community and derive potential solutions to possible deleterious effects of the introduction of new TLDs.

### **Summary of Input**

A substantial number of public comments asserted that the new gTLD program will create an array of trademark law protection concerns which must be addressed through further trademark protection measures. This section organizes the summary of responses about Trademark Protection into the following categories: *In General, Process and Procedure/Defensive Registrations; Objections; and Rights Protection Mechanisms.*

#### **In General**

Costs and Burdens on Trademark Rights Holders. Numerous comments raised concerns that the new gTLD program would potentially impose new burdens and costs on rights holders in well-known brands and trademarks. For example, the International Olympic Committee (IOC) asserted that ICANN's guidelines should explicitly acknowledge the IOC's preeminent IP rights in the Olympic trademarks and raised concerns about: what preventative measures can ICANN take to block or screen out unauthorized applicants for Olympic trademarks; what steps can be taken to ensure that the IOC does not have to expend funds chasing down unauthorized uses of Olympic trademarks? *IOC* (5 Dec. 2008). Others said that allowing registries to sell domains of famous trademarks and keep the profits from the sale is a basic flaw in ICANN policies, which undermines ICANN credibility and the entire domain system. *WMI* (13 Dec. 2008).

Monopoly Concerns. Commenters also raised concerns about the potential for the new gTLD program to destroy the DNS's level playing field by leading to the creation of single entity super brands and monopolistic generic TLDs and urged that more consideration is needed about how to guard against the creation of monopoly positions. E.g., *P. Tattersfield* (15 Dec. 2008)(generic gTLDs risk creation of monopoly positions that would not be permitted under equivalent trademark law; while on the surface a competitive, market-driven approach for generic gTLDs may be well-supported, in practice there may be significant concern about the specific entities that actually run them—e.g., “.search” run by Afilias or VeriSign as opposed to “.search” run by Microsoft); *ANA* at 4 (15 Dec. 2008) (new generic TLD policies and standing must be carefully reviewed). *NCUC* at 4 (15 Dec. 2008) (the proposal perpetuates a presumption that trademarks and domain names are identical rights and raises significant anticompetitive issues regarding generic names). Commenters also warned that the new program is likely to confuse rather than benefit consumers. E.g., *U.S. COC* at 3 (15 Dec. 2008); *Arab Team* at 3 (15 Dec. 2008) (users will lose faith in a system with many variations of TLDs existing for a single label). Particular industry segments are concerned about the rights to certain generic TLDs and urged that no action be taken on them pending further work and consideration about issues raised. For example, the ABA requests that no “.bank” gTLD be granted until such time as the ABA has secured a sponsor or community base. *ABA* at 1-4 (15 Dec. 2008. See also *BITS* at 2-3, 5 (15 Dec. 2008); *Bank of America* at 8 (15 Dec. 2008).

Single Enterprise/Corporate TLDs. A number of commenters said that further work and consideration is required regarding the issue of single enterprise or corporate TLDs.

For example, eBay stated that the draft guidebook may need adjustment to accommodate the possibility to new TLDs operated by individual corporations for their own use, whether strictly internal or consumer-facing. It said ICANN should clarify whether such applications would be labeled as “open” or as “community,” and urged that in appropriate circumstances a registry should be allowed to enter into an exclusive arrangement with a registrar to handle all registrations in a gTLD. *eBay* at 6 (15 Dec. 2008).

Microsoft asserted that if ICANN does not intend to allow the community based gTLD designation to apply to corporate, branded gTLDs, than ICANN should explain a rationale for not doing so. In some cases the applicant may be the only established institution representing the community and the written endorsement requirement should reflect that possibility. Operators of closed, branded gTLDs should have the flexibility to decide to shutter the gTLD; and set out that it would be inappropriate for a third party with no rights in the brand to operate the gTLD. *Microsoft* at 9-10 (Guidebook comments, 15 Dec. 2008). *See also INTA* at 7-8 (15 Dec.2008).

*GT* at 3-4 (15 Dec. 2008) (ICANN should amend the Guidebook to allow a “DNS wildcarding” exception for single enterprise TLD registries).

Potential negative impacts on the perception of DNS root due to single registrant TLDs were also raised. *W. Staub-CORE* (15 Dec. 2008) (single registrant TLDs will create a rush of brands to the top level; there should not be brand-based TLDs where the only conceivable use is reserved to the brand holder itself). Some commenters wanted further practical guidance about single enterprise/corporate TLDs. *E.g.*, is the application open to public or just to those who will be the registrar business? Can any company apply directly to ICANN for a new gTLD for its own business purposes and not resell second level domains? For example, can Nike apply for a .nike gTLD and operate it exclusively for themselves? And technically, will the Internet users be able to just type <http://nike> (without any second level domain name) to go their website? *J. Lam, Email Support*.

### **Process and Procedure; Defensive Registrations**

Numerous comments asserted that ICANN must improve the process and procedures for trademark protection if the new gTLD program is launched. For example one commenter highlighted these concerns with the new gTLD program: (1) little to no protection for global trademark holders; (2) excessive administrative costs for applicants; (3) virtual total control by ICANN with no accountability; (4) exposure to increased fraud and legal liabilities for trademark owners; and (5) easy access and control for unscrupulous entities to core Internet infrastructure components and ultimately threatens Internet commerce around the globe. *R. Raines-Chevron Corporation* (4 Dec. 2008).

Many commenters emphasized that the new gTLD program will impose on them the necessity of expending resources to submit multiple defensive registrations to protect their trademarks, an especially negative cost impact given the global economic recession. *Internet Commerce Coalition* at 2 (15 Dec. 2008) (the new TLD program will greatly increase costs of protecting trademarks and brands). *Citrix* at 1 (15 Dec. 2008) (threatens brand integrity and is too costly). *INTA* at 2 (15 Dec. 2008) (costs imposed on trademark owners and businesses by the new GTLD program raise special concern in current global economic downturn). *E. Brunner-*

*Williams* (the \$75,000 annual fee is too high for most trademark owners to consider defensive registrations of TLDs, but possible for a large trade union and its membership).

USTA asserted that there is no substantiated need for new gTLDs, and is also concerned with trademark abuse in new gTLDs, the obligation on brand owners to defend their trademarks in new gTLDs, and the costs associated with the new gTLD process. They are concerned that brand owners will be forced to defensively register to protect their brands. *USTA* (15 Dec. 2008). *USCIB* at 2 (16 Dec. 2008) (having low-cost ways to protect trademarks at the pre- and post-allocation stages is a key concern). *Hearst Corporation* (15 Dec. 2008) (no commercial value in expanding gTLDs, and will require costly defensive actions by trademark owners). See also *Time Warner* (15 Dec. 2008) (launch of a very large number of new gTLDs poses huge exploitation risks and costs to major trademark owners). *Lego* (4 Dec. 2008) (will impose major costs; outsourcing technical administration to an ISP would lessen burden for trademark owners). *GE van Staden* (12 Dec. 2008); *GE Bandon* (11 Dec. 2008). *Adobe* at 1 (12 Dec. 2008) *Bank of America* at 2 (15 Dec. 2008). *Melbourne IT* at 1 (15 Dec. 2008). *Cyveillance* (15 Dec. 2008).

Commenters cited the need for additional, cost-effective trademark protection measures. Illustrative examples include the following:

Block Registration for Brand Holders. Procedures should be implemented whereby (analogous to the community trademark or PCT patent in which several countries are designated with a single registration): (a) holders of existing domain names or trademarks could register any number of TLDs with a single registration, with a reduced cost to allow such a block registration to be financially feasible; (b) mechanisms to avoid abusive registrations and to verify actual use/right of alleged right holders; (c) an existing registration of all domain names/extensions would effectively block new domain names/extensions that are confusingly similar to existing domains by means of notification to the existing domain name holder allowing it a right of first refusal during a certain period (as opposed to a single sunrise period) - only if it does not act on this right would the domain name become freely available; (d) Joint action - in order to protect their rights, domain name and trademark holders could file a single action or single submission for dispute resolution involving any number of TLD extensions that infringe prior rights, instead of having to file separate actions in each case. *Busse* (13 Dec. 2008).

Many other commenters raised concerns about the increased need for defensive registrations, and some emphasized giving trademark owners the right to block or park TLDs containing their trademarks and to purchase such TLDs at a low cost with no obligation to implement infrastructure to support it. *See, e.g., Lego* (4 Dec. 2008); *Visa* (13 Dec. 2008) (brand owners should be able to register their trademark extension to protect it but should not have to actively use it or fulfill back-end requirements).

Top Level Reserved Names List. ICANN should create a list of top-level reserved names based on clearly defined, objective criteria and a clear process requiring all new string applicants to refer to and honor this list to minimize disputes between new registry applicants and global trademark holders. A dispute procedure should be provided with registry applicants to bear the cost. If the holder of the registered name prevails, the name should be removed to a "White List" of names that are unavailable for registration. ICANN should consider this list concept for country and geographic names. ICANN should revise dispute process at the second level to mandate a standard sunrise process and incorporate the global brand reserve list for second level domains also. *AT&T* at 4-5 (15 Dec. 2008). *See also G. Kirokos* (24 Nov. 2008); *NAM* (15 Dec. 2008) (supports "reserved list" to protect brand owners, just as ICANN created a list of

reserved ICANN-related names to protect its own interests); *NYC* at 6 (13 Dec. 2008) (governments or non-governmental organizations should have same rights as ICANN to reserve their own names). IANA-related infrastructure names should be protected at all levels; the reserved names list has omitted significant Internet infrastructure names. *ARIN* (8 Dec. 2008). ICANN should create a reserved list based on objective criteria for trademark owners at the registry level and applicant requests for a domain name on the reserved list should be resolved in an expedited administrative proceeding. *Internet Commerce Coalition* at 6 (15 Dec. 2008). See also *INTA* at 4-5 (15 Dec. 2008); *Pattishall* at 2 (15 Dec. 2008) (consider reserved names list and/or sunrise); *Nike* (2 Dec. 2008); *CADNA* at 4-5 (15 Dec. 2008) (reserved names list); *FairWinds* at 2-3 (15 Dec. 2008); *L. Cordell* (15 Dec. 2008); *USTA* at 7-8 (15 Dec. 2008); *Lovells* at 3-4 (15 Dec. 2008) (reserved names system); *ITT* at 4 (15 Dec. 2008); *Visa* (13 Dec. 2008); *News Corporation* (15 Dec. 2008) (the reserved names list should be broadened to include well known trademarks).

Some public comments cautioned against ICANN establishing protection mechanisms for trademark owners beyond existing law. *E.g.*, *ICA* at 2, 10-12 (16 Dec. 2008) (protections for rights holders should be limited to enforcement under existing law, not based on creation of broader rights by ICANN fiat; a reserve list of trademark names should not be created because it would provide rights protections beyond the geographic and relevant marketplace limitations of trademark law; new rights or procedures should not supplant the UDRP; all second level registrations should be required to be subject to the UDRP). See also, *C. Christopher* (16 Dec. 2008) (lack of support by trademark owners for TLD expansion is self serving, especially by those who benefit from error traffic monetization and from not having a neutral network.; allowing trademark owners to remove themselves from .com and obtaining their own .brand may reduce trademark problems—consumers will no longer look to .com for individual trademarks).

WHOIS Commitment. New gTLDs will, like nearly all of the new gTLDs previously launched under the auspices of ICANN, operate as thick Registries. Accordingly, they should commit to making a full set of Whois data publicly available on each registration in the new gTLDs, so that copyright and trademark owners (as well as law enforcement, consumers, and members of the public) will have ready access to this information. *IPC* at 6 (15 Dec. 2008).

For the post-launch stage, new gTLDs should take on the same WHOIS publication obligations as those in previous rounds: nearly all new gTLDs have adopted a “thick” registry model in which extensive registrant contact information is collected and retained at the registry level. TLD applicants must specify how they will ensure that data collected by registrars and stored in the registry is accurate and up to date, and this information should be publicly evaluated. *eBay* at 5 (15 Dec. 2008).

ICANN should evaluate applicants’ commitment to maintaining and enforcing WHOIS requirements, and should encourage applicants to maintain centralized or “thick” WHOIS databases and adopt additional WHOIS requirements. *CSC* at 4 (15 Dec. 2008). *Time Warner* at 6 -7 (15 Dec. 2008) (new gTLD registries should be required to maintain “thick” registries and make full registrant contact data publicly accessible; applicants must have policies to ensure accuracy of WHOIS data and how they will enforce this requirement with registrars and resellers, and there should be a tie-in to ICANN’s WDRPS to shut down domains where WHOIS reports go unanswered and uncured for more than 15 business days). *AT&T* at 5 (15 Dec. 2008) (require applicants to maintain thick WHOIS data, inquire about proxy registrations and access to actual registrant data, standardize procedures in any new registry agreement; this is key to law enforcement and consumer safeguards). *U.S. COC* at 8 (15 Dec. 2008). *NAM* (15

Dec. 2008) (applicants must commit to open and accurate WHOIS system; proxy and private registrations should be discouraged if not prohibited). *Internet Commerce Coalition* at 7 (15 Dec. 2008) (require applicants to commit to open and transparent WHOIS database). See also *Visa* (13 Dec. 2008); *COA* at 2, 9-10 (15 Dec. 2008); *FairWinds* at 4 (15 Dec. 2008). *MarkMonitor* at 3 (15 Dec. 2008); *Lovells* at 4 (15 Dec. 2008); *IPC* at 6 (15 Dec. 2008); *Grainger* at 4 (15 Dec. 2008). *AIPLA* at 2 (15 Dec. 2008) (ensure enforcement of WHOIS data accuracy and establish policy regarding proxy or private registrations). *MARQUES* at 5 (15 Dec. 2008) (registry operators should be required to offer a privacy service but must provide for service to third parties and rights owners that need access to the registrant; registrars should not be allowed to offer Whois privacy protection services in the new gTLDs). See also *ITT* at 2-3 (15 Dec. 2008); *Bank of America* at 9 (15 Dec. 2008); *IACC* at 3 (10 Dec. 2008) (ICANN still needs to resolve outstanding Whois issues with existing gTLDs and should not exponentially magnify those problems by launching new gTLDs).

IP Registry/Other Mechanisms. ICANN must do more to provide scalable, cost-effective and efficient rights protection mechanisms to minimize the ICANN-imposed burden of having to secure defensive registrations and combat cybersquatting in as many as 500 new gTLDs. Possible steps include: (1) creating a “reserved list” to which rights owners could apply to have their marks excluded from second level; (2) developing 2-4 standardized Rights Protection Mechanisms (RPMs) that applicants could select from; (3) facilitate creation of a central repository for legal rights documentation on which rights holders may rely in pre-launch RPMs and requiring successful applicants to utilize the repository in their RPMs; (4) creating an online, cross-TLD interface through which rights holders can designate gTLDs they wish to participate in and gTLD operators may access the requisite data for participating rights holders. ICANN must discourage new gTLD registries from using RPMs as revenue-generating opportunities. *Microsoft* at 3 (Guidebook comments, 15 Dec. 2008). See also *ANA* at 3 (15 Dec. 2008); *Ameriprise* at 2 (15 Dec. 2008). *U.S. COC* at 7 (15 Dec. 2008) (ICANN should create a low cost or no-cost IP registry applicable to gTLD applicants and second level domains; it would be used to screen out infringing applications so that trademark owners do not have to defensively register marks in each new gTLD). *MarkMonitor* (15 Dec. 2008) (trademark owners in registry could get notice of infringing applications allowing them to apply for the gTLD). *K. Abbot* (8 Dec. 2008) *MARQUES* at 4 (15 Dec. 2008) (supports IP registry database concept). See also *Melbourne IT* at 3 (15 Dec. 2008); *Visa* (13 Dec. 2008); *SIFMA* at 4 (12 Dec. 2008).

Rights Holder Verification Process. ICANN should consider an alternative to a central IP registry database to facilitate sunrise registrations in new TLDs designed through a consensus process according to the following principles: real-time verification from authoritative sources; time stamp on all verified data; operation by a trusted third party on behalf of global Internet community; all communities to have a voice in developing technical and policy considerations; ICANN should not duplicate a sub-set of non-authoritative trademark data when other more authoritative sources exist. *M. Palage* (15 Dec. 2008).

Second-level concerns. ICANN should (1) require all new TLDs to implement a standard and effective pre-launch rights protection mechanism that would allow trademark owners to block their marks from being registered at second-level; (2) prevent use of “premium pricing” schemes for second-level domain names corresponding to or related to a well known trademark; and (3) require new TLDs to limit fees, if any, in any pre-launch rights protection mechanism to actual cost recovery. *News Corporation* at 3 (16 Dec. 2008). *SIIA* at 5 (15 Dec. 2008) (pre-launch framework to prevent abusive registrations lacking in Guidebook—this issue cannot be left to whims of TLD applicants). Applicants should be evaluated based on criteria such as the likely effectiveness of mechanisms for preventing abusive second-level registrations; costs imposed

on rights holders who make use of such mechanisms, including claims; whether applicants are cooperating with other applicants in implementing common mechanisms or features. Premium pricing of second-level domains should be prohibited. *eBay* at 4-5 (15 Dec. 2008). *IPC* at 5-6 (15 Dec. 2008) (ICANN must do much more to ensure effectiveness of pre-launch mechanisms). *MARQUES* at 4 (15 Dec. 2008) (detailed pre-launch rights protection mechanisms required). ICANN should incent TLD applicants to adopt ways beyond the UDRP compliance to deal promptly and effectively with abusive registration of second-level domains. *eBay* at 6 (15 Dec. 2008). For second-level registrations ICANN should mandate a notice/takedown procedure if the domain name is used in an infringing manner to a name on the IP Registry or require WHOIS verification and prohibit proxy or anonymous registrations for registrants intending to register a domain name conflicting with a name on the IP registry. *USTA* at 9 (15 Dec. 2008). See also *MARQUES* at 5 (15 Dec. 2008) (study notice/takedown experience to improve expedited suspension at registry level of domain names that facilitate sale of counterfeit goods and other infringement).

ICANN should: evaluate new gTLD applications not only on the level of detail used to describe their preventive mechanisms but also on how effective they are likely to be; require new gTLD operators to prevent registrations at the second level of any mark appearing on the gTLD reserved names list; require new gTLD operators to participate in a common repository for documentation of trademark claims that rights holders can invoke in any pre-launch mechanism for particular TLDs; provide a single portal through which rights holders can participate in any pre-launch mechanism provided by participating new gTLD registries and provide strong incentives in the evaluation process for new gTLD operators to participate in the common portal; provide strong incentives for new gTLD operators to limit fees in any pre-launch mechanism to actual cost recovery and to offload costs to ICANN-provided facilities such as the suggested common repository and single portal. *Time Warner* at 6 (15 Dec. 2008). ICANN should establish a baseline processes to ensure that IP rights holders can easily protect their trademarks and brands both prior and subsequent to launch of new gTLDs. *Internet Commerce Coalition* at 6-7 (15 Dec. 2008). *INTA* at 15-16 (15 Dec. 2008) (e.g., reserved trademark list, develop a few basic rights protection mechanisms that applicants could choose; database of cleared rights). See also *COA* at 2, 8-9 (15 Dec. 2008).

## Objections

Burden on Rights Holders. The IACC strenuously objects to the proposed Applicant Guidebook insofar as (i) it imposes 100% of the financial burden of objecting to any application made for a new gTLD upon the existing rights owner (except, ironically, for ICANN itself); and (ii) it imposes no requirement beyond adoption of a UDRP based dispute resolution model with respect to second level domain names. *IACC* (10 Dec. 2008). A less costly and more efficient IP protection solution should be considered to shift the burden to bad faith infringers including due diligence by ICANN regarding serial domain name abusers. *Visa* (13 Dec. 2008).

The ICANN plan reliance on the Legal Rights Objection procedure to filter out applicants seeking to establish new gTLDs that are identical or confusingly similar to preexisting trademarks and service marks (1) unfairly shifts the entire burden and of cost and risk onto trademark owners to identify and challenge applications; (2) is too uncertain and too limited to serve as an adequate protection against abusive applications. *Time Warner* at 2 (15 Dec. 2008). See also *SIFMA* at 5 (12 Dec. 2008); *IACC* at 1-3 (10 Dec. 2008) (suggests additional IP protection measures, including bad faith fines). ICANN should filter out the strongest global marks at an earlier stage, either through expanding the “reserved names” list of character strings that are barred from recognition as new gTLDs or through an adaptation of the non-

objection procedure contemplated for geographic names.—*i.e.*, require that any application be accompanied by a statement of non-objection from the owner of the mark. Also, applications should be disclosed as they are received, not when the application window closes, so that mark owners have the option of filing their own competing application rather than only having the option of invoking the objection procedure. ICANN should also take into account the record of past abusive conduct by the applicant in the existing and new TLD space, and build the expanded reserved names list into the string confusion algorithm to be used to guide determinations on string contention. *Time Warner* at 3 -4 (15 Dec. 2008). A pattern of abusive DNS behavior should be grounds for ineligibility to apply, not just a factor in adjudicating an LRO. *Bank of America* at 11 (15 Dec. 2008). The application procedure should include diligence for past domain name abuse and certainly this should be a factor if raised in any objection. *Nike* (2 Dec. 2008); *Microsoft* (Guidebook comments, 15 Dec. 2008) (application form should have questions about financial crimes, fraud, etc.).

Precedential value of successful objections. Famous trademarks should be added to the reserved name list. However, failing this, successful objections should have precedential value so trademark owners don't have to keep objecting. *Nike* (2 Dec. 2008). *MARQUES* (15 Dec. 2008).

## **Rights Protection Mechanisms**

Current Mechanisms Not Sufficient for New TLDs. The current trademark protection sunrise period system used for TLDs to date will not work economically or practically for new TLDs. The suggestion of an ICANN-supported database of trademarked items for purpose of pre-registering IP rights to protect them within proposed new gTLDs is encouraging. The UDRP is unlikely to be an effective remedy in the context of a very large number of new TLDs. *Net Names* at 1 (16 Dec. 2008). See also *Bank of America* at 2-3 (15 Dec. 2008); *Grainger* at 3 (15 Dec. 2008); *MarkMonitor* at 2 (15 Dec. 2008); *NCTA* at 2-3 (15 Dec. 2008); *USTA* at 8-9 (15 Dec. 2008); *CSC* at 3-4 (15 Dec. 2008); *U.S. COC* at 2-3 (15 Dec. 2008); *Ameriprise* at 2 (15 Dec. 2008). *News Corporation* at 3 (16 Dec. 2008) (with new gTLD program UDRP as tool for second level protection could be undermined completely). *Rodenbaugh* at 1-2 (16 Dec. 2008) (ICANN should study the costs of the new program for trademark owners and other rights holders; the new gTLD program will make abuses dramatically worse if stronger protection mechanisms are not developed to address abusive registrations). *eBay* at 1 (15 Dec. 2008) (existing defense mechanisms almost certainly not feasible once new gTLD process occurs). Most major corporations prefer that the new gTLD program launch be delayed until basic safeguards are adopted to protect against trademark abuse (74% of domain names containing a trademark were registered by 3<sup>rd</sup> parties and not the brand owner) *CSC* at 3 (15 Dec. 2008). *MarkMonitor* at 2 (15 Dec. 2008) (new tools against brand abuse needed that shift costs away from brand owners). See also *RILA* at 2 (15 Dec. 2008). ICANN should establish clear conflict avoidance procedures designed to avoid granting applications that infringe on global trademark holders; the new gTLD program does not afford comprehensive protections to globally recognized brands. *AT&T* at 1 (15 Dec. 2008); *NAM* at 3-4 (15 Dec. 2008) (UDRP will be impractical and too costly for new gTLD program).

Single mode of protection. ICANN should address why there is not a universal Rights Protection Mechanism (“RPM”) that all new gTLDs must follow. *Anonymous Email* (26 Nov. 2008). Presently, it is not proposed that there should be one single model of protection for the assignment of domains within a new gTLD, *i.e.* whether there should be a sunrise period or some other procedure, and the precise terms of any such sunrise. Consequently, with the anticipated launch of numerous gTLDs a trademark owner seeking to protect its key trademarks

will have to familiarize themselves with the particular model chosen for each one, and ensure that they comply. This will inevitably be more time-consuming, and consequently costly, than having one prescribed model. *BBC* (15 Dec. 2008); *MARQUES* (15 Dec. 2008); *Rodenbaugh* (16 Dec. 2008) (supports one-time standardized sunrise validations process for interested rights holders, but more and stronger mechanisms needed to protect rights both before and after infringements).

Explicit Minimum Standards. The draft Guidebook must state for applicants the nature of IP rights that it must consider and minimum standards applicants must have in place for developing a mechanism to protect the rights of others—e.g., the consequences if an assertion of rights is sustained, the consequences if the assertion is rejected, and the minimum standards of authentication to be applied. By making minimum standards known in advance, vendors can self-identify as possessing a solution they believe will fulfill ICANN’s minimum substantive requirements whether or not the procedural mechanism is a “sunrise” or a “stop” or some other form. Brand owners can determine the estimated cost of advanced registration and/or opposition and make strategic decisions regarding both. *GT* at 1-2 (15 Dec. 2008).

Best Practices. New gTLD applicants should be required to adopt strong best practices to protect IP rights; if the method chosen is sunrise period, trademark owners should be charged only a reasonable minimum fee to register their protected names at the second level on the new gTLD. *ICA* at 11 (16 Dec. 2008).

New Registry Agreement--Obligation to Protect. Section 2.7 of the proposed new registry agreement adopts a new, ongoing obligation to “protect the legal rights of third parties,” which goes beyond the current commitment to take specified and agreed-upon steps to protect such rights. It creates potential liability for infringement that is neither practical nor consistent with established law. *RyC* (6 Dec. 2008).

Abusive Registrations/Transparency. There should be greater transparency and stakeholder inquiry of an applicant’s proposed mechanism to minimize abusive registrations and other activities that affect the legal rights of others. The criteria should be increased for earning a minimum acceptable score on proposed policies to minimize abusive registrations. *NetChoice* (15 Dec. 2008).

## **Issues**

### **In General**

What preventative measures can be taken ICANN take to block or screen out unauthorized applicants for trademarks (e.g., Olympics)?

Why are Registries allowed to maintain registrations of famous trademarks and keep the profits?

How will ICANN handle industry-specific generic TLDs (e.g., “.bank” and request for delay until such time as banking industry has consensus and sponsorship is secured)?

How will ICANN handle single enterprise and “corporate” TLDs? E.g., could corporations have a formal relationship with an exclusive registrant?

### **Process and Procedure; Defensive Registrations**

Will ICANN increase the protection for trademark rights holders?

Will ICANN consider allowing trademark holders to apply for multiple TLDs on one application?

Will ICANN consider a low-cost alternative for trademark rights holders to reserve certain TLDs?

Is the application process open to the public or only potential Registry Operators?

Can a company apply for a TLD for internal use only (i.e., not sell second-level domains)?

Will ICANN require new Registries to commit to making a full set of Whois data publicly available so that trademark rights holders (and others—consumers, law enforcement, etc.) can have access to them?

Is ICANN considering any ways to lower the cost of defensive registrations for trademark rights holders?

Will ICANN consider a policy where trademark owners are allowed to apply for TLDs with no obligation to support it?

### **Objections**

Why is the financial burden of the objection process borne by existing rights holders?

Will successful objections have precedential value?

Does past abuse factor into the decision in the objection process?

### **Rights Protection Mechanisms**

Why isn't there a universal rights protection mechanism that all new gTLDs must follow?

With the expansion of the obligations regarding protection of the rights of third parties, do the Registry Operators face greater infringement liability exposure?

Will ICANN consider adding mechanisms that allow for greater transparency of an applicant's rights protection mechanism to minimize abusive registrations?

### **Proposed Position (for this version of the Guidebook)**

The guidebook should have a notation added indicating that information has been received regarding additional requests for trademark protection, and that this is an issue which ICANN has determined requires additional consultation. ICANN intends to conduct a series of discussions with all relevant parties relating to propose enhanced protections for trademark name holders. ICANN is in discussions with WIPO to coordinate setting up some conferences to propose some additional solutions to these issues.

If additional trademark protection mechanisms are agreed upon and included in the next guidebook, this would likely result in a cost savings to trademark holders, and additional consideration should be given to these concerns raised as part of any proposal.

It is possible that in consideration of additional mechanisms for trademark rights holders there may be solutions that require changes to this section in the next version of the Guidebook.

### **Analysis**

As with all situations, ICANN must balance the needs of individuals and individual constituencies with the needs of the community at-large. As it pertains to trademark protection, ICANN recognizes the trademark rights holders' concerns with protecting their brands and controlling costs associated with defensive registrations. ICANN believes in protecting brand owners' trademarks and preventing abusive registrations. To that end, ICANN is continuing to evaluate and update its brand protection strategy and will be setting out a process to receive further inputs regarding appropriate mechanisms to enhance those protections.

### **Process and Procedure; Defensive Registrations**

ICANN understands that trademark protection is of serious concern to the trademark rights holders and is requesting additional input on mechanisms to better protect those rights holders. On the other side of this issue is the need to protect competing trademark rights holders who believe they too have a right in the proposed TLD. ICANN has set forth an enhanced obligation on Registry Operators to protect the rights of third parties within the objection processes and rights protection mechanisms, which should help protect trademark rights holders.

ICANN Staff is evaluating a number of options for further enhancing the mechanisms available within the processes for trademark rights holders; however, it must also take into account the interests of non-trademark holder applicants. A system must be put into place that balances the needs of trademark holders to protect their interests while still promoting an open marketplace for the rest of the community.

The proliferation of defensive registrations is a concern that should be addressed because it is not beneficial to either the trademark rights holders or the Registry Operators.

### **Objections**

These questions bring to light important issues that need to be clarified. In the past, the reserved name list was not as successful as had been hoped in protecting trademark rights holders, and was not uniformly available.

The objection process as drafted requires the objector to bear the costs of the process to prevent frivolous objections and the exposure of TLD applicants to excessive costs. There are many factors that contribute to the resolution of the objection process and the factors utilized should include past abuse.

### **Rights Protection Mechanisms**

ICANN's position has been to develop and implement effective and efficient rights protection mechanisms. ICANN Staff sought and considered information from a variety of sources relating to the implementation plan, including setting out the paper promulgated by the IP Constituency (a copy of which can be found at:

<http://www.ipconstituency.org/PDFs/A%20Perfect%20Sunrise.PDF>) which indicated that no single rights protection mechanism was superior to another and that any number of methods could be equally successful.

All Registry Operators are required to post their rights protection mechanisms to allow applicants a window into the decision making process. It may be necessary to adopt formal steps to address issues of particular concerns to the community.

## **X. OBJECTION & DISPUTE RESOLUTION PROCESSES**

### **Summary of Key Points**

- Several specific questions regarding dispute resolution procedures are answered; new detailed procedures are introduced in the Draft Applicant Guidebook, version 2.
- Specific questions regarding aspects of community-based, legal rights and morality and public order objections are answered. Standards to be employed by morality and public order dispute resolution panels are introduced in the Draft Applicant Guidebook, version 2. There are other Guidebook clarifications.
- Dispute resolution fees models are discussed; the “loser pays” model remains as the preferred model.
- Whether there should be appeals and other post-decision activities are balanced. The current model of no appeals remains but post-delegation objections can be raised in certain areas, with mechanisms under construction, and the model of an Independent Objector is introduced.

### **Summary of Input**

This section organizes the summary of responses into the following categories: *Appeals and Post-Decision*, *Community-Based Objections*, *Existing Rights*, *Fees*, *Morality and Public Order*, and *Procedures*.

#### **Appeals and Post-Decision**

ICANN Authority. Under what circumstances will ICANN allow an application to go forward notwithstanding a successful objection (e.g., decision by DRP in favor of objector)? *K. Rosette* (Module 3, 26 Nov. 2008). *Microsoft* at 5 (Guidebook comments, 15 Dec. 2008) (ICANN must clarify meaning and consideration of panel decisions—i.e., would an application proceed notwithstanding a DRSP in favor of an objector?). See also *IPC* at 4 (15 Dec. 2008); *NCUC* (15 Dec. 2008) (need to clarify ICANN discretion to approve or deny).

Appeals to Dispute Resolution Mechanisms: IP rights holders should have legal recourse and the right to appeal an adverse ruling on an objection. *Internet Commerce Coalition* at 4 (15 Dec. 2008). The Guidelines should allow for a procedure to appeal a clearly erroneous DRSP decision. *MarkMonitor* (Module 3, 15 Dec. 2008). Panel decisions should not be subject to further review by ICANN, but rather to an appeal process by a third party dispute resolution provider and/or a court. *Rodenbaugh* at 5 (16 Dec. 2008). See also *U.S. COC* at 9 (15 Dec. 2008); *ANA* at 4 (15 Dec. 2008); *AIPLA* at 2 (15 Dec. 2008). Several ccTLD operators including Nominet, the operators of .uk, have a reasonably priced appeals process with a three person Appeals Panel. There are well-documented inconsistencies in UDRP decisions which an appeals process would help to even out. *MARQUES* would like a credibly valid appeals process included in LRO. *MARQUES* at 3 (15 Dec. 2008). No appeal opportunity is in clear conflict with common legal practice for organizations serving the public such as ICANN. *SIDN* at 4 (10 Dec. 2008).

Court Review. Will applicants whose strings are in contention and subject to determination by a single panelist have an opportunity for legal review comparable to the UDRP provision: "The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for

independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded.” (Section 4(k) of the UDRP) and if not, why not? *PIR* at 2-3 (15 Dec. 2008). There should not be a rule requiring a losing party in a formal legal rights objection to forfeit its rights to seek judicial redress—i.e., commenters object to the provision that in filing an application for a gTLD, an applicant agrees to accept the gTLD dispute resolution process, if that “acceptance” means that the applicant forfeits his right to protect his legal rights in the courts. *Bank of America* at 9 (15 Dec. 2008). See also *SIFMA* at 6 (12 Dec. 2008); *NCUC* at 5-6 (15 Dec. 2008); *Microsoft* at 4 (15 Dec. 2008). Page 3-1 in paragraph 3.1 says “an objector accepts the GTLD dispute resolution process by filing its objection.” Does that mean that the objector will be required to, in some way, agree not to challenge the outcome of the dispute resolution process such as in court? *COA GNSO New gTLD Question and Answer Open Teleconference*. The Draft Implementation Guidelines eliminate the right of applicants to challenge any ICANN decision or related dispute proceedings in a national court (unlike under the UDRP). So applicants would have no protection at all for their free expression rights and national courts would have no means of protecting their citizens from an abuse in an ICANN proceeding about a domain name. This point was also not in the GNSO's recommendations and is something that staff pulled out of a hat (as part of its bottom-up process) presumably in an attempt to protect itself from being sued. *R. Gross, IP Justice* at 2 (26 Nov. 2008). See also *G. Kirikos* at 10 (24 Nov. 2008) (accountability to courts); *IPC* at 3 (15 Dec. 2008); *Pattishall* at 3 (15 Dec. 2008) (review/appellate process necessary).

Effect of DRSP Decision. A decision from a DRSP should be final and binding on ICANN, rather than an “expert determination” to be considered by ICANN as a factor in the evaluation of a TLD application. *Visa* at 2 (13 Dec. 2008). See also, *U.S. COC* at 9 (15 Dec. 2008). Dispute resolution decisions should be binding and final on ICANN. *CSC* at 4-5 (15 Dec. 2008). Clarify impact of DRSP panel decision on ICANN and the LRO appeal standard. *Bank of America* at 5 (15 Dec. 2008). See also *Grainger* at 4 (15 Dec. 2008); *ITT* at 5 (15 Dec. 2008); *IPC* at 4 (15 Dec. 2008); *MARQUES* at 3 (15 Dec. 2008).

Post-delegation dispute resolution mechanisms: IP rights holders should be entitled to rely on representations in the application that are aimed at minimizing conflict between a new TLD and their IP rights and should have a means of redress available if those representations are violated. *Time Warner* at 5 (15 Dec. 2008); *INTA* at 16 (15 Dec. 2008) (supports development and publication of a post-delegation dispute resolution process as soon as possible); *IPC* at 6-7 (15 Dec. 2008); *MARQUES* at 4-5 (15 Dec. 2008); *SIIA* at 6 (15 Dec. 2008) (post-launch protections needed). ICANN should have a process for reviewing TLD allocations periodically regarding their use and adoption; violations of any approved proposal should also be addressed. *Hacker* at 3 (14 Dec. 2008). ICANN should create specific language for new gTLD registry agreements and consult with a DSRP for developing processes for post-delegation dispute resolution addressing post-launch infringement by a gTLD registry. *Microsoft* at 5-6 (Guidebook comments, 15 Dec. 2008); *COA* at 8 (15 Dec. 2008) (next draft Guidebook needs to address post-delegation obligations in detail).

## Community-Based Objections

Community Definition and Standing. There is no working definition of “community”, so it is possible that the community of “Internet users” and the community of “dog owners”, the community of “blondes” and the community of “anything you can reasonably describe” would be a “defined community” according to ICANN, and as such will have standing if there is an “established institution” to lodge the objection. Also, NCUC believes that further details as to standing need to be disclosed as soon as possible, to enable a more fruitful public discussion to

take place. *NCUC* at 3, 5 (15 Dec. 2008). The concept of community is poorly defined; for example, it will be unfair for a community-based applicant to lose on the basis of substantial opposition by a member of the community if the applicant counters with a showing of substantial support. *Bank of America* at 11 (15 Dec. 2008). See also *CADNA* at 6 (15 Dec. 2008); *COA* at 3-4 (15 Dec. 2008); *ASAE* (10 Dec. 2008).

Linkage to Community. The objector should be required to satisfactorily prove that the string it is objecting to has an association to the community it represents. This does not have to be a strong association, but that it passes the "absurdness" test. *J. Seng* (8 Dec. 2008).

Community Objection Criteria. Regarding point 3.1.2.4 Community Objection, It is an established institution. We feel that this is too limited. What if it is a community of people objecting that don't make up an institution or religious belief. *C. Schuddebeurs; Email Support*. The difference between existing legal rights objections and community-based objections should be described in more detail. *E. Brunner Williams; GNSO New gTLD Question and Answer Open Teleconference*. How will community objection criteria be weighed given subjectivity concerns? *USCIB* at 2 (16 Dec. 2008); *COA* at 5 (15 Dec. 2008). Concerns about the LRO also apply to the community objection procedure. *MARQUES* at 6 (15 Dec. 2008).

Defenses. "Defenses – Satisfaction of the standing requirements for filing a Community Objection (refer to paragraph 3.1.2.4) by the applicant is a complete defense to an objection filed on community grounds." Keeping this clause would imply that a community-based TLD could be squatted by a single member of the community. For instance, that one pharmaceutical company could apply for .pharma and enjoy "complete defense" against objections from any competitor, industry association or consumer group. Or that one bank could apply for .bank and that no other bank, nor associations of banks nor even a banking regulator could successfully object. Or that one tennis club could apply for .tennis and prevail against objection from any federation. It is dangerous to award complete defenses against objections on any ground; some communities have more than one generally accepted representative institution and these do not always agree. *W. Staub-CORE* (11 Dec. 2008). *A. Abril i Abril* (Module 3, 15 Dec. 2008) (automatic defense may yield perverse results).

## Existing Rights

Clarifications Re: Mark and Rights Holders. We request that there be clarification as to the definition of a "mark" relied-on by an objecting brand owner. We assume that this would include an unregistered mark? *BBC* (15 Dec. 2008). The Guidebook should provide more clarity on what constitutes a 'Rights Holder.' For example, with respect to trademark rights, the Guidebook should specifically address what types of trademark rights are eligible for disputes, such as whether common law rights, trademark applications, or trademark registrations and trade names qualify. *MarkMonitor* (Module 3, 15 Dec. 2008).

Ensure rights protection mechanisms are effective. ICANN must do more to ensure that these [rights protection] mechanisms are effective, accessible, low-cost and efficient for right holders to use. *IPC* at 5 (15 Dec. 2008); *Microsoft* at 3 (Guidebook comments, 15 Dec. 2008). Regarding point 3.4.4, Selection and Number of Panelists: There will only be one panelist in intellectual property rights proceedings. Is this sufficient? *C. Schuddebeurs; Email Support*.

Objection Standards. The 'legal rights' ground for objection cannot be clear cut. The law on trademarks, and intellectual property is not universally consistent. What amounts to 'standing legal rights' in one jurisdiction may very possibly not be recognized in other jurisdictions. *ISOC-*

*AU*. Regarding Point 3.1.1 Legal Rights Objections: What happens if two or more parties have equal legal rights? If someone files a TLD that is confusingly similar to someone else's registered mark an objection can be based on the Legal Rights objection. What happens if two or more parties have equal legal rights? What if the applicant owns a trade mark right as well as the objector? Regarding point 3.5.2.4: Knowledge should not be required for infringement or should this read as knowing or should know. *C. Schuddebeurs; Email Support*. How would something like .bank, where under US law you must be a bank to call yourself a bank, be objected against? Is the legal rights objection restricted to the string itself? *Bank of America-GNSO New gTLD Question and Answer Open Teleconference*.

## **Fees**

Fee details. These need to be more detailed. Brand owners are already spending hundreds of thousands to protect their trademarks online and there continues to be rampant online abuse. Having a cost of \$70 - 122K to object to an application is unacceptable. *Nike* (2 Dec. 2008). See also *BITS* at 7 (15 Dec. 2008).

Economic and financial considerations. ICANN should consider small economies when the dispute fees are finalized. *F. Purcell* (Module 3, 6 Nov. 2008). Is it possible for there to be more than two parties in a given dispute? If so, will all parties be required to pay the full 'Dispute Resolution Adjudication Fee? *C. Gomes-Compiled Comments on the New gTLD Applicant Guidebook*. *MarkMonitor* (Module 3, 15 Dec. 2008) (fees are high and duplicative; one fee should be filed in the case of a rights holder's objection to multiple applications for the same TLD).

No separate objection fee should be levied. It is morally offensive to charge a fee for an objection and this should be covered by the evaluation fee. If ICANN does not take that into account, ICANN may receive law suits. *A. Rosenkrans Birkedal* (10 Nov. 2008).

Deterrence Factor of Fee. A fee for filing an objection helps to avoid false and bad-faith filings. An applicant whose proposal has passed initial evaluation and has all the required support from pertinent communities and/or governments shouldn't have to pay for filing a response to an objection, nor any other associated costs. The applicant should have the right to defend himself from allegations without being required to pay to a third party. *NIC Mexico* at 3 (9 Dec. 2008). In order to be taken seriously, an opposition must be considered only if made by a person with standing under section 3.1.2 who has gone to the expense of paying the necessary fees and who has raised a recognized ground for objection. Allowing any person to post a public objection makes a mockery of the standing requirements. If ICANN believes it has defined standing too narrowly, then ICANN should broaden its rule using explicit categories. If ICANN believes its own procedures for objection may forestall inquiry into relevant areas of concern, it should broaden the grounds of objection. If ICANN believes that persons with limited financial means will not be able to raise their legitimate concerns, ICANN should consider waiving or reducing the fee to file an objection upon an application showing good cause. *Bank of America* at 6 (15 Dec. 2008).

Fee levels. Why is the cost of opposing a proposed gTLD string so prohibitively expensive? Why is it so much more expensive than a UDRP, and when will an upper price point cap be announced? *Anonymous Email* (26 Nov. 2008). The proposed process for the "legal right" DRP appears to have a proposed cost two orders of magnitude less than the proposed cost for the proposed process for "community objections" DRP. The choice of proposed vendors may explain a difference in pricing, but if the underlying process is not two orders of magnitude

different in complexity, than the difference in cost has no justification other than the vendor choice. If the "legal right" DRP involves forming judgments on questions of "substantial" (opposition) and "likelihood" (detriment), how is two orders of magnitude of cost difference commercially reasonable for the cost of forming similar judgments for "community objections"? *E. Brunner-Williams* (25 Nov. 2008). Fees for LROs should be at the lower end of range stated in the Guidebook. DRSP rules must specify when and under what conditions fees may increase or be refunded. Parties should be allowed to set up accounts with the DRSPs for administrative ease of payment. *INTA* at 9 (15 Dec. 2008)

Prevailing Party Reimbursement. The prevailing party in a dispute resolution proceeding should be reimbursed for all costs and expenses. This will deter parties from maintaining otherwise questionable proceedings. *Visa* at 1 (13 Dec. 2008). Fees, including attorneys fees and litigation costs should be recovered by the prevailing party. *U.S. COC* at 9 (15 Dec. 2008). See also *Lego* at 1 (4 Dec. 2008); *MarkMonitor* at 3 (15 Dec. 2008); *Grainger* at 2 (15 Dec. 2008); *ITT* at 5 (15 Dec 2008).

### **Morality and Public Order**

Legal Standards. [In relation to categories that are automatically banned] The ICANN paper [Oct 29, 2008] shockingly changes the AND to an OR in description of the US test: ICANN: "This limit should be construed as applying only to violent lawless action that is imminent or likely to result from the incitement." (p. 4 of 29 Oct. paper). So instead of this being a 2-part test as US law requires, ICANN will ban the speech if it meets either prong of the test - big difference and ICANN is not being honest about this legal standard (or is getting incompetent legal counsel). (Technically, it is a 3-part test in the US because the speaker must INTEND to produce the imminent lawless violence.) WHERE DID THE RESEARCH COME FROM THAT TOLD ICANN THE TEST INVOLVED AN "OR" RATHER THAN "AND" AS CLAIMED IN ICANN'S PAPER? *R. Gross, IP Justice* at 2 (26 Nov. 2008). See also *NCUC* (15 Dec. 2008); *ICA* at 2, 12-13 (16 Dec. 2008) (opposes law and public morality objections absent narrow and clearly articulated criteria).

Content Regulation. [In relation to categories that are automatically banned] It appears ICANN is attempting to regulate the content of websites, not URLs, since a domain name (2-6 letter string) cannot be child porn or sexual abuse of children. I'd like an answer from ICANN about how a URL can be child porn as a practical matter. *R. Gross, IP Justice* at 2 (26 Nov. 2008). *Y.E. Shazly* (Module 3, 2 Dec. 2008) (critique of ICANN moral and public order objection approach). *C. Preston* (Module 3, 12 Dec. 2008) (provides legal commentary supportive of ICANN morality and public order standards). ICANN should announce up-front if it will permit any "adult" extensions. *WMI* at 4 (14 Dec. 2008). The proposed standards open the door to unacceptable forms of content regulation by ICANN and provide the ability for a 'heckler's veto' over legitimate possible domains. ICANN needs to clarify the types of objective criteria and the nature of "independent judicial control" that will be used to determine the narrow exceptions that justify an interference with free expression. *NCUC* at 1-3 (15 Dec. 2008)

Standing. Who can bring a morality and public order objection? There is concern that attempts to make this anything other than a government (who has standing to object) will lead to arbitrary, subjective, and more widely conflicting standards. *R. Gross, IP Justice* at 3 (26 Nov. 2008). More details are needed regarding the Morality and Public Order Objection. *CADNA* at 5 (15 Dec. 2008). See also *Rodenbaugh* at 5 (16 Dec. 2008); *Pattishall* at 4 (15 Dec. 2008) (clarify standing); *NCUC* at 5 (15 Dec. 2008) (standing has yet to be determined). New TLDs should be restricted to protect the rights of those who would be offended or harmed by material

widely deemed offensive and not deserving of free speech protection, but the context must be balanced carefully. Any interested party should have the right to object on grounds of morality or public order. *INTA* at 11-12 (15 Dec. 2008)

Dispute Resolution. Module 3 of the Draft Applicant Guidebook states that objections based on morality and public order considerations will in principle be determined by the International Chamber of Commerce (ICC). As the ICC is an industry association for businesses, and as such represents and advocates on their behalf, we do not see the ICC as a particularly well-qualified arbiter of standards of morality and public order or as conducive to considering the interests of non-commercial parties in such a broad and values-based determination. *NCUC* at 3 (15 Dec. 2008). Uncertainty over whether the International Chamber of Commerce is the best place for dispute resolution on questions of morality and related issues. *A Muehlberg* (Cairo Meeting Public Forum, 6 Nov. 2008) See also Y. E. Shazly Cairo Meeting Public Forum, 6 Nov. 2008).

Issue Appropriate for Governments. ICANN should focus on coordinating technical functions related to the management of the DNS and not on matters more appropriately addressed by governments, such as adjudication of morality and public order and community objections in accordance with international human rights law. The proposed mechanisms to address these topics are inappropriate. *U.S. DOC-NTIA* at 2 (18 Dec. 2008). See also *APTLD* at 2-3 (15 Dec. 2008); *Arab Team* at 2 (15 Dec. 2008); *Demand Media* (Module 3, 15 Dec. 2008); *U.S. COC* at 5 (15 Dec. 2008) (ICANN should not assume powers and duties on issues best left to governments as recognized in WSIS Principle 49).

## Procedures

Abuse of Objections Process. In order to avoid potential abuse by entities that use their financial prowess to thwart smaller deserving players, a limit should be placed on the number of disputes per application. *J. Seng* at 3 (8 Dec. 2008). ICANN should take the possible abuse of objections (submitting an objection at the latest possible moment and thus forcing maximum costs at a competitor) into account when determining the objection period. ICANN should set limits on the objection grounds and protect applicants against abuse of objections. A start-up applicant, having already invested significantly in preparing the application and paid fees risks being financially "brought to his knees" by numerous objections of which none might even prevail. *SIDN* at 2 (10 Dec. 2008). See also *DHK* at 2 (15 Dec. 2008).

Panel Qualifications. Panelists should have sufficient years of experience in dispute resolution. ICANN must make clear the scope of documents that can be required by the panel; discovery should be allowed. *INTA* at 10 (15 Dec. 2008). *MARQUES* at 3 (15 Dec. 2008) (fluency of at least one panelist in local language should be required and panel must have sufficient trademark qualifications). ICANN should state a conflicts of interest policy for all panelists. *Rodenbaugh* at 5 (16 Dec. 2008).

General Procedural Comments. What is the limit of the panelist's discretion, and can the list identified in the draft Applicant Guidebook be improved by panelists? The categories are general and could lead to wide interpretation by panelists. *Y.E. Shazly* (Module 3, 2 Dec. 2008). See also *AIPLA* at 1 (15 Dec. 2008) (experts on LRO cases should be subject to approval of both parties); *MARQUES* at 3 (15 Dec. 2008) (use a small number of experts to chair panels and appeals for a fixed term to promote consistent decision-making); *INTA* at 10 (15 Dec. 2008) (hearings should be allowed in exceptional cases and must be public; the standard of proof should be explained). Fees need to be predictable; the panel's apparently unrestricted ability to

appoint experts is inconsistent with predictability. *Time Warner* at 5 (15 Dec. 2008). See also *COA* at 6 (15 Dec. 2008); *Pattishall* at 3 (15 Dec. 2008). For transparency, panel decisions should be published. See *IPC* at 4 (15 Dec. 2008); *AIPLA* at 1 (15 Dec. 2008); *MARQUES* at 3 (15 Dec. 2008); *Bank of America* at 10 (15 Dec. 2008). WIPO acting as the dispute resolution provider is problematic because it will inevitably favor and prioritize applications by trademark owners. *NCUC* at 5 (15 Dec. 2008). WIPO should be the sole provider of LRO services for at least 5 years with annual reviews. *MARQUES* at 3 (15 Dec. 2008). Consistency and transparency are needed in the online dispute resolution (ODR) process; a gateway provided by ICANN could help with this; these proceedings should be public. *InternetBar* (Module 3, 15 Dec. 2008). There should be a single organization with which all objections are filed and that organization should determine which DSRPs should resolve them. *Pattishall* at 3 (15 Dec. 2008); *IPC* at 4, 8-9 (15 Dec. 2008) (consider common portal for objections to promote efficiency; consider including a challenge of last resort). The new gTLD program might benefit from having a free period of mediation after submission of a complaint. *MARQUES* at 3 (15 Dec. 2008). Objections and responses should be made public. *ITT* at 5 (15 Dec. 2008). See also *G. Kirikos* at 10 (24 Nov. 2008); *INTA* at 9-10 (15 Dec. 2008) (lengthen the word limit for objections and responses; allow reasonable extensions of time to file responses; supports fee for filing a response; default judgment); *COA* at 6 (15 Dec. 2008) (word limit should be relaxed for a community objection; ICANN should reconsider policy that objections are not published as received). An objection category should be added regarding applicants who have a history of domain name abuse. *RILA* at 3 (15 Dec. 2008).

Three-Member Panels. ICANN should permit three member panels. *Internet Commerce Coalition* at 4 (15 Dec. 2008). Instead of only a single panelist in LRO cases, as in the existing UDRP, ICANN should consider constituting a three-person panel at the request of parties. *eBay* at 4 (15 Dec. 2008). See also *Microsoft* at 4 (Guidebook comments, 15 Dec. 2008); *MARQUES* at 3 (15 Dec. 2008); *AIPLA* at 1 (15 Dec. 2008) (LRO procedure should allow a 3 member panel); *Lovells* at 5 (15 Dec. 2008); *Pattishall* at 3 (15 Dec. 2008). Why wouldn't objectors be allowed to request a 3-member panel if they are willing to pay the expense if they lose? *C. Gomes-Compiled Comments on the New gTLD Applicant Guidebook*.

Dispute Resolution Criteria. What are the specific criteria that will be used to decide who wins a dispute resolution matter? When will such criteria be published? *Anonymous Email* (26 Nov. 2008). The standard for string contention is confusing similarity in sight, sound or meaning. The "Defenses" section should be removed or clarified, and other objection procedures should be clarified (e.g., clarify how the community objection might be accommodated if in effect there are two or more valid community claims to same or similar strings). *Rodenbaugh* at 5 (16 Dec. 2008). Regarding Point 3.1.1 criteria for String Confusion Objection: In module 2 (2.1.1) it is explained that by string confusion in the Initial Evaluation phase performed by ICANN is meant: "String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion". Do the same criteria apply to the dispute resolution? *Schuddebeurs; Email Support*. Guidance needed for resolving disputes among associations and applicants (e.g., a local association and an international NGO competing for a gTLD). See also *ASAE* (Module 3, 10 Dec. 2008).

Details or Clarification of Objections Process. Objection process should be efficient and cost effective, and more details are needed; a cost of \$70-\$120K to object is unacceptable. *Nike* (2 Dec. 2008). Further clarification is needed regarding standing to object. *NCUC* at 5 (15 Dec.

2008); *NAM* at 7 (15 Dec. 2008) (objections and responses should be made public). When can exact dispute resolution process rules be completed and published? *Rodenbaugh*; *GNSO New gTLD Question and Answer Open Teleconference*. The Guidebook should be clarified to indicate when potential objectors should file objections to an application. *ASAE* (Module 3, 10 Dec. 2008). Will there be a challenge of last resort? *MARQUES* at 6 (15 Dec. 2008). More detail is needed on panel procedures—e.g., documents, ensuring limits on panels appointing experts to be paid for by one or more parties. *Microsoft* at 4 (15 Dec. 2008). See also *Grainger* at 2 (15 Dec. 2008); *IPC* at 4, 8 (15 Dec. 2008); *INTA* at 9-10 (15 Dec. 2008) (various aspects of objection procedures require clarification—e.g., filing deadlines, single complaints with multiple objections, resolution of inconsistent outcomes by DSRPs; cooling off period).

Consolidated Objections. There should be an ability to consolidate complaints against the same party. *Nike* (2 Dec. 2008). Consolidated objections with a single filing fee should be allowed in appropriate circumstances. *Time Warner* at 5 (15 Dec. 2008). See also *Visa* at 2 (13 Dec. 2008); *SIFMA* at 6 (12 Dec. 2008); *DHK* at 2 (15 Dec. 2008); (consolidation should be required); *MARQUES* at 3 (15 Dec. 2008); *IPC* at 4 (15 Dec. 2008); *CADNA* at 2 (15 Dec. 2008). More information is needed on costs of filing objections and ways to reduce costs through consolidated objections. *USCIB* at 2 (16 Dec. 2008). *eBay* at 3-4 (15 Dec. 2008) (clarifications needed regarding consolidated objection scenarios; to promote consistency and predictability, more guidance and examples needed in Guidebook on LRO case resolution). There should be efficient procedures regarding combining multiple objections; opportunities to amend procedurally noncompliant objections, ability to refuse consolidated objection proposals by the DRSP. *Microsoft* at 4 (Guidebook comments, 15 Dec. 2008). See also *C. Gomes* at 6 (17 Nov. 2008); *BITS* at 7 (15 Dec. 2008) (clarify fees for consolidated objections); *Pattishall* at 3 (15 Dec. 2008) (more detail needed on resolving objections based on multiple grounds).

Online Submissions. Is it possible for each applicant to provide copies of all submissions to the DRSP associated with objection proceedings via the electronic system? *C. Gomes-Compiled Comments on the New gTLD Applicant Guidebook*.

Government Concern. The dispute resolution process is not a cost effective way for governments to participate and they should have an earlier opportunity to participate and object; the right of governments to objection and the mechanisms for it should be expressly indicated with costs minimized. Governments should be explicitly recognized as having standing to file an objection. *NYC* (13 Dec. 2008). ICANN should be doing more to minimize disputes with national governments and to increase their understanding of the new gTLD process, especially smaller, developing nation governments. *F. Purcell* (Module 3, 6 Nov. 2008).

Details Needed on LRO Procedure. The Legal Rights Objection (LRO) procedure will generally be the sole means that a trademark owner has at its disposal within the ICANN process to prevent the recognition of a new gTLD that infringes, dilutes, or otherwise harms or weakens its mark, and/or that will threaten to cause confusion detrimental to the mark owner's customers and the public at large. While the LRO procedure is sketched out in the draft applicant guidebook, much more detail will be needed before it can be determined whether this is a sufficiently robust safeguard for preventing these harms. *IPC* at 3 (15 Dec. 2008). See also *AIPLA* (15 Dec. 2008); *SIIA* at 5 (15 Dec. 2008); *Time Warner* at 4-5 (15 Dec. 2008); *eBay* at 3-4 (15 Dec. 2008). Finalized procedures are needed for business certainty—e.g., ICANN has not yet completed agreements with Dispute Resolution Service Providers; it would help rights owners and applicants to know the likely application of factors in the LRO standard. *Microsoft* at 4-5 (Guidebook comments, 15 Dec. 2008).

ICANN Duties and Legal Reviews. ICANN must commit itself to follow the rules and procedures of the Guidebook once final; ICANN is acting in a quasi-governmental capacity and its Guidebook should be considered akin to an administrative rule. *Bank of America* at 12 (15 Dec. 2008). ICANN should state how ICANN will conduct legal reviews of applications, consider legal objections from third parties, and discharge its responsibility to ensure that the process of introducing new gTLDs respects all relevant national and international law, including property rights. *U.S. DOC-NTIA* at 2 (18 December 2008). The dispute resolution processes give ICANN too much authority. *Cyveillance* at 2 (15 Dec. 2008).

## **ISSUES, ANALYSIS AND PROPOSED POSITIONS**

### **Appeals and Post-Decision**

#### **Issues**

How might applications go forward notwithstanding a successful objection?

Will the panels' decisions be final and binding on ICANN?

The guidelines currently do not provide for appeals. Should there be such a provision and does a lack of one conflict with the public interest?

Does an acceptance of the gTLD dispute resolution process mean that the participating party has forfeited all right to judicial review?

Do applicants forfeit their rights to protect their legal rights in the court?

#### **Analysis**

The comments that have been summarized above reflect concerns about due process and the protection of substantive legal rights. ICANN takes these concerns very seriously and, with considerable participation from constituency groups, has sought to create an objection process that is fair and adequately protects the rights of all participants in the process.

One may distinguish three types of recourse or legal action in connection with new gTLD applications: (a) recourse against the expert determination that is rendered in the New gTLD Dispute Resolution Procedure (e.g., an "appeal" or some other action), (b) action in defense of one's legal rights before a court with jurisdiction, and (c) legal action against ICANN by an applicant.

(a) As stated in Section 3.4.5 of the draft Guidebook, the dispute resolution panel's decision will be an expert determination. The New gTLD Dispute Resolution Procedure (the "Procedure") currently does not provide for an appeal or other recourse against the expert determination that is rendered by the Panel. While an expert determination will not be legally binding, as part of the dispute resolution process ICANN will follow the advice of the panel.

(b) It is implicit in the Procedure that an objector does not waive its right to defend its legal rights (e.g., trademark) before a court of competent jurisdiction merely by filing an objection to an applied-for gTLD.

(c) The terms and conditions of the application for a new gTLD contain an express waiver by the applicant of recourse against ICANN relating to the application evaluation and approval process. This does not bar claims against ICANN that may not be related to the application process, nor does it bar claims by the applicant against any other party.

It does not seem that the absence of an appeals process within the process conflicts with ICANN's role in serving the public interest. There are various countervailing factors to consider in formulating the dispute resolution procedure. Adding a procedure for appeal would increase the cost and extend the duration of many – if not most – proceedings, thereby delaying the introduction of many new gTLDs. If on appeal, the determination is “reversed,” there would be an argument for extending the process even further, resulting in great uncertainty in the process.

The dispute resolution process is intended to provide economic incentives for parties to participate in the process and to resolve disputes in a timely and efficient manner.

### **Proposed Position (for this version of the Guidebook)**

At this juncture, ICANN does not plan to introduce an appeals mechanism into the dispute resolution process that has been developed. ICANN has heard many comments about making sure the new gTLD program progresses as swiftly and efficiently as possible. A dispute process that does not include a separate appeals mechanism is intended to help minimize the delay of introduction of new gTLDs into the root zone.

Given the nature of the expert determination to be rendered at the completion of a dispute proceeding, an unsuccessful applicant cannot obtain judicial review of the rejection of its application.

An applicant is not prohibited, however, from pursuing its legal rights related to the application process in court against any party other than ICANN.

### **Community-Based Objections**

#### **Issues**

Will the definition of “community” and the role of an established institution be clarified?

Does an objector have to demonstrate an association with a community related to the string to which it objects?

Does an applicant who is able to fulfill the standing requirements to object have an absolute defense and could this complete defense to a community objection provided for in paragraph 3.1.2.4 lead to squatting?

In addition to describing “existing legal rights objections” and “community based objections,” the Guidebook or supporting documentation could do a better job differentiating the role of each.

#### **Analysis**

The creation of community-based gTLDs offers great opportunities for diverse communities to learn about each other, meet, and communicate through the Internet. However, the rights, obligations and interests of many communities and their representative institutions may be at odds with the legal rights of trademark rights holders. The comments that ICANN has received thus reflect both the avid interest that communities have in obtaining gTLDs and concerns that some people and entities have about definitions and criteria.

The concept of community is not easy to define. That said, the “working definition” of community, and requirements for a community-based gTLD, and objections thereto, are summarized in the draft Applicant Guidebook, Section 1.2.2.1. The Guidebook also sets out the standing requirements for what group or entity may object to a community-based application. Those requirements make clear that the objector does have to demonstrate a relationship to a community to have standing. Further, the objector must be an established institution that has an ongoing relationship with the community. This requirement will help to insure that the objector has some legitimacy as a representative of the community. Such a standing requirement is intended to avoid a multitude of objections from individuals, many of whom represent only themselves and have no relationship to or real interest in the relevant community.

The complete defense to a community objection provided for in paragraph 3.5.4 should not, in itself, lead to squatting for one reason, among others, that a successful registry operator must also make the registry operational. Note the requirements for obtaining a community-based gTLD (summarized in the Draft Guidebook, Section 1.2.2.1) and the post-delegation obligations that the successful applicant will assume (*id.*, Section 1.2.2.2).

Regarding a comparison of legal rights and community objections, different criteria are at issue for each. While it is true that there might be a situation where a gTLD could provide an objector with both grounds, they are exclusive in that the legal rights criteria is focused on providing a forum in which trademark rights holders can object to a gTLD on the basis of an existing legal right to a trademark. The community objection, on the other hand, has no basis in trademark or other intellectual property law and, instead, focuses on rights of organized groups.

### **Proposed Position (for this version of the Guidebook)**

An objector to a community-based gTLD must be an established institution with an ongoing relationship with a defined community that consists of a restricted population. See Draft Guidebook, Section 3.1.2.4. It will be made explicit in the revised Applicant Guidebook that the “defined community” is a community related to the string to which the objector objects.

### **Existing Rights**

#### **Issues**

One common theme that has arisen in various public comments are the concerns voiced by trademark owners in terms of the efforts and costs that may need to be expended to protect their Intellectual Property. Another section of this paper specifically relates to trademark protection and will discuss these overarching concerns.

Do holders of all types of trademark rights – including common law trademarks, trademark applications, and trade names – qualify as “rights holders” and what if both the applicant and the objector are rights holders?

Are the current mechanisms of enforcement low-cost and efficient?

How/Who can object against a string, such as “.bank,” where under U.S. law, it is suggested, an entity must be a bank to use such designation?

How will the “legal rights” grounds for objection be dealt with when the law on trademarks and other intellectual property is not universally consistent?

Regarding Section 3.5.2.4, why isn’t there a knowledge standard required for infringement?

Is the legal rights objection restricted to the string itself?

Is only one panelist in intellectual property rights proceedings sufficient?

## **Analysis**

ICANN appreciates the numerous comments it has received relating to trademark protection and is considering various options. As noted above, a separate section of this paper relates to trademark protection, which addresses the overarching concerns. The rest of this section will discuss the specific issues raised in the comments set forth in this paper.

The definition of mark was meant to allow objections on the basis of registered and unregistered marks. Further, the definition of “Rights Holder” was left broad to allow any person or entity that claims an existing legal right to object so as not to favor a registered mark over a mark that is not registered or to encourage sham filings to obtain registrations in jurisdictions which award them on a first to file basis.

ICANN has attempted to develop a process that is low-cost and efficient. Providing for an independent dispute resolution procedure is meant to achieve the goal of providing efficient and reasonably low cost ways in which rights holders can assert rights to an applied for string, and protect them on a global scale. ICANN is considering additional procedures, including some to apply post delegation; however, at this point allowing for global resolution in one forum in a relatively expeditious time frame goes a long way to providing effective, accessible, low cost and efficient ways for rights claims to be resolved. The UDRP proceedings will remain in effect, as well, for post delegation issues that arise in connection with second level domain disputes in the new gTLDs, and the specific laws of each jurisdiction still provide redress.

In terms of the issue raised regarding the potential gTLD .bank, it is not necessarily true that one must be a bank (i.e., a certain type of financial institution) in order to call oneself a “bank”. (Consider blood bank, food bank, sperm bank, etc.) If more than one entity applies for the gTLD .bank, all applicants for the gTLD would enter into the string contention process. Further, a .bank application may qualify as a community-based application and, in such a circumstance, gain consideration in cases of contention. If the eventual owner of the gTLD .bank uses the name or domain in a way that violates U.S. law, legal action could be taken against that owner in accordance with the law.

It is correct that there is no universal application of intellectual property law. Indeed, this fact has made it quite difficult to identify standards that would be viable on a global stage. Thus, the standards to be applied and balanced are from a number of jurisdictions that enforce intellectual property rights as well as from UDRP proceedings, the closest form of IP precedent available on an international basis. As none of the factors are absolute, knowledge is not a "requirement". However, sections 4 and 5 contemplate a knew-or-should-have-known standard.

ICANN did consider providing for three-member panels, but thought a one-member panel would be more cost efficient. Alternatively, ICANN is considering providing for three-member panels, but only to the extent that all parties agree.

### **Proposed Position (for this Version of the Guidebook)**

ICANN will provide more clarity in the revised Draft Applicant Guidebook in terms of the types of mark an objector or rights holder must have to file a valid objection. ICANN will also make clear in the revised Draft Applicant Guidebook and Procedures that parties may elect a three member panel, but only if all parties in the proceeding agree.

### **Fees**

#### **Issues**

Can the dispute resolution fees be more detailed and can the costs be curtailed or limited?

Can small economies be considered with dispute resolution fees are finalized?

Can the filing fee be funded by the evaluation fee?

Can standing requirements for filing an objection be broadened and allowances for fee waivers be made in lieu of permitting the posting of public objections by any person?

Will the prevailing party be reimbursed for costs and expenses?

If more than two parties participate in a dispute, do all parties pay the Dispute Resolution Adjudication fee?

Why is the proposed cost for the "community objections" DRP proposed process higher than the proposed cost for the "legal rights" DRP proposed process?

#### **Analysis**

Some concerns have been expressed over the estimated dispute resolution fees, particularly for those that are not fixed rate proceedings. The rules of procedure for these proceedings have been designed, in part, to minimize costs. The general rule ICANN is promulgating, that the losing party in the dispute resolution proceedings pays the full cost (i.e., panelists' fees and filing fees), will provide some protection against parties acting in bad faith.

The costs of a dispute resolution proceeding must be paid by the parties in that proceeding (with the prevailing party having its advance payments reimbursed). An applicant's successful

passage through the initial evaluation would not be a basis for waiving dispute resolution fees, as the costs of resolving a dispute arising from an objection must be paid.

The filing fee in dispute resolution proceedings should not be funded by the evaluation fee, as the two fees relate to different steps in the application process, one of which may not occur in some applications. If the evaluation fee were to cover filing fees in dispute resolution proceedings, it would have to be increased (since the evaluation fee is currently set on a cost-recovery basis). This would produce an excessive fee for applications to which no objection is filed. Further, the dispute resolution fee will not be paid to ICANN. Note also that the number of filing fees that must be paid by an individual applicant may vary, depending upon the number of objections that are filed against that applicant's gTLD.

The consolidation of objections should result in certain cost savings (and is therefore strongly encouraged by ICANN). It is intended that the applicant would pay a single filing fee when submitting its response to all of the consolidated objections. Parties would pay in advance the costs of only one proceeding, rather than multiple proceedings, and a single Panel would render one expert determination that is applicable to all of the consolidated objections. Consolidation, of course, is conditioned on the type of objection and the facts of each dispute. For example, legal rights objections depend largely on the rights of the objecting party and therefore it is less likely that cases could or would be consolidated. Morality and Public Order objections are intended typically to be about the applied for string and therefore, a better candidate for consolidation. Consolidation will be the decision of the dispute resolution service provider.

The costs of dispute resolution proceedings in connection with "community objections" are likely to be higher than the costs of "legal rights objections". The latter are unlikely to be as complex, and their duration can be predicted with some confidence. In contrast, proceedings that arise from "community objections" are likely to be more diverse in their nature and to involve more varied factual submissions. For this reason, variable fees based upon the time spent by the expert panelists are more appropriate for the "community objections" than fixed fees. Similar factors indicate that the costs of "morality and public order objections" are also likely to be higher than those of "legal rights objections". In addition, dispute resolution proceedings that involve three-member panels at an hourly rate will have higher costs than those involving a single panelist. If the hourly rate based dispute processes do not take as much time or are less complex than estimated, the amount of time spent by the dispute resolution panel would be less, and therefore the fees should be less than estimated as well.

Per Section 3.4.7 of the draft Applicant Guidebook, the process has been developed so that dispute resolution fees paid in advance by the prevailing party will be refunded to that party.

Simply submitting a public comment in objection to an applied for string will not be considered a formal objection.

### **Proposed Position (for this version of the Guidebook)**

Each dispute resolution provider will establish its fees. ICANN does not plan to include dispute resolution filing fees as part of the application fee, nor does ICANN intend in this round to announce a maximum level for dispute resolution fees.

### **Morality and Public Order**

## **Issues**

As related to the standards: (i) Does the test for incitement conflict with the test under US law; and (ii) what type of domain name would qualify as “child pornography” leading to an automatic ban?

Can anyone other than a governmental entity bring a morality and public order objection?

Is this dispute resolution process the right mechanism for adjudicating issues of morality and public order and community objections with international human rights law?

Can the types of objective criteria and the nature of “independent judicial control” used to determine when in interference with free expression is justified be clarified?

## **Analysis**

Issues of morality and public order with respect to rights of expression are inherently controversial. The accepted standards of morality and public order may vary widely in different societies and over time. As explained in the first Draft Applicant Guidebook (Section 3.5.3), ICANN is guided by two general principles in this area: (a) everyone has the right to freedom of expression, and (b) such freedom of expression may be subject to certain narrowly interpreted exceptions that are necessary to protect other important rights.

ICANN has conducted extensive research and consultations to develop standards under which the Morality and Public Order Objections should be reviewed. In addition to extensive research in every geographic region, ICANN conducted individual consultations with experts in the human rights arena, present and former judges of internationally recognized tribunals dealing in human rights and morality issues, as well as legal practitioners who regularly appear in such tribunals. In such consultations, the starting premise was always that found in the GNSO Principle G:

“The string evaluation process must not infringe the Applicant’s freedom of expression rights that are protected under internationally recognized principles of law” (emphasis added).

Internationally recognized principles of law, however, do include narrow restrictions. See, e.g., Articles 19(3) and 20 of the International Covenant on Civil and Political Rights, Article 10(2) of the European Convention on Human Rights and Article 13 of the American Convention on Human Rights. Thus, absolute freedom of expression is not protected under internationally recognized principles of law; there are permissible limits.

As the GNSO policy indicated, the standards that panels shall apply in dispute resolution proceedings should not necessarily be based upon U.S. law. The standards applied to morality and public order objections need to be as international in reach and applicability as possible, which ICANN has intended to identify now and in its Explanatory Memorandum on morality and public order objections, which can be found at: <http://www.icann.org/en/topics/new-gtlds/morality-public-order-draft-29oct08-en.pdf>.

The rule that would bar incitement to violent lawless action in new gTLD strings is not necessarily the same as the rule under U.S. constitutional law. Dispute resolution panels can consider whether under internationally recognized standards of law a string is likely to produce

violent lawless action and, if so, whether such action would be immediate (along with other factors), but it may not be appropriate to require “immediate” violence to sustain an objection. The DRSP panel is not bound to follow U.S. law in deciding morality and public order objections.

The standard that would bar incitement to or promotion of certain forms of discrimination has been criticized as a potential “heckler’s veto” or the adoption of a “European Standard” for limiting free expression. Rules barring incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin exist in various forms in many countries around the world, not just in Europe. See also Article 20(2) of the International Covenant on Civil and Political Rights, which provides for analogous limits upon free expression.

It is important to stress that the requirement that new gTLD strings not be contrary to generally accepted legal norms relating to morality and public order concerns the string – *i.e.*, the letters to the right of the dot. This is not a regulation of the content of websites. It would be optimal if a mere gTLD string could not constitute incitement or promotion of child pornography or other sexual abuse of children. However, taking into account the fact that new gTLD strings may comprise up to 63 characters, one must anticipate that a string could well incite or promote child pornography.

Based on a few comments, there seems to be some confusion about the role of the dispute resolution service providers (DRSP). The DRSP itself does not decide the disputes; the DRSP administers the dispute resolution proceedings. That administration includes the selection and appointment of the panel (comprising one or three experts) that will issue an expert determination. The rules of procedure that ICANN plans to implement state that panelists deciding morality and public order objections should be eminent jurists of international reputation.

ICANN agrees that the standing and standards issues are worthy of further discussion. One comment asserts that the standards will be “arbitrary, subjective, and ... conflicting” if parties other than governments have standing to file morality and public order objections. ICANN is still working to develop a mechanism relating to the standing requirements for filing objections relating to Morality and Public Order. Concerns have been expressed about leaving this open to any person or entity, but concerns have also been expressed about limiting this to just one defined group of people, such as governments. Allowing anyone to object is consistent with the scope of potential harm, but may be an insufficient bar to frivolous objections. On the other hand, while groups such as governments may be well-suited to protecting morality and public order within their own country, they may be unwilling to participate in the process. The current thought, on which ICANN invites public comment, is to develop a mechanism by which those objecting on these grounds must show a legitimate interest and harm or potential harm by the proposed string.

It has been suggested that the “proposed mechanisms” for this adjudication are “inappropriate”, but no specific details or constructive criticism were provided. ICANN remains open to suggestions for improving its dispute resolution procedure for morality and public order objections and other objections.

### **Proposed Position (for this version of the Guidebook)**

ICANN is recommending that the dispute resolution panel be provided the GNSO recommendation relating to Morality and Public Order (Recommendation No. 6), along with the categories of restriction described in ICANN’s Explanatory Memorandum dated 29 October

2008, as well as what will be set out in the Draft Applicant Guidebook, version 2. The categories include certain criteria contrary to principles of international law: (i) incitement to violent lawless action; (ii) incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin; (iii) incitement to or promotion of child pornography or other sexual abuse of children; and (iv) any other category that the panel determines would render a proposed TLD contrary to equally generally accepted identified legal norms relating to morality and public order that are recognized under principles of international law. With respect to standing, as noted above, ICANN is still working on standing requirements for filing an objection on these grounds.

## **Procedures**

### **Issues and Analysis**

There are naturally many questions about the details of the dispute resolution procedure. Some of these points will be clarified with the publication of the New gTLD Dispute Resolution Procedure (a detailed set of procedures governing the objection process, based upon the more general description in Module 3 of the Draft Application Guidebook, version 2). Meanwhile, ICANN wishes to answer as many of the specific questions that have been raised as possible:

Can a limit be placed on the number of objections allowed per application?

ICANN understands the concern. However, it seems appropriate not to place a limit in advance upon the number of objections allowed per application because there is no first come first serve requirement and placing a limit would prevent legitimate objectors from objecting.

Will ICANN take measures to protect applicants from objection abuse – like limiting the grounds for objection – in order to protect applicants from incurring potentially devastating costs in the process of responding to multiple objections?

The process has been designed to take these concerns into account. Both standing to object is limited as are the grounds for objecting, and certain standards for such objections are defined. Multiple objections on the same grounds can be consolidated, thereby reducing costs. In addition, the rule that the losing party pays the costs of the dispute resolution process (i.e., panelists' fees) should discourage frivolous objections.

Can the costs of objecting to multiple applications of the same TLD be consolidated?

This is not currently contemplated, but is something that will be considered in light of string contention and the dispute resolution provider rules.

What is the limit of the panelist's discretion, and can the list identified in the draft Applicant Guidebook be improved by panelists? The categories are general and could lead to wide interpretation by panelists.

Specific standards have been defined, within which panelists will exercise their discretion as independent experts.

Can complaints against the same party be consolidated?

Yes, provided that the objections are based upon the same grounds. Thus, two or more legal rights objections against the same applied-for gTLD can be consolidated, whereas a legal rights objection against a given gTLD cannot be consolidated with a community objection against the same gTLD. Consolidation will be at the discretion of the DRSPs.

Will ICANN provide more guidance on the objection process, specifically on timing, deadlines, and procedure?

Yes. ICANN will publish its New gTLD Dispute Resolution Procedure along with the Draft Applicant Guidebook, version 2, which identifies specific Procedures.

Will ICANN allow community based objections to be submitted to the International Chamber of Commerce?

Community-based objections shall indeed be submitted by the objector to the International Chamber of Commerce's International Centre for Expertise (ICC), which will administer the dispute resolution proceedings. The panel appointed by the ICC (and not the ICC itself) will issue the expert determination.

Can applicants provide copies of all submissions to the dispute resolution service provider associated with objection proceedings via the electronic system?

Yes. In fact, that is required.

Will ICANN permit legal rights objections to be adjudicated by three member panels, particularly if objectors are willing to pay the expense if they lose?

Yes, provided both parties agree.

What specific criteria are used to decide who wins a dispute resolution matter and when will such criteria be published?

Certain criteria – i.e., standards – have already been published. See draft Guidebook, § 3.5. The standards for deciding morality and public order objections will be published in the Draft Applicant Guidebook, version 2.

Can ICANN provide more detail about the existing legal rights procedure so that it can be determined whether this procedure is a sufficiently robust safeguard?

The publication of the New gTLD Dispute Resolution Procedure with the Draft Applicant Guidebook, version 2 will provide more detail.

What discretion does the ICANN Board have to reject an application that threatens the process, the stability of ICANN, or the interests of the Internet community, but that has otherwise cleared all steps in the process because no third party objected?

ICANN does have discretion to reject such applications. Other mechanisms that could help ensure that applications that may “threaten [] the process, the stability of ICANN, or the interests of the Internet community,” are also being carefully scrutinized and considered. Such a mechanism might include an independent third party or “Independent Objector” to ensure no obviously objectionable applications pass through

the process without objection. More information about ICANN's thinking about an 'Independent Objector' will be published with the Draft Applicant Guidebook, version 2.

Do the proposed standards for objection procedure open the door to unacceptable forms of content regulation or allow a 'heckler's veto' over legitimate possible domains?

No. Please see the "Morality and Public Order" Analysis.

Can ICANN provide more detail about who has standing to object?

The rules for standing for three of the four grounds for objections were provided in the draft Guidebook, Section 3.1.2. ICANN is still working on developing standing requirements for filing objections relating to Morality and Public Order. Concerns have been expressed about leaving this open to any person or entity, but concerns have also been expressed about limiting this to just one defined group, such as governments. The requirements will ensure that those objecting on the ground of morality and public order have and prove a legitimate interest and harm or potential harm resulting from the applied-for gTLD string.

How will ICANN conduct legal reviews of applications, consider legal objections from third parties, and discharge its responsibility to ensure that the process of introducing new gTLDs respects all relevant national and international law?

The dispute resolution process that is being developed by ICANN (Module 3) will perform exactly these tasks.

When can exact dispute resolution process rules be completed and published?

The current version of the Dispute Resolution Procedure will be published with the revised Draft Applicant Guidebook. These will be supplemented by the specific rules for the dispute resolution providers. The existing Rules of Expertise will apply for the disputes administered by the ICC. WIPO Rules for New gTLD Dispute Resolution Procedure will apply for disputes administered by the Arbitration and Mediation Center for the World Intellectual Property Organization. The ICDR Supplementary Procedures for ICANN's New gTLD Program will apply to the disputes administered by the International Centre for Dispute Resolution.

Does the same "confusion" principle set forth in Module 2 (regarding String Confusion Objection) apply to DRSP?

Yes; see Section 3.5.1 of the Applicant Guidebook.

### **Proposed Position (for this version of the Guidebook)**

Many of the comments received about the procedures are well-taken and will be addressed in a more detailed procedures document that will be published with the Draft Applicant Guidebook, version 2.

## **XI. STRING CONTENTION**

### **A. STRING CONTENTION: STRING SIMILARITY**

#### **Summary of Key Points**

- The objection-based dispute resolution process tests for all types of string similarity that might result in user confusion, including visual, aural and meaning similarity. The revised version of the Applicant Guidebook will highlight this.
- The string similarity check in the Initial Evaluation will be done based on visual similarity in order to identify most cases of contention or user confusion early in the process.
- The role of the algorithm is primarily for filtering; it is intended to provide informational data to the panel of examiners and expedite their review.

#### **Summary of Input**

It should be made very clear to applicants up front that the definition of confusing similarity is not just visual. It could be easily concluded, because the algorithm only covers visual confusion, that that's all that matters, which is not the case with regard to GNSO recommendation 2. C. *Gomes*; *INTERNET COMMERCE COALITION* (15 Dec. 2008)

String confusion should apply to visual confusion only. Any broadening of the standard will limit competition. *Demand Media* (15 Dec. 2008); *Pattishall* (15 Dec. 2008)

In the standard for string confusion, how will the probability of confusion be determined? This should be clearly defined. C. *Gomes*(18 Nov. 2008)

The similarity review will be conducted by a panel of String Similarity Examiners. This examination will be informed by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs. The score will provide one objective measure for consideration by the panel. The algorithm uses proprietary software to perform a series of mathematical calculations to assess the visual similarity between strings based upon the following parameters. Issue--It is inappropriate for ICANN to use an algorithm which is not public, and not based on public data. C. *Gomes*(18 Nov. 2008)

The string similarity algorithm only accounts for visual similarity, and does not address aural or phonetic similarity. The phonetic sound or meaning should be incorporated in the string similarity algorithm. *INTERNET COMMERCE COALITION* (15 Dec. 2008).

Concerned that confusing similarity is only restricted to visual and not other forms of perception. G. *Kirikos-GNSO New gTLD Question and Answer Open Teleconference*.

The string review process is visually, but objections can be on other grounds - like meaning. A. *Kinderis-GNSO New gTLD Question and Answer Open Teleconference*.

The current approach taken where every string is seen as independent from any other may cause problems. It could create unnecessary fights and problems. It doesn't full account for the

realities of other scripts. (RA, WT) - See *Cairo Participation Key (Cairo public forum, 6 Nov. 2008)*.

## **Issues**

**Scope of similarity:** How are all types of user confusion tested? How is the similarity test defined by standards that will be furnished to evaluators?

**Role of algorithm:** What is the role of the algorithm? Should an algorithm based on proprietary software be used and, if so, in what function and what kind of similarities should be covered?

## **Analysis**

**Scope of similarity:**

For the introduction of new gTLDs, the Generic Names Supporting Organization (GNSO) has recommended that: Strings must not be confusingly similar to an existing top-level domain or a Reserved Name. (Recommendation 2, [http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#\\_ftn26](http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_ftn26))

The string contention lifecycle was developed to address this concern. There are two main components of string contention. The first involves identifying gTLD strings that are likely to deceive or cause user confusion in relation to existing TLDs or Reserved Names. In addition, proposed gTLDs in a given round must not be likely to deceive or cause user confusion in relation to each other.

The applicant Guidebook provides the standard to be used in the Objection process by dispute resolution providers to determine whether an applied-for string should be excluded or placed into a contention set based upon potential confusion: "String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion."

More specific standards were considered during the development of the Guidebook. It seemed that very specific standards would lead to gaming or manipulation or would leave holes for the introduction of strings that would result in user confusion.

The revised Guidebook indicates in several places that this examination is not limited to visual checks only but also includes aural and meaning similarity, for example, any similarity that will result in user confusion.

In addition to the process that tests for all types of confusion, the Guidebook also includes a preliminary test. The Initial Evaluation includes a first check of similarity to find cases of identical strings among applications and string sets with a strong visual similarity. This is intended to capture many sets of string contention or instances of user confusion early in the process. It is not intended to replace the basic objection and dispute resolution model described above, just augment it.

The standard for this initial test is: "String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the

average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.”

This is a standard first step in the application handling process. Given that similarities can be of other natures, these will be caught when objections regarding confusing similarities can be lodged based on a full range of similarities.

Role of algorithm:

The algorithm selected is a tool used by many trademark offices to provide evidence of identical strings and similarity cases worthy of closer scrutiny. It is developed to focus on visual similarity and there are no algorithms on the market that we know of that effectively extend to wider concepts of similarity. Its wide acceptance makes it an attractive product. Generally, ICANN would plan to make the code public. In this instance, its wide acceptance and evident effectiveness caused ICANN to accept, for now the fact that the software cannot be published. No other products, where publication of the code was acceptable, were found to be as economical, effective, reliable and repeatable as the currently selected algorithm. Developing new software is attended by substantial risk and cost.

The similarity check in the Initial Evaluation is a first check for obvious cases of similarity, based on visual similarity where the algorithm primarily has a filtering role, reducing the work load on the panel to focus on the most likely cases of similarity, while giving an indication of visual similarity for pairs of strings to scrutinize. The decision whether a string pair is confusingly similar or not is entirely with the panel.

The algorithm will allow the panel of examiners to swiftly sort through the  $n(n-1)$  combinations of applications in order to identify candidates where confusion might arise. Every combination of string can be ranked ordered according to score, allowing the examiners to scan down and identify a family of combinations for closer examination.

**Proposed Position (for this version of the Guidebook)**

Scope of similarity:

The scope of the string confusion objection and dispute resolution process includes all types of confusion: visual, aural, meaning and so on. This check is implemented through the policy recommended objection and dispute resolution process. The revised Applicant Guidebook will include specific descriptions of these types of similarity.

The Initial Evaluation includes a first check that is based on visual similarity. The intention of this early check is to identify many instances of contention or user confusion as soon as possible in the process.

At this preliminary check, an algorithm will be employed to sort all combinations of strings and provide similarity scores to evaluators that can use the score along with other evidence of similarity.

In response to comments on the draft Applicant Guidebook, ICANN has clarified the standard for string similarity in Initial Evaluation as visual but that other forms of confusion are available in the Objection process, as recommended by the GNSO Council.

Role of algorithm:

The algorithm has primarily a filtering role, reducing the workload on the panel to focus on the most likely cases of similarity, while giving an indication of visual similarity for pairs of strings. The decision whether a string pair is confusingly similar or not is entirely with the panel.

## **B. STRING CONTENTION: COMMUNITY**

### **Summary of Key Points**

- Advance postings of proposed strings in order to identify possible string contention is a good idea but may lead to abuses.
- The distinction between open and community-based applications is intended to provide a preference for bona fide community-based applicants in cases of contention between identical (or very similar) TLD strings.
- Brand owners may apply as community-based applicants. Whether they are extended the preference depends on whether that application meets the comparative evaluation criteria.

### **Summary of Input**

ICANN should post an open board for public comment on intended gTLD strings before the formal application process as a way of reducing string contention. *L. Ye (28 Oct. 2008)*

We encourage ICANN to remove the designation of open and community based from all gTLD applications. ICANN should allow all applicants to compete with each other on an equal basis through a comparative evaluation. *DHK (15 Dec. 2008)*.

On open vs. community-based TLD types, ICANN is commended “for defining a workable process for this complex issue of ‘community’.” *Demand Media (17 Dec. 2008)*.

Is the applicant's identification of its application as open or community-based dispositive? If not, under what circumstances will ICANN substantively examine that self-identification and change it? *K. Rosette (26 Nov 2008)*.

There is a need for clarifying the “Open” vs. “Community-based” question by publishing further examples of types of organizations that would fit in both categories – and then explaining the process of selection if there is string contention between Open and Community-based applicants. *IPC (15 Dec. 2008); COA (15 Dec. 2008)*.

Does ICANN consider a ‘brand’ application an ‘open’ gTLD or a ‘community based’ gTLD? *F. Hammersley (9 Dec. 2009)*.

There are many issues around community provisions that all Constituencies need to understand further. One issue for the IPC is whether a business application (e.g., an application to run a gTLD for the exclusive use of a single company) could ever be categorized as a Community-based application, and if so, under what circumstances? *IPC (15 Dec. 2008); COA (15 Dec. 2008)*.

### **Issues**

Should ICANN post intended strings for public comment before the formal application period is launched or, alternatively, before it is closed?

Should the distinction between open and community-based applications be eliminated?

What is the (potential) relationship between a brand and a community-based TLD?

### **Analysis**

The benefits of posting information about strings that are known beforehand to be contemplated for applications would be that the community be informed earlier with possibilities to discuss and provide feedback to the applicants at an earlier stage.

ICANN staff may have information about various gTLD projects and contemplated strings before the application period is launched, but it would be inappropriate for ICANN to announce such information for public comment. Early public information about strings could arguably facilitate voluntary agreements between contenders for the same string, but could equally well prompt others to apply for the same string, thereby exacerbating string contention rather than reducing it. This was discussed in depth during the policy development and the adopted policy clearly requires that proposed strings be kept confidential until the end of the application period. To announce proposed strings before the end of the application period would be at variance with the adopted policy.

To eliminate the distinction between open and community-based applications would certainly simplify the process. However, the distinction between open and community-based applications has been introduced to implement the approved policy and enable the required preference for community-based applications in contention situations, as the adopted policy requires. This is a core policy aspect that was discussed in depth during the policy development and clearly expressed in the finally adopted policy. The test of the application's worthiness of such preferential treatment is encapsulated in the Comparative Evaluation criteria and the threshold set for winning.

The distinction between open and community-based applications implements the approved policy, enabling the required preference for community-based applications in contention situations, as the adopted policy suggests. The test of the application's worthiness of such preferential treatment is encapsulated in the Comparative Evaluation criteria and the threshold set for winning. The policy reasons for creating a preference for community-based TLDs, as indicated in the record of the policy discussions, indicate that community-based TLDs enhance the name space and that true communities should be afforded some preferences and protections.

It is wholly up to the applicant potentially a brand owner, to select the type of application to file. ICANN will not verify nor change the type as such. Whether the application, if declared as community-based, will prevail in Comparative Evaluation for a contention situation is dependent on how well the application scores against the criteria, as detailed in the Applicant Guidebook.

### **Proposed position (for this version of the Guidebook)**

Confidentiality about proposed strings will be kept until the end of the application period, after which all will be posted publicly.

To eliminate the distinction between open and community-based applications would be in conflict with the adopted policy and the distinction will remain for the next version of the Applicant Guidebook. The distinction provides a vehicle for extending a preference to a bona fide community-based TLD in cases of contention.

### **C. STRING CONTENTION: COMPARATIVE EVALUATION**

#### **Summary of Key Points**

- The comparative evaluation criteria are altered to provide increased granularity in the scoring and an altered threshold for meeting the criteria in the revised version of the Applicant Guidebook.
- The only preference extended to community-based applicants is in cases of string contention. If the comparative evaluation criteria are not met, there is no other preference.

#### **Summary of Input**

Lower the required points to achieve community-based from 11 to 10 to bring the intent more in line with the purpose i.e. better balancing. *R. Fasset* *Employmedia.com* (5 Dec. 2008); *J. Seng* (8 Dec. 2008); *SIDN* (10 Dec. 2008); *CADNA* (15 Dec. 2008); *COA* (15 Dec. 2008).

Applying the most weight for nexus to trade names infers an assumption that the concern for implementation is the predictability of string contention for non-dictionary terms vs. dictionary terms. I think the reverse is true and that the intent of GNSO Implementation Guideline F (ii) - and the reason for its existence - is because the reverse is true. *R. Andruff* (20 Nov. 2008).

The Guidebook requires “an impossibly high threshold of proof - particularly when the review of an applicant’s nexus to a particular community is wholly subjective, i.e., subject to human fallibility.” A modification should be made to avoid auction, and factor in human error. *R. Andruff* (20 Nov. 2008).

Does the trade name of a community institution, as a gTLD string, offer the strongest connection ‘between proposed string and community’? *R. Fasset*, *Employmedia.com* (5 Dec. 2008).

Why does the first ‘Dedicated Registration’ policy get a higher score than the second? *C. Gomes* (18 Nov 2008).

The comparative evaluation procedures must not be used to capture generic words for the benefit of one group. Also, community scoring should be high (11 or above). *Demand Media* (15 Dec. 2008).

To what extent will “the good of the internet community” be taken into account in such a clash? Is it ICANN’s view that a Community-based application will always be better for the internet community? *S. Metalitz* (*IPC, COA*).

If a community-based application fails to emerge as a “clear winner” in a comparative evaluation, does any preference it would otherwise receive evaporate? *S. Metalitz* (*IPC, COA*).

What happens if a claim of support from the community is not substantiated? C. Gomes (18 Nov 2008)

### **Issues**

How should the scoring and threshold for winning in a comparative evaluation be modified to ensure that proper preference is given to a bona fide community application?

To what extent will "the good of the internet community" be taken into account in cases of string contention? Does the community-based TLD always prevail?

What preferences are given to community-based applicants that do not meet the comparative evaluation criteria?

Must community support be substantiated?

### **Analysis**

The threshold for winning is intentionally set with a view to prevent gaming attempts and identifying true Community applications. The risk for "false negatives" in the scoring can be moderated by a lowering of the threshold, but this has to be balanced against an increased risk for "false positives". In cases of generic words submitted as Community based strings, test runs by staff have also shown that the threshold is difficult to attain with the current scoring template and alternatives are being considered. There is merit in considering uniqueness in the nexus between string and community as a main factor for achieving a high score. To be an unambiguous identifier, the "ideal" string would have no other associations than to the community in question. This can arguably be achieved by using the community institution abbreviation as string, but there are other possibilities, for example by putting a prefix or suffix on a generic string to make it distinctly and uniquely associated with the relevant community (for example, prefixing "boy" to "scouts" for the community of boy scout organizations, or suffixing "growers" to "apple" for the associations of apple growers). Modification of the scoring template to reflect this approach is considered.

A higher granularity in the scoring template might provide for higher reliability in the scoring and reduce the impact of human judgment subjectivity. This is especially the case where the increase in granularity is attained by asking more detailed questions that are more objective. A higher granularity is considered, both by widening the scoring scale and de-aggregating some of the criteria (i.e., asking separate, more specific questions).

Registration policy is a criterion where a balance is needed between what is reasonably the most appropriate registration policy for a community and the risk for gaming of the process by an "open" application declaring itself as "community-based" to get an advantage in a contention situation. The approach taken is conservative in this respect, with the high score reserved for a registration policy only permitting members of the community to register. A widening has been considered, but it appears reasonable to maintain the chosen approach, while at the same time possibly de-aggregate this criterion in the scoring template in order to reduce the effect of missing out on one of the sub-criteria.

In accordance with the broad-based policy discussions, the category of community-based applications was introduced to implement a preference for community-based applications in contention situations. This preference is manifested in the process as an opportunity to win a

Comparative Evaluation for a contention situation. The test of the application's worthiness of such a preference is encapsulated in the Comparative Evaluation criteria and the threshold required for meeting the criteria, as detailed in the revised Applicant Guidebook. Both aspects are under review for the next version.

The only preference a community-based application will be given is the opportunity to win a Comparative Evaluation for a contention situation. If the application scores lower than the required threshold for winning, that opportunity is lost and there is no other preferential treatment to expect. In the eventuality that multiple community-based applications score above the required threshold in a Comparative Evaluation, they may all proceed to delegation if their strings are not identical or confusingly similar to each other. Otherwise, a further step is required to resolve the remaining contention among these applications.

Substantiated community support is a criterion that is scored for the application in a Comparative Evaluation. The absence of substantiated community support will lead to a lower score for the application in a Comparative Evaluation, reducing the application's likelihood of reaching an overall score above the required threshold for winning.

#### **Proposed Position (for this version of the Guidebook)**

The Comparative Evaluation scoring and threshold was reviewed and modified with increased granularity of the scoring template and an altered threshold for meeting the criteria in the revised version of the Applicant Guidebook.

### **D. STRING CONTENTION: COMMUNITY RESOLUTION ASPECTS**

#### **Summary of Key Points**

- In cases where multiple community-based applications meet comparative evaluation criteria, the other, non-community based applications that are in direct contention with the former will no longer be considered.
- In cases where multiple community-based applications address the same community and meet comparative evaluation criteria, if one applications demonstrates considerably more community support, it will prevail.
- In cases where multiple community-based applications meet comparative evaluation criteria, but neither has demonstrated significantly more support than the other or they represent different communities, and they cannot settle the contention amongst them, an auction will be held between these applications.

#### **Summary of Input**

In the case of two community-based applicants of equal strength, rather than go to auction, neither should get the proposed TLD. Instead:

- Establish a parallel and similarly-limited period for negotiating the merging of proposals whenever there is more than one community-based application for the same community, also under the control of an ICANN-appointed mediator. If agreement is reached, the parties would have a further month to amend one of the applications, if needed, and

such reformed application would be put at the very end of the evaluation queue, not delaying the process for other applicants.

- In case more than one community-based TLD passes the Comparative Evaluation (scores 11 or 12), and both applications are deemed to represent or have the support of similar or even sizable parts of the intended community, ICANN should refrain from allocating such TLD in this round, and the parties (both community-based and eventual open applicants) should resubmit it at the next application window, if they wish so. *A. Abril i Abril* (15 Dec. 2008); *CORE Internet Council of Registrars*; *PIR*.

What is the reason for not allowing contending parties to combine to form a new application? *K. Rosette* (26 Nov. 2008)

ICANN should encourage joint ventures as a means of resolving string contention, as opposed to prohibiting them. *CentralNIC* (13 Dec. 2008); *Melbourne IT* (15 Dec. 2008). Why are joint ventures not allowed? *C. Gomes* (18 Nov. 2008). Joint ventures will help resolve string contention among competing applications. *Demand Media* (15 Dec. 2008).

In the 1st public draft GFA text, this set always goes to auction if two or more of community-based applications score 11 points or more in the comparative evaluation, and the relative evaluation fails to determine a "clear winner". Suppose that all three community-based applications each score 11 points in the comparative evaluation, and the evaluators are unable to arrive at a basis for awarding priority between them.

Therefore, Chrysler LLC, with a capitalization that may be negative today, but historically has had better access to capital than any Tribal Government ever, is allowed to bid as a brand manager (JEEP CHEROKEE) against three rather poor tribes and their respective community-based applicants. This is not the outcome we should be designing for. The process should always select a qualified community-based application, and unlike contention sets formed for generic strings, communities can not change their names to accommodate the uniqueness of labels requirement of the DNS, there is no 'commercially reasonable' private settlement possible for communities, unlike commercial plays for generic strings." *E. Brunner-Williams* (15 Nov 2008)

ICANN may consider allowing applicants to apply for up to x (x being a reasonable number like 5 for example) gTLD strings with one application with a mandate to reduce it to one after string contention check. ICANN may charge a "change fee". ICANN may charge "change fee" if such action leads to extra work for ICANN and to discourage frivolous changes. *I. Vachovsky* (15 Nov. 2008)

Should an applicant who invests in the process but loses a String Contention be afforded the opportunity of selecting (or proposing) another character string that is not part of a contention set? *S. Metalitz (IPC, COA)*. Why can't an applicant choose an alternate string to avoid contention? The parties should be given an opportunity to select an alternative string if they fall into a contention set for auction. If the parties cannot agree to select different strings, then an auction would be able to proceed. *Smartcall* (4 Dec. 2008).

There will be a high degree of cooperation to resolve contention if the efficient allocation mechanism of last resort is auctions (as applicants will have incentives to not go to auction). If the mechanism is chance, less cooperation will occur and gaming may result. *Demand Media* (17 Dec. 2008). In the case of contention and where more than one applicant meets the criteria for community-based, "I believe ICANN has administered all that they can fairly and objectively

for the applicants with the final resolution to be left to an auction.” *R. Fasset, Employmedia.com* (15 Dec. 2008)

The option to elect to comparative evaluation raises an additional cost for community-based applicants. *E. Brunner-Williams* (15 Nov. 2008).

Does the cooling off period count against any applicable time limits? Why wouldn't the time limits be automatically extended for the amount of time used in the cooling off period? *C. Gomes* (18 Nov. 2008).

Will the Evaluators take into consideration the purpose of an application? Is “Content Contention” of concern to ICANN? Would ICANN accept two applications with dissimilar character strings but identical purposes? *S. Metalitz (IPC, COA)*.

It would be helpful for the Applicant Guidebook to clearly denote that the only instance when an applicant will be evaluated against another applicant is when two or more applicants each achieve the number of points required to be community-based. *R. Fasset, Employmedia.com* (10 Dec. 2008)

### **Issue**

How can a residual contention situation between multiple community-based applicants who meet the criteria in a Comparative Evaluation best be resolved, or possibly prevented?

### **Analysis**

The case at issue here is when there are multiple community applications, for identical or confusingly similar strings, that score above the threshold for criteria in a Comparative Evaluation.

There is some merit in refusing to resolve such a contention, notably to avoid polarization of the community, but this would have to be weighed against the negative consequences for all applicants involved in the contention set - their applications would all be considered void and they would have to reapply in the next round, implying both substantial extra costs and severe delays.

It should further be made clear that any final resolution necessary will be made ONLY between the community applications that score above the threshold, and NOT involve other applications in the contention set. This was ambiguous in the first version and will be clarified in the next version.

The opportunity to resolve the contention situation on a voluntary basis is present before a Comparative Evaluation takes place. To add an opportunity for such a resolution thereafter would carry a risk of delay with arguably meager chance of success, as the voluntary path has already been tried and failed. It is a preferred option to further facilitate the original opportunity for voluntary resolution by allowing more flexibility for agreements between the contending applicants, while safeguarding expedience in the process. Agreements between contending parties may result in deep modifications of an application that would have to be reviewed thru all steps from Initial Evaluation onwards. Applicants can investigate what agreements can be permitted in order to facilitate voluntary resolution of contention without resulting in substantive changes of any application. This should be considered in order to reduce the number of

contention cases to address by other means, thereby also avoiding additional costs for applicants.

An opportunity for applicants to present alternative strings, or to select a new string, would facilitate contention resolution and this was an option considered in the policy discussion but it was thought it would overly complicate the process. The agreed approach in the implementation advice accompanying the policy recommendations was, in short, that there be only one string per application to prevent gaming aspects.

For the final resolution in a case with multiple community applications, there are essentially two options to consider, either assessment of which one has majority support from the community or an auction among the winners. The first option is only applicable if the contenders do address the same community, while the second is applicable to any situation. From that perspective, an auction is preferred since that solution provides clarity of process and better predictability.

The role of the purported “purpose” of the TLD application: similarity of purpose between two applications is not a contention situation as defined by the process, which only is concerned with the ability of the TLD strings to coexist in the DNS. Provisions to prevent “content contention” are not part of the adopted policy, nor contemplated in the implementation. “Similarity of purpose” is, in fact, another way of saying “competition” and it is ICANN’s recognized duty to promote competition.

#### **Proposed Position (for this version of the Guidebook)**

A comparative evaluation where multiple community applications feature identical or confusingly similar strings and score above the threshold for meeting the criteria will need to be resolved through an additional step. In cases where the applicants represent the same community, there will be a test to determine if one of the applicants represents a significantly greater portion of the community. In cases where this is not so, the applicants will be afforded an opportunity to settle the contention. During that time, the community invoked in the applications may choose to support one of the applicants over the other, with the result that one of the applicants would no longer meet the criteria and the other applicant would prevail. Absent a failure of all these methods, an auction will be held.

If more than one community-based application meet the criteria, none of the non-community-based (open) applications in direct contention with the former will prevail. This step should only address the particular contention situation among these community applications and not involve other applications in the contention set in question. This will be clarified in the revised version of the Applicant Guidebook.

#### **E. STRING CONTENTION: LAST RESORT CONTENTION RESOLUTION--AUCTIONS**

##### **Summary of Key Points**

- The revised Guidebook proposes that if comparative evaluation, agreement between parties or other methods do not resolve contention among applicants, that auctions will be used as a last resort contention resolution method.
- Several other methods of contention resolution were considered. Auction is an objective, legal, timely way to resolve contention, while other candidates proved not to be.

- Bona fide community-based applicants meeting the criteria will not face non-community based applicants in auction. In certain cases, if after other additional methods fail, community-based applicants might face each other in auction.
- Proceeds from auctions will be returned to the community via a foundation that has a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community. One use of funds would be to sustain registry operations for a temporary period in the case of registry failure.

## **Summary of Input**

### **Support or Non-Objection to Auctions**

Demand Media strongly supports the use of auction to resolve contention for open TLDs. They note that there will be a high degree of cooperation to resolve contention if the efficient allocation mechanism of last resort is auctions (as applicants will have incentives to not go to auction). If the mechanism is chance, less cooperation will occur and gaming may result. Related to cooperation is the issue of self-resolution of string contention. Demand Media notes that joint ventures could be permitted if the joint venture proceeds with the original bidder except for the new ownership structure of the entity. *Demand Media* (15 Dec. 2008).

“As a related comment, I would like to add that the draft AGB is still unsure what to do in the case more than one applicant meets the criteria for community-based. In this scenario, I believe ICANN has administered all that they can fairly and objectively for the applicants with the final resolution to be left to an auction.” *R. Fasset (EmployMedia)* (15 Dec. 2008)

“Second, ICANN should encourage joint ventures as a means of resolving string contention, as opposed to prohibiting them. As long as the original applicant is part of the joint venture, the application shouldn’t change in substance sufficiently to prohibit an important means to resolve string contention. If ICANN really wants to use auctions as a contention resolution method of last resort, it should adopt a high refund policy, announce it soon, and permit joint ventures to be formed by two or more parties that are contending for the same or similar string.” *CentralNIC* (13 Dec. 2008). Several commenters also addressed the joint venture issue: E.g., noting that it is unclear why applicants may not resolve string contention situation through creating a joint venture to operate one string. *Rodenbaugh* (16 Dec. 2008). *Demand Media* (15 Dec. 2008). *K. Rosette* (26 Nov. 2008). *C. Gomes* (18 Nov. 2008). *Bank of America* (15 Dec. 2008).

4.3 Contention Resolution- “The Guidebook mentions an ‘efficient mechanism for contention resolution’ that has yet to be developed; the Guidebook only states a) that the first efficient means of resolution that will be employed is an attempt at a settlement between the two parties, and b) that auctions will be a last resort. ICANN should develop this mechanism that will come into play after attempts to settle a dispute between two competing applicants.” CADNA notes that the Guidebook needs further clarification regarding how funds resulting from auctions will be allocated. “There should be further clarification as to what would be deemed an appropriate allocation of these proceeds, the time frame for this decision and how this allocation would be determined through ‘community consultation.’” *CADNA* (15 Dec. 2008).

“The Guidebook mentions an ‘efficient mechanism for contention resolution’ that has yet to be developed; the Guidebook currently only states a) that the first efficient means of resolution that will be employed is an attempt at a settlement between the two parties, and b) that auctions will be a last resort. ICANN should develop this mechanism so that contention sets are not frequently pushed to auction.” *RILA* (15 Dec. 2008).

## General Concerns: Support for Comparative Evaluation Over Auction; Other

Supports mandatory, rather than optional, comparative evaluation on string contention. *AIPLA* (15 Dec. 2008) The DAG indicates that “auctions are one means of last resort” to resolve string contention. However, *SIIA* notes that no other means are discussed. *SIIA* has serious reservations about auctions as a mechanism for awarding new gTLDs.” *SIIA* (15 Dec. 2008)

Instead of auction, “not allocating the TLD would be more efficient to all parties involved (when multiple applicants for the same community-based TLD pass the evaluation and are all of them representative of such community).” *A. Abril i Abril* (15 Dec. 2008).

“If no community-based applications are presented other enterprises competing for a gTLD could be determined either between the competing parties or through an auction process (the one with the most money offered wins). There is no guarantee that the most appropriate trademark owner would retain a gTLD containing their brand name.” *R. Raines* (4 Dec. 2008).

“The so-called “comparative evaluation” process should be completely re-thought, since in its present form it will be extremely difficult for even a strong community application to emerge as a “clear winner” and escape being funneled into an auction.” “COA participants share the strongly stated concerns of the IPC regarding the inappropriateness of resorting to auctions to award gTLDs in most cases, see <http://www.ipconstituency.org/PDFs/IPC%20comments%20on%20auctions%20paper%20090708.PDF>, and thus urge ICANN to re-think the “comparative evaluation” procedure. Especially when only one community-based application is involved, it should be designed mainly to weed out specious claims of community-based status, rather than to impose an unjustifiably high hurdle between an otherwise qualified community applicant (including those that have survived Community Objection procedures) and the goal of a gTLD delegation.” *COA* (15 Dec. 2008)

The next Guidebook should clearly describe the nature of the “efficient mechanism for contention resolution”; it is doubtful that auction is appropriate for resolution of any string contention). *Bank of America* (15 Dec. 2008). *SIFMA* (12 Dec. 2008). *SIDN* (10 Dec. 2008) (revenues to ICANN aspect is problematic).

## Opposed to Auctions

On Module 4, George Kirikos asserts that auctions alone are insufficient mechanisms for allocating gTLDs, as they do not address the negative externalities imposed upon others.” “ICANN cannot be trusted to use the auction proceeds in a financially responsible manner, given what has been revealed in its IRS Form 990 disclosures, whereby ICANN's budget and staff compensation has been exploding to unreasonably high levels. Any proceeds should be used on a dollar-for-dollar basis to reduce ICANN fees for existing gTLD registrants, thereby refunding partially the externalities that ICANN is imposing upon society. Debacles like the ICANN Fellowship Project ...should not create new precedents for even grander debacles that ICANN and its insiders hope to fund through auction proceeds. Financial prudence in these tough economic times means not funding white elephants, but instead rebating the fees back to domain registrants.” “In the “Resolving String Contention”, bidders during any auction must place a bidding deposit of large enough size to ensure that no fraudulent bids take place (in which case the auctions would be replayed, but the deposit forfeited to the other bidders). It's unclear that the current mechanism adequately addresses this, given the short time frames discussed

(bank letters of credit or other instruments might be required before the auctions). We've seen spectrum auctions, for example, where bidders defaulted, e.g. [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-08-2207A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-08-2207A1.pdf). G. Kirikos (24 Nov. 2008)

Section 4.3 of the DAG states that "auctions are one means of last resort" to resolve string contention, but no other means are discussed. IPC reiterates its strong concerns about auctions as a mechanism for awarding new gTLDs (see <http://www.ipconstituency.org/PDFs/IPC%20comments%20on%20auctions%20paper%20090708.PDF> and previous submissions cited there). [These comments were addressed in the Explanatory Memo on Auctions, except for detail on uses of funds and revised comparative evaluation criteria. IPC (15 Dec. 2008).

"Section 4.3 deals with an auction to resolve contention. Is this to maximize the revenue of ICANN? This seems to go against the foundational principles to promote competition in the domain-name marketplace while ensuring Internet security and stability. Surely the parties should firstly be given the option of accepting an alternative name? If this is not agreed then by all means, have an auction." *Smartcall* (4 Dec. 2008)

For brand protection in resolving string contention in the new gTLD process, auctions should be avoided and other mechanisms should be developed. If auctions are deemed necessary in some cases, escrow amounts should be required to deter fraud or defaulting bidders; analysis of auctions and resultant revenues to ICANN in relation to ICANN's status as a nonprofit should also be assessed. *NAM* (15 Dec. 2008).

### **Opposed to Auctions – Don't Use if Rights Holder has Objected**

On Auctions, *MarkMonitor* recommends "Section 4.3- Auctions should not be adopted as a mechanism for string contention resolution if there has been an objection filed by a rights holder. This might occur if ICANN decides not to adopt the findings of the DRSP, and the rights holder has submitted an application for the string. To do so would enable ICANN to benefit from potentially infringing TLD applicants." *MarkMonitor* (15 Dec. 2008).

### **Opposed to Auctions – In Case of Community-Based Applicants**

"In the 1st public draft GFA text, this set always goes to auction if two or more of community-based applications score 11 points or more in the comparative evaluation, and the relative evaluation fails to determine a "clear winner". Suppose that all three community-based applications each score 11 points in the comparative evaluation, and the evaluators are unable to arrive at a basis for awarding priority between them.

Therefore, Chrysler LLC, with a capitalization that may be negative today, but historically has had better access to capital than any Tribal Government ever, is allowed to bid as a brand manager (JEEP CHEROKEE) against three rather poor (and corrupt for two out of the three) Tribes and their respective community-based applicants. This is not the outcome we should be designing for." "The process should always select a qualified community-based application, and unlike contention sets formed for generic strings, communities can not change their names to accommodate the uniqueness of labels requirement of the DNS, there is no "commercially reasonable" private settlement possible for communities, unlike commercial plays for generic strings." "It should be very clear that paying a fee to obtain access to an evaluated outcome rather than a auction outcome is an additional barrier to community-based applications who may be in a contention set, and failure to pay this fee will, in the simple case of a community-based

applicant and a "open" application, resolve the outcome as an auction in which the bidders are comprised of one auction-preferred bidder, and one auction-adverse bidder, with the obvious general outcome." "Again, this is not the outcome we should be designing for. The evaluation fee should be paid by the party forcing the evaluation, which is the "open" application which intentionally formed a contention set by applying for a community identifier, and has not withdrawn its application upon notice that a community-based application for that community identifier has been filed. Where there are no applicants within a contention set predisposed to an auction outcome, the evaluation fee should be paid by ICANN, which at its sole discretion selected the rather expensive International Chamber of Commerce rather than any other means to evaluate community-based applications, and which has, so far, rejected any contention outcomes other than "last man standing." *E. Brunner-Williams* (15 Dec. 2008)

"If there is no "clear winner" from the Comparative Evaluation, the resolution process is to process into a not-yet-finalized Efficient Mechanism for Contention Resolution, which will probably be auctions. Auctions do not appear to be a realistic mechanism for resolving contention among community-based applicants. Because it seems likely that many community-based applicants, such as non-profit organizations, may not have resources sufficient to compete with the open applicant in the auction setting, auctions are likely to favor those with open applications instead of those with community-based applications. In addition, an auction would work to the detriment of a community-based applicant unfortunate enough to compete with another community-based applicant and an open applicant. If the two community-based applicants both qualify through the Comparative Evaluation procedure and neither represents "a much larger share of the relevant community," they might both lose out to a better funded open applicant. This result seems contrary to the general preference for community-based applicants." *INTA* (15 Dec. 2008); *Arab Team* (15 Dec. 2008) (do not use auctions for community-based string contention).

### **Issues**

1. Whether to specify or more clearly explain that joint ventures are permitted under the current language of the Applicant Guidebook, as part of self-resolution of contention among competing applicants.
2. Whether to specify that ICANN staff is proposing that auctions be the last resort mechanism to resolve string contention.
3. Whether to add detail on potential uses of funds derived from auction.
4. Whether community-based applicants continue to auction in cases where comparative evaluation does not produce a clear winner.
5. Whether auctions should be used as a last resort contention mechanism in cases in which an objection has been filed against a proposed string.

### **Proposed Position (for this version of the Guidebook)**

1. Whether to specify or more clearly explain that joint ventures are permitted under the current language of the Applicant Guidebook, as part of self-resolution of contention among competing applicants.

Joint ventures are expected as part of the application process and it is designed to accommodate applications by new entities. Agreements are expected as part of self-resolution of string contention but a new entity, resulting in a material change to the application information would require re-evaluation for satisfaction of the Operational/Technical/Financial criteria. This might require additional fees or potential

postponement of consideration to a subsequent round. Applicants are encouraged to resolve contention amongst them by arriving at accommodations that do not materially alter the application information of the surviving applicant in order to achieve a timely resolution and decision. ICANN will work with evaluation service providers as they are retained to determine if re-evaluation can occur in a timely way.

2. Whether to specify that ICANN staff is proposing that auctions be the last resort mechanism to resolve string contention.

Considerable analysis of this question is provided below. Module 4 has been revised to clearly describe auction as the last resort contention resolution mechanism, only after contending parties have had an opportunity to resolve the contention themselves, comparative evaluation does not resolve the contention, and all objection processes or comparative evaluation processes are complete. It is expected that resolution between the parties will present a more economical resolution method for applicants and that most contention will be resolved in this manner.

3. What are uses of funds derived from auction?

Proceeds from auctions will be returned to the community via a foundation that has a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community. One use of funds would be to sustain registry operations for a temporary period in the case of registry failure. Other uses include outreach and education, and DNS stability/security projects. The revised Guidebook includes this added detail on the use of funds regarding the establishment of a foundation.

It is important to note again that it is thought that most cases of contention will be resolved by an agreement among the parties since that is a more economical solution to contention than auction. Therefore, few auctions are expected.

4. Whether community-based applicants continue to auction in cases where comparative evaluation does not produce a clear winner.

This situation is described more fully in a companion paper. Briefly:

- In cases where multiple community-based applications meet comparative evaluation criteria, the other, non-community based applications in direct contention with the former will no longer be considered.
- In cases where multiple community-based applications address the same community and meet comparative evaluation criteria, if one application demonstrates considerably more community support, it will prevail.
- In cases where multiple community-based applications meet comparative evaluation criteria, neither has demonstrated significantly more support than the other or they represent different communities, and they cannot settle the contention amongst them, an auction will be held between these applications.

Contending parties will be given an opportunity to resolve their differences, after which an auction will be conducted. An alternative was for both community-based applicants to come back at a later date (future round) after both have settled their differences but this seems to unnecessarily delay the delegation of a desired resource.

5. Whether auctions should be used as a last resort contention mechanism in cases in which an objection has been filed against a proposed string.

All objections will be resolved prior to resolution among contending applications. Presuming that the objection was not successful, and contention remains after the original objection was filed, then the contending applicants should proceed to resolution methods, including comparative evaluation, agreement among the parties, and auction.

## **Analysis**

### **Background**

Comparative evaluations were used in the 2001 proof-of-concept round and the 2003 sponsored TLD round. Comparative evaluation was also used in the .NET rebid process and transition of .ORG. It was widely noted in the community that ICANN did not have a good experience with comparative evaluation in the .NET rebid process.

The use of auctions in the new gTLD process has been discussed for many years. In 2004, ICANN received a paper on allocation of gTLDs via auction from the Organization for Economic Cooperation and Development (OECD) titled "Generic Top Level Domain Names: Market Development and Allocation Issues" (see <http://www.oecd.org/dataoecd/56/34/32996948.pdf>). This paper described allocation methods for gTLD strings, including auction and comparative evaluation. The OECD concluded: "On balance the economic arguments favour the use of auctions in some form, where scarcity exists, in relation to the goals set by ICANN for allocation procedures. They are particularly strong in relation to allocation decisions concerning to existing resources and where a 'tie-breaker' is needed during a comparative selection procedure for a new resource. In all cases, the best elements of comparative selection procedures could still be incorporated, at a prequalification stage for registries, using straightforward, transparent, and objective procedures that preserve the stability of the Internet" (pp. 51-52).<sup>1</sup>

The paper acknowledged that comparative evaluation may have the advantage of providing equity for new gTLD applicants, and permits the inclusion of broader objectives in the new gTLD selection process. However, it also noted that comparative evaluation lacks transparency and relies on subjective judgment in the determination of a winner for a proposed gTLD string.

Auction of new gTLDs was discussed during the development of the GNSO Recommendations during a meeting in Marina del Rey, California in 2007, and referenced in the final recommendations approved by the GNSO. Implementation details, including potential use of auctions, were discussed with the GNSO and others during the ICANN meetings in Los Angeles, Delhi, Paris and Cairo.

The GNSO Recommendations approved by the ICANN Board in June 2008 state that new gTLDs must be introduced in an orderly, timely and predictable way. There must be a clear and pre-published application process using objective and measurable criteria. All applications must initially be assessed in rounds until the scale of demand is clear.

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<sup>1</sup> Legal scholars familiar with ICANN and the DNS have also recommended auction as a means for distributing new gTLDs. See "An Economic Analysis of Domain Name Policy," *Hastings Communication and Entertainment Law Journal* (2003) (by Karl M. Manheim and Lawrence B. Solum) (<http://law.bepress.com/sandiegolwps/le/art1>).

The GNSO also recommended that if there is contention for strings, applicants may:

1. resolve contention between them within an established time-frame;
2. if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. **If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention** [emphasis added] and;
3. the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

In early 2008, ICANN retained PowerAuctions, LLC as an auction consultant, and published an Economic Case for Auctions in August 2008. The Economic Case paper became the basis for the auction model incorporated as Chapter 6 of the Resolving String Contention explanatory memorandum attached to the draft Applicant Guidebook.

### **Allocation Mechanisms Overview**

The GNSO Recommendations anticipate that there will be cases where two or more identical or nearly identical strings will meet the qualifying criteria and successfully complete all evaluations. Applicants should first be provided an opportunity to resolve contention themselves. In cases where one or more contenders is community-based, comparative evaluation may be used. If comparative evaluation is not used or does not result in a clear winner, contention may be resolved by an “efficient mechanism.” Staff has proposed that this mechanism be auctions. There are essentially four ways to resolve contention:

- Comparative evaluation – subjective criteria are applied to each contender in order to determine the better or best applicant. This method, supported by the GNSO Council for community-based applicants, is problematic because devising measurable criteria is difficult and the process will lead to controversial results.
- Auction – In a pre-determined methodology, contending applicants submit monetary bids for the TLD. Generally, the highest bid wins. This method is objective. It is supported by the OECD (Organization for Economic Cooperation and Development, [www.OECD.org](http://www.OECD.org)) and other stakeholders including aspiring gTLD registries.<sup>2</sup>
- Random selection – A coin-flip or (in the case of several contenders) random drawing determines the winner. The method is objective but is problematic as law in certain jurisdictions provides a direct barrier to using a lottery or other form of selection by chance to determine the winner of a contested gTLD.

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<sup>2</sup> The GNSO stated that in these cases “a process will be put in place to enable efficient resolution of contention.” In that report, the council indicated that they had considered auctions as discussed in policy discussions and implementation meetings with ICANN staff an auctions merited additional study.

- Best terms - The party agreeing to best contract terms would be the winner. Determination of what are best terms is problematic and will lead to gaming. For example, the choice could be made on a registry reliability or response time measure that won't necessarily serve registrants better but would result in a number of overreaching application promises.

### **1. Selection by Chance**

Selection by chance includes the use of lotteries, "short straw", "coin flip" or random selection as a mechanism for allocating applications for new gTLDs. ICANN has received advice from outside counsel that lotteries (or other selection by chance methods) might be viewed as illegal in some jurisdictions, and such laws may provide a direct barrier to using lotteries or other chance mechanisms in order to determine the winner of a contested gTLD.

### **2. Comparative Evaluation**

ICANN previously used comparative evaluation for the transition of .ORG from VeriSign to PIR, the .NET rebid process, and the 2000 and 2003 new gTLD rounds. Subjective aspects of comparative evaluation in the .NET rebid made selection of a winner in a close contest difficult and vulnerable to litigation. ICANN anticipates that comparative evaluation will be used to resolve contention among applicants when at least one applicant purports to represent a community or is seeking a community-based gTLD.

The disadvantages of comparative evaluations can be summarized as follows:

- It is difficult to establish clearly objective criteria that allow the evaluator to differentiate among competing applications that have already passed all evaluation criteria;
- comparative evaluations take relatively longer time periods than objective measures and cost more;
- Depending on how the comparative evaluation is structured, the process may favor well-connected applicants, and thus may not be any more protective of disadvantaged applicants than auctions;
- Comparative evaluation is difficult in cases where community-based applicants are up against open applicants over the same string.

### **3. Auctions**

ICANN has received a number of inputs from the community on the potential use of auctions to resolve contention among competing new gTLD applications.

Auctions are an objective and transparent means to resolve string contention. Given that bids are observable and verifiable by a court or any third party, the final allocation is less likely to be legally contested relative to a comparative selection procedure. The key benefits of a well-designed auction mechanism include the following:

- Transparent and objective means for determining a winner
- Efficient allocation – puts gTLD strings in the hands of those who value them
- Efficient process – fully dynamic auction, concludes in one day to one week
- Revenue maximization (although this is not one of ICANN's goals in the new gTLD process)

Parties competing for the same or similar strings would be able to collaborate with each other once contention sets have been identified. This would permit applicants for the same or similar strings to work out contention amongst themselves between the time in which all applications are posted and the initial evaluation process closes, and this would be in line with the GNSO

Recommendations. This would be a more cost effective solution for most contending parties and it is anticipated most contention would be resolved prior to the auction occurring. ICANN's task is to make a final determination among the applications received. As an example, how best should ICANN resolve contention for .shop if VeriSign, NeuStar, Afilias, Nominet and NIC.MX all meet the base criteria? An auction mechanism would provide for a clear and objective means for resolving contention among multiple applicants. In another example, how should ICANN resolve contention for .car, .cars, .care, and .cares (if it is determined that .car, .care and .cars are in contention and .cares and .care are in contention with each other)?

#### **4. Selection by Best Terms**

ICANN could also determine to resolve contention by selecting the applications that present the "best terms". This would require ICANN to identify in advance "best terms." Determination of what are best terms is problematic and will lead to gaming. For example, the choice could be made on a registry reliability or response time measure that won't necessarily serve registrants better but would result in a number of overreaching application promises.

#### **Uses of Funds**

ICANN's plan is that fees and costs of the new gTLD program will offset, so any funds coming from a last resort contention resolution mechanism such as auctions would result in new revenue to ICANN. Therefore, consideration of a last resort contention mechanism should include the possible uses of funds. Clearly, any funds must be used in a manner that supports directly ICANN's Mission and Core Values.

Given that possible new revenue from contention resolution mechanisms could range from zero to potentially significant sums, it is challenging to identify specific uses with certainty. Proceeds from auctions will be returned to the community via a foundation that has a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community. One use of funds would be to sustain registry operations for a temporary period in the case of registry failure. Other uses include outreach and education, and DNS stability/security projects. Other possible uses could include reduction in application fees or grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, or other specific projects for the benefit of the Internet community in accordance with ICANN's security and stability mission.

## **XII. REGISTRY AGREEMENT**

### **Summary of Key Points**

- ICANN received dozens of thoughtful and constructive comments on the draft proposed Registry Agreement.
- There have been significant revisions to the proposed Registry Agreement in response to public commentary and discussions:
  - ICANN has modified the proposed process and included limitations on implementing global amendments to the form of the Registry Agreement.
  - ICANN has included covenants requiring equitable treatment among registry operators and open and transparent actions by ICANN.
  - The recurring registry fees to ICANN have been reduced to US\$25,000 per year, plus a flat \$0.25 per transaction for registries with over 50,000 names.

### **Summary of Input**

This section organizes the summary of responses about the Registry Agreement into the following categories: *General Comments, Covenants of ICANN, Consensus Policies, Compliance, TLD Delegation, Term and Termination, Payment Concerns, Pass-Through of Registrar Fees, Price Controls, Amendment Process, Dispute Resolution and Damages, Indemnification, Warranties and Liability, and Changes of Control.*

### **General Comments**

**General Concerns Regarding Proposed New Form of Registry Agreement.** The introduction of an entirely new “base agreement” in the draft appears to be based only on a desire to simplify the form of agreement. With a few exceptions, it certainly does not stem from the recommendations in “Term of Reference Four – Contractual Conditions: [http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#\\_Toc35657640](http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm#_Toc35657640).” The resulting base agreement is so flawed in substantive provisions that consideration should be given to abandoning it in its entirety. At the very least, the Board should consider, as a possible starting point, the forms of registry management agreements in force for .ORG, .BIZ and .INFO. Among other sections that must be added: ICANN covenants, consensus policies, limits on ICANN authority to make changes; and certain fee provisions should be removed. *PIR* (15 Dec. 2008). ICANN must address other omissions and changes in the agreement - e.g., the TLD zone servers; the term of agreement; renewals; termination rights; dispute resolution; arbitration; liability; registry fees; RSTEP cost recovery; collection of registrar fees by registries; changes and modifications to the agreement; notice of changes; indemnification; and changes in control. *RyC* (6 Dec. 2008); *G. Kirikos* (24 Nov. 2008) (cites numerous deficiencies and need for revisions to the base agreement—e.g., renewal provisions, pricing, equal treatment trigger problem, fees, changes in registry control, rights protection mechanisms); *Demand Media* (Module 5, 15 Dec. 2008) (suggests numerous revisions – e.g., spell out rights protection mechanisms, indemnification, arbitration, community policies, audits); *A. Abril i Abril* (Module 5,

15 Dec. 2008) (certain omitted provisions should be added back into agreement — e.g., rights to data, traffic data, extent of delegated authority; clarification needed for public law corporations and community-based TLDs). Why does the currently proposed draft Registry Agreement deviate so much from existing Registry Agreements? It is very one-sided in favor of ICANN. Are there key areas in existing agreements that ICANN Staff think have been unsuccessful? If so, what are those and why are they thought to be unsuccessful? *C. Gomes* (18 Nov. 2008).

Need for a Balanced Agreement. Registries believe that we should focus now on crafting an agreement that is fair, gives ICANN the tools it needs to achieve its limited mission, and gives Registries the stability and predictability they need to operate businesses. Provisions under which changes to the fee provisions of each registry's agreement should be negotiated on an individual basis, as appropriate. *RyC* (6 Dec. 2008).

Impact on Existing TLDs. What will be the impact of the adoption of the new form of Registry Agreement on existing TLDs? *G. Kirikos* (24 Oct. 2008).

Compliance with Application; Changes. Do TLDs have to follow what was in the application? *J. Neuman, C. Greer; Notes from October 29 RyC Meeting.* ICANN should anticipate and accept that reasonable changes may occur during the course of what could be a lengthy review process. Registries also believe that the Registry Agreement should obligate operators to fulfill the commitments made in their applications, particularly with respect to community based applications, and note that this provision does not accomplish that goal. *RyC* (6 Dec. 2008). Can an applicant apply for a TLD and choose not to use it? Can applicants apply for a TLD to prevent others from using it? *F. Hammersley* (24 Nov. 2008; 6 Nov. 2008) (inquires about possible pre-application opinion on similarity to a reserved name; what is the position on gTLD "warehousing" to prevent others from using it).

Contract Execution. Section 4.4 – If an Applicant is in good faith negotiations with ICANN on the Registry Agreement, ICANN should not have the right to assign the contract to the runner-up applicant if the contract has not been signed within 90 days. *MarkMonitor* (Module 4, 15 Dec. 2008); *C. Gomes-GNSO New gTLD Question and Answer Open Teleconference.*

## **Covenants of ICANN**

ICANN Accountability. More ICANN accountability is needed. The covenants section of the Registry Agreement needs clarification and adjustment to conform with established registry expectations, and the agreement also raises concern due to certain unilateral changes. ICANN needs to reconsider the significant changes it made to the "Covenants of ICANN" (article 3) provision. The proposed changes in this section eliminate ICANN's obligations to (a) operate in an open and transparent matter consistent with its expressed mission and core values, and (b) not apply its standards, policies, procedures or practices arbitrarily, unjustifiably or inequitably, and not single out particular Registries for disparate treatment unless justified by substantial and reasonable cause. As previously discussed, because Bylaws can be changed, Registry Operators feel very strongly that ICANN's accountability for compliance with the most basic obligations of fair dealing should be set out in the Registry Agreement. *RyC* (6 Dec. 2008). Why was the reference to the "equitable treatment" provisions in the old form of Registry Agreement (Sections 3.2(a) and (b)) removed from the list of issues which consensus policies could not modify? *M. Palage, J. Neuman; October 29, RyC Meeting.*

Zone Server and Nameserver Implementation Timeframe. Related to Section 3.1, the Registry Operators believe that ICANN should be willing to commit to a best efforts standard that targets implementation within 7 days for changes to the TLD zone server and nameserver. ICANN is obligated to ensure that the authoritative root points to the designated TLD zone servers to the extent ICANN has the authority to do so. This is a very limited obligation with respect to a matter of fundamental importance to Registries, and should remain in the Registry Agreement. *RyC (6 Dec. 2008).*

## Consensus Policies

Limitations. Why was the definition of “Registry Services” removed from the Consensus Policy specification? *M. Palage, October 29, 2008, RyC Meeting.*

Scope of Consensus Policies. Registry operators cannot agree to expand the scope of Consensus Policies beyond the long-accepted picket fence, and believe that it is not in ICANN's long-term interests to do so. Because Bylaws can and do change, Registries feel that contractual protections for the picket fence are essential. *RyC (6 Dec. 2008).* Registry Agreement pricing is not a stability or security issue and thus not within the bounds of the picket fence. It is a matter on which each registry is free to agree via contract, but it is not an appropriate matter for Consensus Policy. *M. Palage, October 29, RyC Meeting.*

## Compliance

Audit Rights. ICANN has the right to audit a registry's compliance with each and every aspect of the Registry Agreement. ICANN already has the right to audit compliance with the fee arrangements and with ICANN's technical and functional specifications. This provision could impose significant costs on Registry Operators (even if ICANN has to pay the actual auditor) that are not justified unless the audit is necessary to investigate a bona fide complaint about a material violation of the Registry Agreement. *RyC (6 Dec. 2008).*

Sanctions Program. ICANN should require re-evaluations in the event of blatant violations of the TLD's specified purpose that simplifies the deregistration process. *Hacker (14 Dec. 2008).* Is there a compliance and sanctions process for the companies who will run the new gTLDs? And if so, what is it? *Anonymous Email (26 Nov. 2008).* Where in the draft base agreement is implementation of GNSO recommendation 17 about a “clear compliance and sanctions process must be set out in the base contract that could lead to termination?” *C. Gomes (18 Nov. 2008).* ICANN should use graduated sanctions for registries and additional rights protection mechanisms should be encouraged beyond UDRP. *MarkMonitor (Module 5, 15 Dec. 2008).*

Community-Based TLDs. On contracts post-delegation, Demand Media would like to see ICANN include in community contracts a requirement that changes only be considered due to changes within the community itself. *Demand Media*; [http://forum.icann.org/lists/gtld-transition/pdfm3Q\\_H889SJ.pdf](http://forum.icann.org/lists/gtld-transition/pdfm3Q_H889SJ.pdf). If a community application makes it through without contention, are they bound to the restrictions in application? *Demand Media-GNSO New gTLD Question and Answer Open Teleconference.*

Reporting Requirements. ICANN demands monthly reporting by the registry. It is unclear what the purpose of such reporting is and what the ground for such an obligation would be. ICANN

demands reporting on transfers. Again, it is unclear what the purpose of such reporting is and what the ground for such an obligation would be. *SIDN* (10 Dec. 2008).

Whois Obligations. Was it intended that all new TLDs have only the Whois obligations of their registries? If so, why? *S. Metalitz* (25 Nov. 2008). It is essential to combating online fraud that full Whois information be available at the Registry Operator level (Base agreement Section 2.4, specification 4). *Microsoft* (Guidebook comments, 15 Dec. 2008).

General; ICANN Enforcement Capacity. “Standards Compliance: Registry Operator shall implement and comply with all existing RFCs.” Does this include RFC 2549? *E. Brunner-Williams* (25 Nov. 2008). ICANN must demonstrate that ICANN has sufficient capacity to enforce contract compliance with an as-yet unknown number of new contracting parties, especially in light of outstanding questions regarding existing contracts (such as the proposed amendments to the Registrar Accreditation Agreements and problems with the Whois data accuracy reporting system). *U.S. DOC-NTIA* (18 Dec. 2008); *Lovells* (15 Dec. 2008); *News Corporation* (16 Dec. 2008) (ICANN also must dedicate resources to enforcement); *Grainger* (15 Dec. 2008) (policing new TLDs for compliance with intended use is ICANN’s responsibility). ICANN must foster consistency and empower its contracting parties with the clear right to suspend resolution to any abusively registered domain; this right is absent in the proposed new Registry Agreement. ICANN should consider a notice and takedown system for abusive registrations. *Rodenbaugh* (16 Dec. 2008); *ICA* (16 Dec. 2008) (strongly oppose cost-free takedown procedures for domains alleged to be established in bad faith for new and existing gTLDs; bad faith is already one of the key elements of the UDRP and should be one or three elements in a balanced proceeding, not the single determinative element; ICANN and registries should increase resources for taking down domains used for criminal activity).

## **TLD Delegation**

Applicant Implementation. The contract should allow the applicant to choose its own timetable for entering into the root zone. To prevent complete preclusion of a string by an applicant, an applicant should be required to proceed to delegation and to register at least one second level domain with legitimate content within three years after award of a gTLD. *Bank of America* (15 Dec. 2008); *Visa* (13 Dec. 2008) (brand owners should be able to register their trademark extension to protect it but should not have to actively use it or fulfill back-end requirements). We recommend that the contract require the new domain to adopt the best available security measures, such as DNSSEC, a robust Whois (see section 2.1.3) and the current Add Grace Period Limits Policy which currently does not have even “temporary policy” status. *Bank of America* (15 Dec. 2008). Is there any idea what the time period will be for ICANN to determine that a registry’s initial start-up requirements are not satisfied such that the gTLD can be delegated into the root zone within the time frame specified in the Registry Agreement? Should this correspond to the time period by which the TLD has to become active? *C. Gomes-Compiled Comments on the new gTLD Applicant Guidebook*.

## **Term and Termination**

Term of Agreement. Extending the term to ten years does not justify the many changes ICANN proposes to make in this agreement. In fact, the protections in place in the current agreements are far more important, and once in place, the term itself is less critical to Registry Operators. *RyC* (6 Dec. 2008).

**Termination and Renewal.** The current Registry Agreement places modest constraints on ICANN's rights to refuse to renew, which ICANN proposes to eliminate in the draft. The draft also eliminates existing provisions regarding the terms under which such renewals will take place. The current agreement assures ICANN that it can bring renewal agreements in line with contract changes that have been implemented during the term, but provide the degree of stability and predictability Registry Operators need to operate their businesses, both with respect to terms and pricing. Those protections should be maintained. *RyC* (6 Dec. 2008). The new draft extends ICANN's termination rights to any "fundamental and material breach" of the agreement, including any changed terms. *RyC* (6 Dec. 2008). Related to Section 4.4, the reference to "critical registry functions" should be defined in the same manner that this phrase is used in the proposed gTLD Registry Continuity Plan. *RyC* (6 Dec. 2008). Competitive bidding should be required for renewals of a gTLD Registry Agreement, rather than granting incumbents perpetual right to renew; this serves the interests of registrants and may lower domain prices and raise operating specifications. *U.S. DOC-NTIA* (18 Dec. 2008). If the Registry Operator operates a closed, branded gTLD or a gTLD with fewer than a set number of registrants, the Registry Operator should have the right to terminate the Agreement and cease operating the registry. *Microsoft* (Guidebook comments, 15 Dec. 2008). *Demand Media* (Module 5, 15 Dec. 2008) (registry should have right to terminate under certain conditions).

### **Payment Concerns, Pass-Through of Registrar Fees**

**Bilingual Fees.** Regarding Section 6.1 of the New gTLD Draft Agreement, the fee structures do not make any provisions for bilingual Registry Operators, who may be required under equality legislation to make bilingual domain registrations available at no extra cost to the end user. We wish to suggest that Registry Operators who are legally required to operate bilingually should be dealt with on a different fee structure. *dotCYM* (15 Dec. 2008).

**Registry Fee Collection.** Registry operators have agreed in the past to collect fees, subject to a specific cap, from Registrars on behalf of ICANN. Registry operators cannot, however, agree to the changes proposed by ICANN, which remove all limitations on what ICANN may require Registries to collect. Also, regarding Section 6.4, this provision would appear to obligate Registries to pay registrar fees with no phase-in period to allow Registries to first collect the fees from Registrars. Registries should not have to compensate ICANN for fees due by Registrars unless they have had the opportunity first to collect those fees. *RyC* (6 Dec. 2008).

### **Price Controls**

**Maintain Price Controls.** ICANN should clarify whether price controls that apply to domain names will be preserved; before any elimination of them ICANN must demonstrate the mechanisms to ensure that prices will be controlled by market forces. *News Corporation* (16 Dec. 2008); *K. Pilna* (16 Dec. 2008) (concern lack of price controls and preserving TLD neutrality); *eedlee* (Module 5, 12 Nov. 2008); *Swa Frantzen* (Module 5, 11 Nov. 2008); *A. Allemann* (Module 5, 12 Nov. 2008); *T. Smith* (Module 5, 8 Dec. 2008); *C. Christopher* (Module 5, 8 Dec. 2008); *P. Gusterson* (Module 5, 8 Dec. 2008); *D. Carter* (Module 5, 13 Nov. 2008) (why opening up old debate); *YouBeats* (Module 5, 12 Nov. 2008); *E. Rice* (Module 5, 13 Nov. 2008); *Searchen Networks* (Module 5, 14 Nov. 2008); *S. Morsa* (Module, 8 Dec. 2008); *B. Regan* (Module 5, 9 Dec. 2008); *G. Yandl* (Module 5, 15 Dec. 2008); *M. Menius* (16 Nov. 2008, 12 Dec. 2008, 15 Dec. 2008); *K. Pitts* (12 Nov. 2008); *C. Mendla* (13 Nov. 2008); *F. Schilling* (Module 5, 21 Nov. 2008); *K. Ohashi* (13 Nov. 2008); *K. Smith* (13 Nov. 2008); *Tom* (Module 5,

15 Nov. 2008, 13 Nov. 2008); *URL Names* (4 Dec. 2008); *C. Beach* (Module 5, 8 Dec. 2008); *J. Monasterio* (10 Dec. 2008); *M. Sumner* (Module 5, 13 Nov. 2008); *M. Castello* (13 Nov. 2008); *G. Boulter* (15 Nov. 2008); *R. Lafaye* (10 Dec. 2008); *A. Miller* (Module 5, 8 Dec. 2008); *J. Sprout* (11 Dec. 2008); *WMI* (14 Dec. 2008) (should not allow tiered pricing).

Impact on Innovation and Public Interest. Is it not in the ICANN charter to help support the growth and definition of the Internet for the public? The public does not need control but protection it seems from those that want to enslave it for profitable gain beyond what most can cope with. We need to help the newcomers as well as the founding members of the web to have as free and open a marketplace as can be made available. Allowing the introduction of open charging fees that could be anything the registrar deems appropriate is a recipe for disaster. As an example, .TV would have stood a much greater chance at succeeding if not for the incredibly high registration fees for their premium names. This was not good for the public, nor the domain owner. The public was denied a domain name that was stunted in its growth from the start. *M. Castello* (13 Nov. 2008).

Impact on Existing gTLDs. The new gTLD contracts must have hard caps in place to protect existing gTLD registrants. New gTLDs are NOT effective substitutes for existing gTLDs, and thus "competition" isn't going to keep VeriSign's pricing power in check. Even with a 10-year transition period, it would shock the conscience if VeriSign was permitted to arbitrarily and unilaterally raise the renewal price of .coms to millions or billions of dollars per year (say \$1 billion/yr for Google.com, \$10 million/yr for Hotels.com, \$50 million/yr for Cars.com, \$30 million/yr for Games.com, or whatever the market would bear), effectively re-auctioning the entire list of premium domain names to the highest bidder, removing the existing registrant and replacing things with .tv style pricing. Alternatively, all existing gTLD operators need to agree to language, before any new gTLDs are approved, that make explicit that the hard caps cannot be removed regardless of whatever happens in other gTLDs. *G. Kirikos* (24 Oct. 2008); *G. Kirikos* (4 Dec. 2008) (raises ICANN staff process concerns about changing price controls policy); *C. Christopher* (16 Dec. 2008) (equal cost registration and renewal for all registrants of retail TLDs to avoid extortion by registries, and ICANN must show its own financial accountability).

Lack of Price Controls. Maximum price caps or other terms benefiting consumers should be imposed in those cases where competitive bidding mechanisms will not adequately limit the ability of Registry Operators to exercise market power. *U.S. DOC-NTIA* (18 Dec. 2008); *ICA* (16 Dec. 2008) (draft contract for new registries lacks any pricing controls, and could lead to tiered pricing). Price caps should not be included in new gTLD agreements, but ICANN must be cautious about removing the caps in incumbent agreements given potential for tiered renewal pricing. *Go Daddy* (15 Dec. 2008); *D. Craig* (17 Nov. 2008) (new TLD purchaser should be able to set pricing, but there should be safeguards against monopolistic, unrestricted price increases); *I. Vachovsky* (15 Nov. 2008) (consider a model where gTLDs divided into two groups – (1) unregulated free market and competitive and (2) regulated monopolistic). To preclude abusive behavior, ICANN should have review mechanisms and then approve or disapprove any renewal price increases over a certain threshold. The potential exists for elimination of negotiated price caps in existing Registry Agreements, leading to differential pricing, as well as extortionate renewal pricing. *Rodenbaugh* (16 Dec. 2008). The base agreement represents a Trojan Horse that can be used by existing gTLD Registry Operators to engage in tiered pricing, due to the equal treatment clauses in existing contracts and the removal of price controls. It should take into account contingency that U.S. Dept. of Commerce will not renew the JPA. The base agreement tends to favor Registry Operators at the expense of registrants. There should not be bilateral, non-public agreement amendments by ICANN and

Registry Operators. *G. Kirikos* (24 Nov. 2008); *ICA* (16 Dec. 2008) (do not reopen tiered pricing through backdoor of new registry contracts).

Vertical Separation. Regarding vertical separation in registries under price caps, the Report is correct that relaxing the vertical separation requirement for registries operating under a price cap is undesirable, and will remain so for at least as long as those registries, particularly .com, account for such a disproportionate volume of current registrations. *Steve Metalitz (IPC)*. Open-access and price cap controls are essential complements to vertical ownership. *D. Maher* (forwarding J. Cave study). The new gTLD process must not be used to resurrect differential pricing by registries. ICANN should maintain vertical separation between registries and registrars and enforce equal access policies for registrars, with any exceptions to these policies strictly limited. ICANN should move slowly toward permitting integration of registry and registrar services, but should not use experimentation with single-organization and hybrid registries as a prelude to relaxing vertical separation and equal access requirements for a broader pool of gTLDs. *ICA* (16 Dec. 2008).

Objection to Registrar Price Disclosure; Notice of Increases. In a competitive market for registrar services, we do not understand ICANN's justification for requiring Registrars to disclose their price structure to registrants. The transparency of pricing for registry services provision is problematic; pricing policies are contracts between registries and registrars, not between registries and registrants. *RyC* (6 Dec. 2008). It is unclear why a registry has to publish prices on its website. *SIDN* (10 Dec. 2008). All Registries should be required to provide adequate notice before increasing renewal prices. *Network Solutions* (15 Dec. 2008).

Effect of Equitable Treatment Provision in Existing Registry Agreements. The following language—"ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause" - could lead to existing gTLD operators such as VeriSign petitioning to get the same treatment as new gTLDs in regards to not having a pricing cap. This could open up the door to variable pricing, whereby registrants of popular and/or high-earning domains would have to pay more for the same service, simply because they can afford it. *M. Sumner* (Module 5, 13 Nov. 2008). Before any new contract is approved with VeriSign in regard to .com and .net, unambiguous language must be specifically included in the contract that prohibits tiered-pricing on new registrations and renewals in the .com and .net namespace. Comment on the CRA Report is against existing gTLD registries being able to modify their agreements to remove price caps. *M. Menius* (16 Nov. 2008). Given the existing Registry Agreements state that ICANN cannot apply inequitable policies to registries, a logical conclusion must be that if the new gTLDs have no pricing controls, the existing registries will apply to have price controls removed also, and ICANN will be in no position to deny them. *C. Beach* (Module 5, 8 Dec. 2008). Will the issue of tiered pricing be revisited; what mechanisms are in place to prevent existing gTLDs from using the "equitable treatment" clause to have price controls removed? *G. Kirikos* (24 Nov. 2008). If price caps are not included for new gTLDs, then price caps must be removed from the .biz Registry Agreement. Any material changes for the newer, no-price capped TLDs regarding vertical separation and equal access in general must be applied to NeuStar – this is required under the .biz Registry Agreement and ICANN's Bylaws. Price caps are appropriate for larger TLDs that have a much higher percentage of the market and are not appropriate for gTLDs that do not have any real market power. *NeuStar* (15 Dec. 2008).

## Amendment Process

Objection to unilateral amendment by ICANN; other changes. To remove the potential for unilateral amendments to the Registry Agreement by ICANN, ICANN should remove the Board's ability to override a GNSO's veto of agreement amendments. *NIC Mexico* (9 Dec. 2008); *Demand Media* (Module 5, 15 Dec. 2008) (remove ICANN ability to change contract); ICANN should not have ability to change contract terms unilaterally; *CentralNIC* at 2 (13 Dec. 2008); *dotSCO* (15 Dec. 2008) (ICANN should not have unilateral ability to alter contract); *Van Couvering* (15 Dec. 2008) (instead allow ICANN to make changes all at once, but changes have to approved by 2/3 of registries). This is completely unnecessary, and an extraordinary act of over-reaching on ICANN's part. ICANN has described this provision as providing necessary flexibility, but has not identified any situation in which the absence of this right has hindered ICANN's ability to perform its mission. But the fact is that ICANN already possesses authority to impose new obligations on Registry Operators through the Consensus Policy provisions of the agreement, and has emergency authority to do so using the Temporary Policy provisions of the Registry Agreement. These provisions give ICANN the authority at all times to make changes necessary to preserve the stability and security of the Internet and the DNS. ICANN has not – because it cannot – point to any situation where it needed the kind of blank check it is requesting here. *RyC* (6 Dec. 2008). These annexes should not be subject to unilateral change absent a stability or security consideration that supports creation of a Consensus Policy. *RyC* (6 Dec. 2008). *dotSCO* has reservations on the proposed provisions for “Universal Contract change,” and requests that ICANN respect the various legal systems that proposed Registries may be operating under. *dotSCO* (15 Dec. 2008).

Burden Shifting Concern. There is no justification for shifting the burdens in the way this provision does. Under the arrangement proposed by ICANN, however, ICANN can impose any changes it wants, and the burden is on Registries to block those that regulate activities outside the picket fence. Even if such burden shifting could be supported, the requirement of a vote of two-thirds of the number of Registries to overturn such changes is not an effective check in an environment involving hundreds, if not thousands, of TLDs employing many different business models. *RyC* (6 Dec. 2008).

GNSO Role. It is not clear what the ability of the GNSO Council to overturn a change by a two-thirds vote adds by way of protection for Registries. Rather, it problematically expands the mission of the GNSO Council, which currently consists of policy development only. *RyC* (6 Dec. 2008); *NeuStar* (15 Dec. 2008) (the GNSO Council should not be involved in any of the gTLD Registry Agreements except for the limited role already afforded to it as part of serving as managers of policy development per the Consensus Policy provisions of the agreements).

Clarifications and Modifications. What was the genesis of Article 7 of the new form of agreement, and how does ICANN expect to enforce these provisions? *J. Neuman; October 29, RyC Meeting.* What can ICANN change under Article 7 – Changes and Modifications? *Anonymous Email.* If Section 7 must stay in the Registry Agreement, then we request the following changes: (1) the term “Affected Registries” is unclear and should be defined; “Affected Registry Operator” should be defined as a “TLD operator that is materially impacted by such proposed change;” (2) ICANN should then provide notice to those TLD operators that ICANN has determined are the Affected Registry Operators who are entitled to vote; (3) ICANN should publish a list of those TLD operators that ICANN has determined are the Affected Registry Operators; (4) there should be a challenge process and dispute resolution process in the event that a party does not agree with ICANN's assessment of who constitutes an Affected Registry Operator; (5) the vote to disapprove the proposed changes to the Registry Agreement should be

51% of the Affected Registry Operators, not 2/3 vote; (6) in the event that the proposed change is disapproved by the Affected Registry Operators, the ICANN Board vote to override such disapproval shall be 2/3 vote of the ICANN Board. *Demand Media* (15 Dec. 2008). Section 2.7 of the proposed Registry Agreement should clarify that only changes that might decrease the effectiveness of Rights Protection Mechanisms are subject to prior ICANN approval. *Rodenbaugh* (16 Dec. 2008).

Uniform Standard Agreements. Uniform standard agreements that cannot be altered are essential. *WMI* (14 Dec. 2008); *SIFMA* (12 Dec. 2008). There should be one or at most two (one for open and another for community) standard contracts between ICANN and registry owners. The standard contract should not be subject to modification. The contract term must be finalized in the rule-making process and not left open for further negotiation or modification by the ICANN Board of Directors. *Bank of America* (15 Dec. 2008).

### **Dispute Resolution and Damages**

Process Details. The existing Registry Agreement sets out a specific process whereby either party can invoke the other party's cooperative engagement obligation, and then sets out a series of steps for that process. While there are many ways this process could reasonably proceed, these changes remove all specificity – including most importantly, specificity about when the period starts. *RyC* (6 Dec. 2008).

Arbitration Requests. The Registry Operators object to mandating a single arbitrator. Moreover, we see no grounds for substituting a blanket right to seek extraordinary damages for the limited right set out in of the current Registry Agreement (Failure to Perform in Good Faith), which provides procedural and substantive safeguards to prevent abuse. *RyC* (6 Dec. 2008). Can ICANN seek punitive damages under the new agreement? *J. Neuman, October 29, RyC Meeting.*

### **Indemnification, Warranties and Liability**

ICANN Liability. ICANN should be accountable and not have broad immunity. *RILA* (15 Dec. 2008); *G. Kirikos* (24 Nov. 2008); *SIFMA* (12 Dec. 2008); *CADNA* (15 Dec. 2008); *Bank of America* (15 Dec. 2008); *FairWinds* (15 Dec. 2008). Applicants must agree to release ICANN from liability for any acts or omissions in anyway connected with its consideration of the application, no matter how outrageous those acts or omissions may be. *RyC* (6 Dec. 2008).

Fee Liability Increase for Registries. The changes to Section 5.3 increase the liability for Registry Operators from “fees and sanctions owing” to fees paid during the preceding 12 months. ICANN's liability is not increased, however. *RyC* (6 Dec. 2008).

Indemnification. The indemnification provision (paragraph 5) is unfair – why should an applicant defend and indemnify ICANN if a disappointed objector or other applicant sues ICANN over the same string as that awarded to the applicant? ICANN is demanding sweeping indemnification rights without justification and without providing anything to Registries. There is no justification for such sweeping indemnification. *Bank of America* (15 Dec. 2008); *CentralNIC* (13 Dec. 2008); *RyC* (6 Dec. 2008). The covenant not to challenge and waiver in paragraph 6 are overly broad and unreasonable and should be revised in their entirety. *Microsoft* (Guidebook comments, 15 Dec. 2008).

Warranties. Registry operators do not agree with ICANN that the express waiver of warranties is unnecessary. *RyC* (6 Dec. 2008).

## **Changes of Control**

Approval; Assignments. Does ICANN anticipate revising this provision to require a Registry Operator to obtain ICANN's prior written approval for a change of control? If not, why not? *K. Rosette* (26 Nov. 2008). Parties should have the ability to assign their rights in any application under commercially reasonable circumstances. ICANN should retain discretion to approve or reject any such assignment to prevent the development of a market for TLD applications and to ensure that any assignee meets all of the applicant criteria previously met by the assignor. *Rodenbaugh* (16 Dec. 2008).

Notice Requirement. To the extent notification of subcontracting arrangements is required, it should be limited to subcontracts that have a material impact on a registry's compliance with the Registry Agreement. Moreover, while there may be situations in which it is appropriate for ICANN to seek advance notice of changes in control that should be the exception rather than the rule. *RyC* (6 Dec. 2008).

## **ISSUES, ANALYSIS AND PROPOSED POSITIONS**

### **General Comments**

#### **Issues**

What were the main objectives in crafting the proposed new Registry Agreement?

Why did ICANN determine to change its form of gTLD Registry Agreement?

What will be the impact of the adoption of the new form of new Registry Agreement on existing TLDs?

#### **Analysis**

During the process of creating a new agreement framework for new TLDs, ICANN endeavored to craft a flexible yet robust agreement that provides sufficient protections and clarity for new TLDs. The proposed new form of agreement is intended to be simpler and streamlined where possible, focusing on technical requirements and security and stability issues. These changes were made after taking into consideration input from the GNSO in its recent policy development processes on new gTLDs and contractual conditions. Much of the prior details in the Registry Agreement and associated appendices have been replaced with relevant specifications and requirements, which will be maintained on ICANN's web site.

In drafting the proposed new form of Registry Agreement, ICANN started with a list of concepts the agreement must or should include. Where appropriate, language was drawn from existing Registry Agreements. As proposed, each of the new TLD agreements will have an initial ten-year term, with an expectation of renewal, in order to allow operators of the new registries some surety in the investments necessary to build a successful registry. ICANN has incorporated proposed mechanisms into the form of new Registry Agreement to allow ease of effecting

changes and modifications during the life of the Registry Agreement. These form changes were deemed appropriate and beneficial to both parties.

### **Proposed Position (for this version of the Guidebook)**

The general comments on the new form of Registry Agreement raised a number of important issues that will be the subject of continuing community discussion. The revised version of the base Registry Agreement being posted with the second draft applicant guidebook incorporates a number of changes in response to further feedback, and discussion and thought on these comments will continue and changes will continue to be made in the proposed form of agreement.

Existing Registry Operators may approach ICANN to discuss adopting the new form of agreement, which would be the subject of bilateral discussions between the parties. ICANN will not require existing Registry Operators to implement the new form of agreement.

### **Application Process**

#### **Issues**

To what extent will ICANN mandate applicants adhere to statements made in their applications?

Why is ICANN requiring an applicant to execute a Registry Agreement within 90 days following a contention resolution?

#### **Analysis**

With respect to “community-based” TLDs, ICANN recognized that it needed to protect the community identified in the application from fraudulent applicants (i.e., applicants who had stated one purpose in their application and then once the TLD was granted used the TLD for an entirely different purpose).

Following resolution of string contention proceedings, an applicant should be in a position to enter into a Registry Agreement with all due haste, and accordingly 90 days should be more than sufficient time for this to occur.

### **Proposed Position (for this version of the Guidebook)**

Registry Operators will be required to comply with the terms of the Registry Agreement. Registry Operators will be required to warrant that all information provided and statements made in connection with the registry TLD application were true and correct. Also, community-based TLDs will be required to observe and implement measures set forth in their application relative to the defined community.

Per Section 4.3 of the proposed draft Registry Agreement, ICANN may terminate the Registry Agreement if the applicant does not complete all testing and procedures necessary for delegation of the TLD into the root zone within 12 months. Apart from requiring the Registry Operator to pass technical and operational checks sufficient to permit the TLD to be delegated in the rootzone, ICANN does not require a Registry Operator to utilize or operate a TLD in any specific manner.

Because the Registry Agreement will be signed by Registry Operators in a form that is substantially similar to the final proposed draft, 90 days should be enough time to resolve any minor points that may need to be negotiated by ICANN and the Registry Operator.

## **Covenants of ICANN**

### **Issues**

Will ICANN reconsider the removal of ICANN's covenants regarding operating in an open and transparent manner and equitable treatment among Registry Operators?

Why did ICANN remove the commitment to implement name server and TLD zone server changes within 7 days?

Why were ICANN's covenants removed from the list of provisions that could not be modified by Consensus Policies?

### **Analysis**

ICANN understands that applicants and Registry Operators need to feel confident that ICANN will live up to its obligations, and such obligations should be confirmed in writing. ICANN's Bylaws already require ICANN to act transparently and non-discriminatorily, but as a result of community feedback these commitments will also continue to be restated in the Registry Agreements.

With regard to the commitment to implement nameserver and TLD zone server changes within 7 days: ICANN understands that timely implementation of changes is an important matter and is constantly looking for ways to improve its efficiency, however, ICANN also sees the need for some flexibility regarding this requirement because it does not always have control over the receipt of necessary information and cooperation from third parties. ICANN is presently engaged in discussions with existing and potential Registry Operators regarding a service level commitment by ICANN with respect to nameserver change requests. ICANN has stated its goal is to complete nameserver changes within 10 days.

### **Proposed Position (for this version of the Guidebook)**

Consistent with ICANN's Bylaws, the covenants regarding operating in an open and transparent manner and equitable treatment will be reinstated.

For the reasons noted above, the commitment to \*always\* implement nameserver and TLD zone server changes within 7 calendar days of submission may not be sustainable as the gTLD name space rapidly expands. Apart from actions required by ICANN, ICANN must receive confirmation of certain changes from third parties, the timing of which may be outside of ICANN's control. Nevertheless, the revised draft Registry Agreement has been modified somewhat to continue to reference a goal of seven days for changes when possible.

With the reinstatement of the transparency and equitable treatment covenants, ICANN will include these covenants within the list of topics that may not be modified through the Consensus Policy process, consistent with other recent Registry Agreements.

## **Consensus Policies**

### **Issues**

Why was the definition of “Registry Services” removed from the list of items comprising the picket fence?

What will protect Registry Operators from expansion of the scope of Consensus Policies, particularly in relationship to the process set out in Article 7 of the proposed Registry Agreement by which the agreement and specifications can be modified, subject to certain requirements?

### **Analysis**

In light of comments received, ICANN considers it is appropriate to incorporate a definition of “registry services” in the revised proposed Registry Agreement. This definition will be relative generally to compliance provisions in the agreement.

ICANN reviewed and considered the continuing relevance of each item included within the “picket fence,” which contains the topics excluded from the adoption of Consensus Policies. The definition of “registry services” was included within the list of topics excluded from Consensus Policies contained in Registry Agreements negotiated during 2005-2006, but not during 2001-2002. The genesis for the inclusion within the 2005-2006 Registry Agreements was the concern of Registry Operators regarding the process for the approval of new or modified registry services and the attendant definition of registry services. Subsequently, a Consensus Policy regarding the process for the approval of new registry services (including a definition of registry services) was adopted, rendering the earlier concern regarding changes to the contractual definition a non-issue.

It has historically been the position within Registry Agreements that pricing matters should not be a subject of Consensus Policies, and that is why pricing of registry services is an excluded topic from the topics on which Consensus Policies may be adopted.

### **Proposed Position (for this version of the Guidebook)**

ICANN will include a definition of Registry Services in the specification incorporated into the proposed new form of agreement.

The specification on Consensus Policies retains the concept of the picket fence and exclusions from Consensus Policy adoption, and the scope of the fence is appropriately revised to remove items that are no longer relevant, similar to the revisions in 2005 of the list of Consensus Policies exclusions included in the 2001 form of agreement.

See also discussion regarding changes to the amendment process specified in Article 7 as it relates to the consensus policies provisions of the agreement.

## **Compliance**

### **Issues**

Why is the proposed expansion of ICANN's audit rights appropriate?

Will ICANN include a sanctions program as part of the Registry Agreement?

Are community-based TLDs going to be held to their stated purpose and operation for a defined community?

Why does ICANN requiring monthly reporting on items such as monthly transfers?

Was it intended that all new TLDs have only the Whois obligations of thin registries? If so, why?

Will ICANN be able to enforce compliance with the increased number of TLDs?

### **Analysis**

Audit and compliance provisions are important components of a contractual relationship whereby accurate reporting is essential. With that in mind, ICANN has carefully considered the scope of its audit provisions and the affect they could have on the Registry Operators. ICANN has reviewed and reconsidered the audit provisions in light of public comments and determined that the scope was perceived by the community as broader than intended. The scope of ICANN's audit rights will accordingly be clarified and limited to some extent in the next version of the proposed agreement to cover only the covenants of Registry Operator (which are enumerated in Article 2 of the agreement).

With regard to the institution of a monetary sanctions program, ICANN looked to past agreements and its past course of dealing to evaluate the costs and benefits associated with the implementation of such a program. After careful consideration, ICANN's assessment is that, in the past, when a sanctions-like program was in place, there was little opportunity or need to utilize it and a reluctance to do so given the punitive nature. In addition, an ability by ICANN to unilaterally impose sanctions on a Registry Operator without the requirement of proceeding through arbitration was considered to raise due process concerns. The first draft proposed base agreement included a provision permitting the imposition of punitive or exemplary damages by arbitrators in cases of repeated willful breaches of the agreement, and the new draft includes a proposal that arbitrators be permitted to order operational sanctions such as temporarily restricting Registry Operator's right to sell new registrations.

The Registry Agreement requires compliance with all terms and conditions. ICANN employs appropriate tools and procedures to monitor compliance. ICANN has the ability to terminate the Registry Agreement for repeated and willful material breach. It is not ICANN's objective to \*sanction\* Registry Operators through fines or some other punitive means in the case of minor infractions and noncompliance issues. In ICANN's experience, "good citizen" Registry Operators are willing to work with ICANN in the event there is a disagreement over contractual requirements.

As part of the creation of new gTLDs, ICANN will continue to implement and enhance its contractual compliance oversight program <<http://www.icann.org/en/compliance/>>. The audit provisions of the proposed Registry Agreement were included specifically for this purpose. ICANN has already initiated the planning that will be necessary to ensure operational readiness in the new environment to be created by the addition of new gTLDs.

### **Proposed Position (for this version of the Guidebook)**

ICANN will revise the audit rights provision in the agreement included as part of the updated Applicant Guidebook to more closely align with the provisions in the current Registry Agreement, which cover compliance with the fee arrangements, monthly reporting specifications and technical and functional specifications. The scope of ICANN's audit rights will be clarified and limited to cover only the covenants of Registry Operator (which are enumerated in Article 2 of the agreement).

For Registry Operators who are repeatedly problematic, ICANN can bring action in front of an arbitrator and request the award of punitive damages. In addition, ICANN will clarify in the proposed Registry Agreement that ICANN may request that an arbitrator sanction the Registry Operator for noncompliance issues, including operational sanctions such as an order temporarily restricting a Registry Operator's right to sell new registrations if appropriate.

Community-based TLDs will not be able to make changes to community-specific terms without support from the community. Any necessary material changes to the community-based TLD operator's agreement would only be approved following appropriate public notice and comment.

ICANN requires monthly reporting by all Registries operators for tracking purposes including expected database demands, fees compliance and policy compliance.

ICANN is only requiring the publication of "thin" Whois data due to the multitude of applicable laws (including data protection and privacy laws) in different jurisdictions. Registry operators would be free to collect and publish additional data in accordance with their individual business plans and agreements. ICANN is exploring a possible requirement that Registry Operators would have to collect additional data, which would not be required to be publicized, as an additional safeguard against loss of information in the event of registry or registrar failure.

As discussed above, ICANN plans to enhance and strengthen its contractual compliance program <<http://www.icann.org/en/compliance/>>. The audit provisions of the proposed Registry Agreement were included specifically for this purpose. ICANN has already initiated the planning that will be necessary to ensure operational readiness in the new environment to be created by the addition of new gTLDs.

## **TLD Delegation**

### **Issues**

What security resources will be required of TLD operators in order to safeguard DNS stability and security?

Will there be specific timing obligations related to delegation into the root-zone?

### **Analysis**

The stability and security of the DNS is a primary focus of ICANN's mission. ICANN believes in encouraging Registry Operators to use the most advanced technologies available to ensure registry security is fundamental and appropriate. ICANN must also, however, balance these requirements with the constraints applicable to small Registry Operators who do not have and may not expect to have a large user base to justify the cost of certain measures. For these smaller Registry Operators, the requirement to implement these state of the art security

measures, DNSSEC for example, could be too financially burdensome and is therefore optional. Please refer, for example, to the evaluation questions and criteria (#46) for details regarding the treatment of applicants' plans to implement DNSSEC.

ICANN is and will remain committed to encouraging the use of adequate security measures. For the time being, the requirement to implement DNSSEC will remain optional for Registry Operators due to the expense and burden it would place on smaller Registry Operators. Likewise, ICANN is only requiring the publication of "thin" Whois data due to the multitude of data protection and privacy laws in different jurisdictions. Registry operators would be free to collect and publish additional data in accordance with their individual business plans and agreements. ICANN is exploring a possible requirement that Registry Operators would have to collect additional data, which would not be required to be publicized, as an additional safeguard against loss of information in the event of registry or registrar failure.

ICANN is requiring applicants to commit to go through the required steps for a TLD to be delegated into the root zone to attempt to deter "blocking" applicants, who have no intention of actually running a TLD, but would attempt to take the opportunity to do so from other applicants. The new gTLD application process and the proposed base Registry Agreement are being designed to assure that ICANN retains the ability to respond flexibly and resiliently to changing circumstances and marketplace evolution that could occur with the growth of the Internet and the expansion of the name space.

### **Proposed Position (for this version of the Guidebook)**

For additional details on security requirements and evaluation, please refer to the evaluation questions and criteria section titled "Demonstration of Technical & Operational Capability."

Registry operators are required to complete technical and operational checks to allow the TLD to be delegated into the root zone within 12 months of execution of the Registry Agreement. There are no other staged requirements for TLD start-up.

### **Term and Termination**

#### **Issues**

What is the justification for the changes to the term and termination provisions in the proposed Registry Agreement?

What protections does the proposed Registry Agreement offer against arbitrary decisions by ICANN not to renew a Registry Agreement?

How will "fundamental and material breach" and "critical registry operations" be interpreted for purposes of the termination provisions of the proposed Registry Agreement?

Will ICANN consider a competitive bidding process for TLD renewals?

#### **Analysis**

ICANN balanced considerations relative to the security of a longer term against ICANN's need to be able to act to terminate the agreement, or determine not to renew, in the case of repeated

bad actor Registry Operators. Accordingly, there is less rigidity relative to the right to renewal of the proposed Registry Agreement.

Providing a 10-year potential term of the agreement is beneficial to the Registry Operator by providing assurance on the issue of business continuity and supporting the basis for investment by the Registry Operator. However, by proposing a ten-year term, ICANN must have the flexibility to implement modifications to the agreement during the term. On balance, providing a longer term for the agreement with the flexibility to modify seemed likely to be more desirable to the community as opposed to short 3 or 5 year term agreements which do not include a flexible process for making amendments such as the equivalent of Article 7 in the proposed agreement.

Proposed Section 4.2 (Renewal) has been modified somewhat in response to comments and allows for automatic renewal so long as the registry hasn't been deemed in fundamental and material breach of the agreement during the initial term. Essentially, this means that so long as the Registry Agreement hasn't been terminated due to breach, or subject to an uncured breach at the time of proposed renewal, it will be renewed.

As part of the evaluation of applications, ICANN will be carefully selecting among applicants those that are best suited and most qualified to operate a TLD. Registry Operators should expect to invest significant time, effort and expense in building a robust business model to support registry operations and service the registrants within the TLD. Mandating a rebid process for a TLD upon renewal would de-incentivize Registry Operators from making this investment, and directly counter the philosophy relative to the selection of each TLD Registry Operator.

#### **Proposed Position (for this version of the Guidebook)**

The termination rights provision will be revised for clarification and specificity. The definition of "critical registry functions" does not appear to be necessary as this section is generally describing the transition obligations of the outgoing Registry Operator. The registry functions that are considered to be critical in the context of the Registry Continuity Plan do not necessarily correspond directly to the responsibilities of an outgoing Registry Operator protect registrants and registrars by cooperating in a smooth transition to a new operator.

The inclusion of termination rights for ICANN relative to fundamental and material breaches of the Registry Agreement is consistent with existing Registry Agreements and will also relate to "fundamental and material breach" of the agreement as the same may be modified during its term.

The comments concerning the idea of requiring the rebid of TLDs upon expiration of the initial term of a Registry Agreement raise profound economic questions that will be addressed separately from this legal analysis, and will continue to be the subject of community discussions.

#### **Payment Concerns, Pass-Through of Registrar Fees**

##### **Issues**

What adjustments can be made to the fee structure to accommodate Registry Operators who are required to make bilingual registrations at no extra charge?

Why was the cap on the registrar fee that could be collected from the Registries eliminated?

How will the timing on collection and payment by Registries of the Registrars' fee if the obligation is triggered operate?

### **Analysis**

ICANN received a number of thoughtful comments on the proposed model for the calculation of fees to be paid by Registry Operators to ICANN. Please refer to the separate paper on financial considerations for a detailed discussion of the proposed fee model. One of the GNSO's implementation guidelines was that "ICANN should take a consistent approach to the establishment of registry fees." The model being proposed (in the separate paper on financial considerations) attempts to find a balance between fairness and consistency, but it would be difficult to find a consistent fee model that is well-matched to every jurisdiction where registries will operate and to every varied business model that registries will implement.

The provision allowing the pass-through of the registrar fees has been a component of existing Registry Agreements and this is not a conceptual change. ICANN must retain the flexibility to require registries to collect this fee from the registrars, however the fee is fully recoupable by the registry from registrars. Any such fees would be approved through the ordinary ICANN budget approval process, but otherwise there is no special phase-in period for collection and payment of these fees by registrars or registries; they would be collectible from registries (and through them from registrars) directly upon invoice as they are under current Registry Agreements and registry-registrar agreements.

### **Proposed Position (for this version of the Guidebook)**

The proposed agreement is sufficiently flexible to allow Registry Operators to adapt their own fee structures regarding domain name registrations as necessary to comply with local law.

ICANN must retain some flexibility to adjust the fees that registries pass through to registrars in response to changes in the evolving marketplace. These fees, however, will be justified in ICANN's annual budget and will therefore be subject to public scrutiny and comment. In response to comments ICANN will cap the transactional component of the Variable Registry-Level Fee. Registries will have the flexibility to include a provision in the registry-registrar agreement that gives them assurance on the ability to collect the registrar fees on a timely basis.

### **Price Controls**

#### **Issues**

Will ICANN reconsider inclusion of price controls in the Registry Agreement?

How will ICANN deal with price caps under vertical ownership?

Will the issue of tiered pricing with respect to new registrations and renewal registrations be revisited?

Has ICANN considered the affect that the absence of price controls will have on new Registry Operators as well as existing Registry Operators?

Why is ICANN requiring Registries to disclose their pricing and fee structure?

### **Analysis**

One of ICANN's main goals of the proposed Registry Agreement is to provide enough flexibility for Registry Operators to implement a variety of business models. ICANN has commissioned studies on whether there should be price controls in new gTLDs, and also a study on the effects of vertical registry-registrar separation. Please refer to those separate detailed analyses for treatment of the concerns raised in this set of comments.

### **Proposed Position (for this version of the Guidebook)**

In General. ICANN has commissioned a study on the economics of and relative need for price controls in new gTLDs, which will be posted as soon as available.

Vertical Separation. ICANN commissioned a comprehensive study on the effects of vertical separation, which has been posted at <http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf>.

Transparency of Pricing for Registry Services. ICANN has modified the proposed requirement in response to comments. Six months' notice of a registry price increase has been incorporated consistent with other recent Registry Agreements. Further, the functional and performance specification and now also section 2.9 of the Registry Agreement obligate Registry Operators to offer up to ten-year registrations.

Equitable Treatment. As it relates to an ability for Registry Operators under existing Registry Agreements to invoke the "equitable treatment" clause to require ICANN to agree to the removal of price controls under existing agreements, "equitable treatment" does not mean that every TLD will have the same agreement. Specifically, existing Registry Agreements are not alike in all respects and include distinctions to address differing business and market concerns. ICANN's current Registry Agreements differ from each other markedly in some aspects, for example some registries (unsponsored) operate under price caps, while other current Registry Agreements (sponsored) have no price controls. Please refer to the separate economic studies for further discussion and analysis of this issue.

### **Amendment Process**

#### **Issues**

Why did ICANN decide to include the process set forth in Article 7 allowing ICANN to implement modifications to the Registry Agreement and specifications during the term of the agreement?

What modifications and changes to the Registry Agreement (and incorporated specifications) can ICANN implement under Article 7?

Why did ICANN propose to allow veto of a proposed agreement modification by the GNSO Council?

## **Analysis**

The proposed process for amending the Registry Agreement is a deviation from the current form Registry Agreement, and ICANN has carefully considered all comments on the proposed contract change mechanism. The problem the Internet community faces as the population of TLDs increases is how to deal with the inevitable changes and advancements, either in technology or circumstance, that affect all or substantially all TLDs. For example, concerns relating to changes due to market growth or dominance, or the need to impose new requirements due to Internet security or stability concerns. With anticipated significant growth in the TLD space, the burden to negotiate individual changes is too great to bear, and not achievable from a practical standpoint. With that in mind, Article 7, allowing contract changes and modifications to be implemented across all new TLDs, was conceived to create a mechanism where changes affecting all or substantially all TLDs could be made efficiently but still provide procedural safeguards for affected Registry Operators to act to contravene proposed changes.

The Registrar Accreditation Agreement (the "RAA") includes an analogous procedure to modify the form of agreement across all registrars, but it requires a lengthy and cumbersome development, approval, and implementation process that can more than 5 years to complete. ICANN's experience with attempting to negotiate and implement changes to the RAA have demonstrated the need for a flexible and efficient process for public discussion and approval of beneficial changes to the form of ICANN's agreements. In order to retain authority to address any adverse effects or consequences of the introduction of a large number of new gTLDs, ICANN needs a mechanism allowing modification to the agreement.

### **Proposed Position (for this version of the Guidebook)**

ICANN's proposal included in the October 2008 draft agreement provides that ICANN would first consult with Registry Operators and the public for at least 30 days on any proposed changes to the agreement. Any material changes to the Registry Agreement would continue to be subject to ICANN Board approval. ICANN would give Registry Operators notice 90 days before any changes would take effect. This flexibility is also intended to benefit the registry community. Specifically, Registry Operators who believe change or modification to the Registry Agreement is necessary or appropriate will be able to suggest such a change or modification for consideration in a public forum.

ICANN has incorporated proposed mechanisms into the form of new Registry Agreement to allow ease of effecting changes and modifications during the life of the Registry Agreement. The process proposed by ICANN allows for public notice, discussion and opposition by the registry community, and, as noted above, any material changes to the Registry Agreement and specifications would require ICANN Board review and approval.

Existing gTLD operators (who would not be subject to the provisions of Article 7) are subject to the terms of their agreements, which cannot be amended without negotiation and bilateral agreement with ICANN. ICANN understands the concerns the Registry community has with proposed Article 7 and believes that a compromise is possible. The February 2009 v2 revised version of the proposed Registry Agreement reflects a modified Article 7 incorporating changes to address community comments, including: 1) a new preliminary 30-day consultation period prior to posting a notice of any proposed change, 2) a new requirement that any proposed changes could be vetoed by a majority of affected registry operators (instead of providing that a two-thirds' vote of either the registries or the GNSO Council could veto any change), and 3) a

prohibition on using the amendment process to modify ICANN's covenants in the agreement or provisions on Consensus Policies.. Community discussions on how to reach a compromise model for approval of global amendments to the form of the Registry Agreement (or whether such an amendment process is necessary at all) will continue, and further changes to this provision in the agreement can be expected.

## **Dispute Resolution and Damages**

### **Issues**

Why was the specificity regarding (i) the procedure for cooperative engagement between senior management of the Registry Operator and ICANN and (ii) the arbitration process removed?

Why did ICANN eschew a panel of three arbitrators in favor of only one with respect to the arbitration of disputes under the Registry Agreement?

Can ICANN seek punitive damages under the proposed Registry Agreement?

### **Analysis**

ICANN determined to revise the dispute resolution provisions contained in the proposed Registry Agreement in an attempt to simplify and streamline the agreement. With respect to the provisions mandating a process for cooperative engagement by senior management of both parties, ICANN did not believe incorporating a rigid process into the proposed Registry Agreement was necessary. In making this decision, ICANN considered the current course of dealing in communications with Registry Operators, pursuant to which points of contention are raised and typically resolved in such cooperative discussions which proceed in a fashion suitable to both parties. As relationships with Registry Operators have evolved, ICANN has not experienced difficulty in arranging management level discussions (akin to cooperative engagement) to resolve issues and or points of disagreement regarding Registry Agreement provisions.

ICANN simplified the arbitration provision in the proposed Registry Agreement, allowing the parties to rely on the rules of the ICC. ICANN's decision to mandate a single arbitrator as opposed to a panel was driven by an interest in keeping the process both efficient time wise (selecting a single arbitrator is generally quicker than selecting a panel) and also in cost (a single arbitrator's fees versus the fees for a panel of arbitrators). From a legal perspective, ICANN does not perceive a notable benefit from having three arbitrators render a decision as opposed to a single arbitrator. Conversely, having to select and appoint three agreed-upon arbitrators can increase the time involved before a matter can be substantively decided and also raises costs that are ultimately passed on to registrants.

ICANN may ask an arbitrator for an award of punitive damages against a Registry Operator in circumstances where the Registry Operator has been in repeated and willful fundamental and material breach of the agreement. This right to punitive damages will be in addition to ICANN's right to ask for specific performance, or sanctions (monetary or operational) against the Registry Operator.

## **Proposed Position (for this version of the Guidebook)**

ICANN has removed the very specific contractual provisions as unnecessary, with the expectation that ICANN and Registry Operators will keep open communications to resolve disputes before escalating to formal action. In response to comments, the revised version of the agreement has been modified to make it clearer that either party may initiate good-faith communications concerning any dispute.

As discussed above, ICANN does not perceive a notable benefit from having three arbitrators render a decision as opposed to a single arbitrator, and therefore the concept of a single arbitrator remains in the dispute resolution article of the proposed Registry Agreement.

Under the parameters specified in the proposed agreement (repeated willful fundamental and material breach) ICANN can request an arbitrators to award punitive damages, or specific performance. ICANN will clarify in the revised proposed Registry Agreement that ICANN may request the arbitrator order sanctions against the Registry Operator, which could include monetary and/or operational sanctions.

## **Indemnification, Warranties and Liability**

### **Issues**

How does the provision regarding the limitation of liability of the parties to fees paid during the prior 12 months operate differ from existing agreements?

Why were the indemnification provisions in the proposed Registry Agreement revised from those included in existing Registry Agreements and what is the effect?

Why was the express waiver of warranties relating to services, including implied warranties of merchantability, non-infringement or fitness for a particular purpose removed?

What is the justification for the requirement applicants release ICANN from liability from any acts or omissions associated with its consideration of the application?

### **Analysis**

In the process of preparing the proposed Registry Agreement, ICANN specifically focused on provisions that could be simplified to the benefit of both parties. In the provision relating to the limitation of the liability of the parties, ICANN revised to allow ICANN to recover in an indemnification proceeding an amount equal to fees paid in the past 12 months, together with exemplary or punitive damages imposed by an arbitrator. This can be compared to existing Registry Agreements that allow ICANN to recover an amount equal to fees and monetary sanctions (imposed as a result of breaches of the agreement) due and owing in the last 12 months.

Regarding the topics on which the proposed Registry Agreement requires the Registry Operator to indemnify ICANN, as compared to existing gTLD agreements, the provision does not include the several other grounds for which ICANN could claim indemnification, such as (a) ICANN's reliance, in connection with its decision to delegate the TLD to Registry Operator or to enter into the Registry Agreement, on information provided by Registry Operator in its application for the

TLD; (b) Registry Operator's establishment of the registry for the TLD; (c) collection or handling of Personal Data by Registry Operator; and (d) any dispute concerning registration of a domain name within the domain of the TLD for the registry.

The express waiver of warranties relating to services, including implied warranties of merchantability, non-infringement or fitness for a particular purpose was deleted as not applicable to the commitments under the Registry Agreement. There are no express warranties made by the Registry Operator, and implied warranties typically seen in agreements relating to the sale of goods are not applicable.

Regarding the application indemnification provision, ICANN anticipates that rejected or unsuccessful applicants might try to take legal action in an attempt to challenge the decision, and possibly delay the advancement of the new gTLD program. Accordingly, ICANN has carefully considered how to protect the new gTLD program from such challenges. The release from such potential claims was deemed appropriate in light of these considerations.

### **Proposed Position (for this version of the Guidebook)**

As discussed above, the limitation on liability provisions are appropriate for the proposed Registry Agreement as they are consistent with the revised provisions relating to dispute resolution.

The indemnification provisions included in the proposed new form of agreement (as compared to existing gTLD agreements) have been narrowed to require the Registry Operator to indemnify ICANN only for losses and damages caused by the Registry Operator's operation of the TLD or the provision of registry services. As part of the revisions to the form of Registry Agreement, ICANN viewed it as appropriate to reduce ICANN's rights in this regard.

It was determined to be unnecessary to include an express waiver of warranties, implied or otherwise, in the proposed Registry Agreement. As discussed above, the express waiver of warranties relating to services, including implied warranties of merchantability, non-infringement or fitness for a particular purpose was deleted as not applicable to the commitments under the Registry Agreement.

### **Changes of Control**

#### **Issues**

Is a Registry Operator required to obtain ICANN's prior approval in the context of a change in control transaction, such as a sale of the entity?

Should there be a materiality threshold requiring notice to ICANN of arrangements to subcontract registry operations?

#### **Analysis**

ICANN's prior approval to a change in control of a Registry Operator, such as the sale of all assets of or equity in the relevant entity, is not required. ICANN simply requires notice no less than 10 days prior to the anticipated event. Requiring ICANN pre-approval of any change of control of a contracting party could be burdensome. Similarly, with subcontracting

arrangements, ICANN simply requires notice and not pre-approval. Notice requirements with respect to such events are, at a minimum, typical in a business agreement.

**Proposed Position (for this version of the Guidebook)**

ICANN will retain the provision as included in the draft Applicant Guidebook. A materiality requirement has been added to the notice of subcontracting requirement.

### **XIII. REGISTRY/REGISTRAR SEPARATION**

#### **Summary of Key Points**

- An independent report was commissioned to study registry-registrar separation requirements after considerable community inquiry about the issue.
- The report (by Charles River Associates) weighed the benefits and risks to lifting the restrictions, taking into account the current and proposed gTLD environment.
- The report proposed a limited lifting of the restrictions in a way that reduced risk so that the effects could be studied.
- Based on the report and a set of public consultations, a model for lifting the current restrictions in a limited way, is introduced in the revised Applicant Guidebook for discussion.

#### **Summary of Input**

Below is a summary of input addressing registry and registrar separation and ownership comments submitted in (1) the first comment period regarding the new GTLD Draft Applicant Guidebook consultation; and (2) the consultation addressing the Charles River Associates (CRA) report – Revisiting Vertical Separation of Registries and Registrars - which was commissioned by ICANN. ICANN staff prepared an earlier summary and analysis of the CRA comments which is posted at <http://forum.icann.org/lists/crai-report/msg00035.html>. ICANN also conducted two face-to-face consultations regarding the CRA Report in December 2008.

#### **(1) Comments in the new gTLD Consultation**

**Maintain Separation.** There should be separation between registries and registrars; registries must continue to sell registrations through registrars and should not discriminate among registrars; with limited exception a registrar should not sell domain services of an affiliated registry (exception should allow sales of an affiliated registry up to a certain threshold of names—i.e., 100,000); this exception eliminates need for a special single organization TLD exception; registries must provide reasonable notification period before making domain renewal price changes; ICANN should maintain existing market protections for registries with market power. *Network Solutions* (15 Dec. 2008). ICANN should move slowly toward permitting integration of registry and registrar services, but should not use experimentation with single-organization and hybrid registries as a prelude to relaxing vertical separation and equal access requirements for a broader pool of gTLDs. *ICA* (16 Dec. 2008).

**Maintain Accredited Registrar Model.** The Accredited Registrar model should be required regardless of how the vertical integration and separation issues are resolved. *RC* (15 Dec. 2008).

**Equitable Considerations.** It is unfair to allow registrars to own new registries but to not allow existing registries to own registrars. *NeuStar* (15 Dec. 2008); *J. Neuman* (26 Nov. 2008) (clarify registry-registrar issues).

**Risks of Ownership Changes.** To avoid risk of a speculative marketplace developing through “flipped” registries, ICANN should clarify policy regarding changes of ownership or control of a registry; there is no restriction on ability of an applicant to flip registry to a buyer unvetted by ICANN, even immediately after delegation. *IPC* (15 Dec. 2008); *G. Kirikos* (24 Nov. 2008); *K.*

*Rosette* (26 Nov. 2008) (clarify ICANN approval policy regarding registry control change); *R. Raines* (4 Dec. 2008) (change allowing cross ownership could be exploited and increase cyber crime); *CentralNIC* (13 Dec. 2008).

Allow Cross-Ownership. *Melbourne IT* (15 Dec. 2008) (supports allowing single organization operating a “closed” gTLD to operate both the registry and registrar functions subject to safeguards). *J. Cady* (3 Nov. 2008) (clarify separation and consider novel uses allowing one company to do both). *Demand Media* (15 Dec. 2008) (change policy for new registries, allow cross ownership and do not impose price controls).

(2) Comments in the CRA Report Consultation (meetings held in Washington, DC and Los Angeles on 11 & 19 Dec 2008, respectively)

The views expressed in the comments to the publication of the CRA report on registry-registrar separation can be categorized as follows:

Cross ownership:

- support for limited cross-ownership where a registry could own an accredited registrar but not service names in its own TLD, and a registrar could own a registry as long as it did not service names in the TLD that it owns;
- support for limited cross-ownership with a self-management threshold of varied size (from 20,000 to 100,000 names);
- support for cross-ownership without a threshold; and
- support for continued registry-registrar separation.

Use of accredited registrars:

- wide support for continuing use of accredited registrars; and
- some opinion that “private label” registries, need not use accredited registrars.

These viewpoints and suggestions are summarized in specific models discussed below:

**One Cross-Ownership Model with Limited Self-registration**

During the Consultation on Registry-Registrar Separation in Washington, DC on 11 December 2008, Jon Nevett of Network Solutions presented the following model based on adherence to the following safeguards:

- if there is cross-ownership, there should be separation between the registry and registrar functions;
- registries must continue to sell domain registrations through registrars;
- registries should not discriminate among registrars;
- with a limited exception, a registrar should not sell domain services of an affiliated registry;
- registries must provide a reasonable notification period before making any pricing changes on domain renewals; and
- ICANN should maintain existing market protections with regard to registries with market power.

The model generally agrees with the CRA recommendation that a registry and registrar may be corporate affiliates, but the registrar may not sell the domain name services of an affiliated company, so long as market protection mechanisms are in place and enforced.

The model would permit:

- a registry to sell domain name services through an affiliated ICANN accredited registrar until the registry meets a certain threshold of names, such as 100,000 names;
- once the threshold is met, the registrar would no longer be able to accept new registrations, but would be permitted to manage its existing base;
- the registrar would not be required to divest these names; and
- other market safeguards would remain in place.

One aspect is that the model would help a new registry reach a sustainable level of registrations to remain competitive in the market. This would allow small, community-based TLDs to be supported by an affiliated registrar with an understanding of the needs of the TLD. Under this model, ICANN would not need to adopt the CRA recommendation for single organization TLDs.

Other comments suggested variations of the first model.

Vittorio Bertola recommended that registries could self-manage up to 20,000 names, but between 20,000-100,000 names, registries must accept willing accredited registrars. He recommended full vertical separation for registries charging a fee and managing over 100,000 names.

Michael Palage also supported the suggestion that registries could provide registration services direct to registrants up to a certain threshold, such as 50,000 names.

During the DC consultation session on 11 December 2008, Carolyn Hoover of DotCoop noted that they could support the model of a 100,000 name cap at start-up for self-management through an affiliated registrar as a reasonable long-term approach for starting a registry. Carolyn noted that many of the problems they experienced would not have occurred if they had been able to continue to support the names managed by the affiliated registrar, rather than divesting them after six months from launch.

Eric Brunner-Williams of CORE supported the idea of the Nevett Model but thought the 100,000 name cap was too large. He thought the proper number was somewhere below 100,000 names. This would help support proposed TLDs aimed at small linguistic or cultural communities, allowing them to directly serve their community when there may be little interest from other registrars. His comments were made from the experience of .MUSEUM (which CORE serves as the backend Registry Operator). .MUSEUM proposed to self-manage a number of registrations without using ICANN accredited registrars. In the renewal of the 2007 .MUSEUM sTLD Agreement, MuseDoma was permitted to self-manage up to 4,000 names.

Amadeu Abril i Abril also supported the idea of registry self-management of names through an affiliated registrar, up to a cap, such as 10,000 names. He did not support single-organization TLDs.

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The concept of the Network Solutions Model was supported by Liana Ye, who suggested that ICANN “allow registrar[s] to operate both as registry and registrar to a certain point before they

have to separate into two entities to encourage start-up operation without price cap.” She also suggests that legal separation is important and there should be a requirement that at least 50% of the directors [for a registry or registrar] cannot be the same.

The threshold concept was supported by the gTLD Registry Constituency in its comments.

“It would be possible to come up with a numerical threshold of registrations below which relaxation of these requirements could apply, and above which the restrictions would apply. The RyC believes that further study should be conducted on what those thresholds should be and how these registries would transition to new restrictions [upon surpassing the threshold].”

Melbourne IT recommends that where a registry offers registrations to third parties, the registry should be allowed to operate its own registrar (up to a cap of 50,000 names in total), as well as allowing other ICANN accredited registrars to offer names on the same commercial terms. Upon reaching the cap, the registry would not be able to sell additional registrations (or registrations for other gTLDs). This would assist a small registry to get started, but ensure that if the registry was dealing with large numbers of registrants, the registrants have the option to choose registrars in a competitive market.

Unlike Network Solutions’ model, Melbourne IT supports a single-operator closed TLD operating both the registry and registrar functions. To avoid gaming, the operator would be limited to single organizations as the registrant for all second level domain names in the TLD and the registry prevented from licensing registrations to third parties.

### **A Second Model with Unlimited Self-registrations**

Richard Tindal of Demand Media provided an alternate model for discussion, which supports the cross-ownership of gTLD registries and ICANN accredited-registrars. Demand Media supports the conclusion in the CRA Report that registries be able to sell directly to the public through an affiliated registrar. Demand Media supports legal but not ownership separation of registry and registrar functions. Unlike the Nevett model, the Demand Media model would not have a 100,000 name threshold.

Demand Media notes that registrars should be able to own a registry and sell through domain services of that registry but the registry should also be open to other willing registrars. “We believe the objective of enhanced competition in TLDs will be harmed if TLD operators are not allowed (under equal terms) to also promote their TLD at the retail level via an accredited registrar which is owned by the registry.”

Demand Media supports relaxation of price caps. *“For registries not operating under a binding price cap, the arguments in favor of vertical separation and equal access requirements are less clear cut. We would recommend that ICANN take steps towards relaxing one or both of these requirements. We agree.”*

Demand Media supports keeping market safeguards in place for registries with market power. This concept is supported by NeuStar. Comments from GoDaddy echoed the cross-ownership with no threshold approach. GoDaddy advocates the elimination of existing restrictions on registry-registrar cross-ownership as a way for ICANN to stimulate competition. This comment was also supported by Antony Van Couvering.

In response to earlier models (such as the Networks Solutions 100,000 name threshold or Melbourne IT 50,000 name threshold), GoDaddy notes that the limit “provides a warm fuzzy” but if cross-ownership works for the first 50,000 names, there is no sound reason to limit it there. The caps also impose on registrants who want additional domain names in a new name space (or other TLD) to then manage names between two different entities, or incur additional expense in getting their existing names transferred.

GoDaddy cites to existing examples of registry-registrar cross-ownership (Hostway & .PRO, the consortium of registrars that formed .INFO, VeriSign’s management of .TV, GoDaddy’s joint venture for .ME). “There are no such integration restrictions within several major ccTLD name spaces, yet it isn’t collapsing, there is robust competition, and the ccTLD space continues to grow.”

Of the two CRA models, GoDaddy recommends that the issue of single owner TLDs be referred back to the GNSO Council for vetting with the community and examination of the policy implications.

### **Cross-Ownership/Equitable Treatment**

Jeff Neuman of NeuStar recommends that registries be able to operate an accredited registrar, as long as the registrar did not sell registrations of the TLD that owns it.

Neuman suggests that a registry should be able to have an ownership interest in a registrar as registrars can already have in a registry under the existing rules.

“NeuStar’s main point is that there needs to be a level competitive playing field and ICANN has not been able to achieve this to date. IF justification exists to allow registrars to directly or indirectly serve as registries, THEN steps needed to be taken to ensure that existing registries are not discriminated against. IF registrars are allowed to enter the registry market, then NeuStar agrees with the CRAI recommendation that a registry should not serve as a registrar in the TLD for which it serves as the registry. However, NeuStar is not certain that ICANN has established sufficient justification as to why a registrar should be allowed to enter the registry market. NeuStar also believes that ALL loopholes need to be closed to make sure that a registry does not resell the names as a reseller to circumvent the rules. IN other words, a registrar should not directly OR *indirectly* be allowed to sell names in a TLD for which it has a *direct or indirect* ownership in the registry.”

Amadeu Abril i Abril (CORE) notes that some registrars serve as backend Registry Operators today (like CORE) and they should be permitted to do so and operate a registry as long as they do not sell registrations in the TLD they are managing.

NeuStar also notes that price cap flexibility must be offered to existing registries if offered to new gTLDs (except for registries with market power).

### **Comments against lifting of registry-registrar separation requirement**

Steve Metalitz (on behalf of Intellectual Property Constituency, IPC) noted that ICANN has not made clear why the CRA Report was requested. The IPC urges ICANN to provide its reasoning and assumptions underlying the request to CRA to conduct the report. The IPC also note that the comprehensive economic study has not been done and would be valuable for a number of

ICANN initiatives. The IPC is asking for a status update on that study.

The IPC notes that some registrars are large domain name holders. "Because several registrars own vast domain portfolios, the equal access and vertical separation requirements also have the positive effect of preventing particular *registrants* from having privileged access to domains in particular registries. Relaxing the [registry-registrar separation] requirements could inhibit competition in the market for domain names."

The IPC agrees that relaxing of the vertical separation requirement for registries operating under price caps is undesirable and should remain in place for .com.

On single-owner TLDs, the IPC notes this is theoretically possible "but the devil is in the details." The IPC does not understand why a gTLD operated as a money-making venture should be excluded from the single-owner model. Owners of a collective mark may want to register a gTLD and sell second-level registrations to members. The same may be true of trade associations or franchisors. "The Report's description of the single-owner model should have made clear what gTLDs should not qualify for the single-owner model."

The IPC calls the hybrid model proposed in the report deeply flawed and should not be given serious consideration. If not for vertical separation, ICANN may have to take on more monitoring and enforcing compliance. See <http://forum.icann.org/lists/crai-report/msg00013.html>.

Patrick Mevzek notes that he sees no reason to relax the current registry-registrar separation under the current market conditions. He notes that makes sense to let registries own registrars or the opposite as long as the registrar does not register domain names in the registry it owns or that owns it, provided there are proper safeguards in place. He suggests data should be publicly available to be able to see who owns these entities. "It is not a big problem already for registries, due to their current low numbers, but it is already a huge problem currently for registrars, as some studies have shown even basic data such as true postal address and phone numbers are not really available for all current registrars."

He suggests performance criteria for new gTLDs should be established before any new gTLD is introduced. See <http://forum.icann.org/lists/crai-report/msg00019.html>.

David Maher submitted a comment on behalf of Public Interest Registry ("PIR") noting that the CRA Report had four major shortcomings:

1. "PIR believes that the public interest in supporting competition does not favor a breakdown of the current separation of registry and registrar ownership. Even more so, the (limited) separation in the current rules, as reflected in the contracts so far, should be made symmetric [registrars should not be permitted to own registries]."
2. "PIR believes that the conclusions of the CRAI Report do not give ICANN a basis for an implicit policy to remove all cross ownership restrictions on new gTLDs. PIR further believes that any policy ultimately adopted should be applicable equally to registries and registrars and to existing and new gTLDs."
3. The proposed experiments in the Report do take account of the risks of self-dealing by registrars that own registries.
4. The creation of the accredited registrar program has led to problems with monitoring compliance and ownership across 900+ registrars. "Blurring lines of registry/registrar

ownership would strengthen incentives for the economically strongest registrars to engage in the anti-competitive practices.”

PIR believes ICANN should adopt a general policy limiting or prohibiting cross ownership between registries and registrars. See <http://forum.icann.org/lists/crai-report/msg00020.html>.

David Maher also provided a study by Jonathan A.K. Cave titled “A name by any other rows: an economic consideration of vertical cross-ownership between registries and registrars” by Jonathan A.K. Cave of the University of Warwick. The paper is an analysis of the proposal to relax, eliminate or substantially modify cross-ownership of registries and registrars from an economic perspective. The paper sets forth arguments for the continuing necessity of vertical restrictions, and makes recommendations based on the current market.

Cave notes that vertical control can distort competition between registries, encourage registries to become integrated, and may lead to “capture” by market power in a concentrated layer. This may give integrated registrars unfair advantages in bargaining with other registries, and it may give advantages to commercial registries over non-commercial registries that do not own registrars. Cave states that open-access and price cap controls are essential complements to vertical ownership.

Among the open issues are:

- “The extent of real competition in the registrar market or in the registry market;
- The extent of any anti-competitive behavior in relation to prices, entry, name access and quality of service and the degree to which this is predatory or collusive;
- Whether competition is actually producing useful efficiencies (lower costs, lower prices, better distribution of name access, incentives to invest in the DNS system or in the economic valorization of names); and
- Whether real (and useful) innovation is going on, as opposed to ‘mere novelty.’”

Cave recommends that these issues can be addressed through 1) the development of a unified model considering the current registry-registrar market and the possibility of vertical control by ownership, 2) a panel econometric study of the competitive performance of DNS markets (including market facing ccTLDs) and of efficiency indicators, and 3) a forward-looking analysis based on models with the increase in TLDs. See <http://forum.icann.org/lists/crai-report/msg00021.html>.

Paul Tattersfield noted that it would be helpful if consultants such as CRA would do similar analysis on other areas of concern on the introduction of new gTLDs (such as large registries push boundaries of their positions). See <http://forum.icann.org/lists/crai-report/msg00023.html>. He asks a question on what happens to a .brand TLD when brand owners merge.

“One area the report doesn't touch upon are the implications from the creation of pure generic gTLDs and how to guard against the creation of monopoly positions. It is simple to make the statement for allowing open competition and let the market decide, and on the surface many people will support that notion. Of all the people who support the opening up of the DNS to allow generic new gTLDs like .search for example perhaps run

by Afilias or VeriSign etc. How many of those same people would show the same enthusiasm if .search was secured by Microsoft?”

George Kirikos asserted that the CRA Report provided only theoretical arguments, not empirical data, therefore the report should be discounted. He also states that competition should be promoted through a tender process. See <http://forum.icann.org/lists/crai-report/msg00024.html>.

Max Menius stated that he is against existing gTLD registries being able to modify their agreements to remove price caps. See <http://forum.icann.org/lists/crai-report/msg00033.html>.

## **Issues**

1. Why was the CRA Report on Registry-Registrar separation requirements issued?
2. To what extent should the limitation on cross-ownership of registries and registrars be lifted as part of the new gTLD process, and why?
3. If it is determined to permit limited cross-ownership, which model should be considered for further community consultation?

## **Analysis**

**Previous Consultations.** ICANN has received input from constituency groups, and stakeholders in the community over several years on the topic of registry-registrar separation. During the consultations on the development of the GNSO recommendations, the topic was discussed. The GNSO approved a recommendation (19) that “registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.”

During the ICANN meeting in November 2007 in Los Angeles, California, ICANN conducted an open session on the GNSO recommendations and a number of viewpoints were raised about registry-registrar separation and potential models. ICANN committed to undertaking a study of registry-registrar separation requirements and the effects of lifting such restrictions on the marketplace, most importantly, on registrants.

**CRA Report.** ICANN requested Charles River Associates International (“CRA”) to perform economic research pursuant to two resolutions of the ICANN Board of Directors: 1) the 18 October 2006 resolution of ICANN's Board of Directors seeking more information relating to the registry and registrar marketplace; and, 2) the 26 June 2008 resolution of ICANN's Board, directing the development and completion of a detailed implementation plan for the new gTLD Policy.

ICANN's policies regarding the relationship between registries and registrars have evolved over time. Current gTLD Registry Agreements prohibit registries from acquiring directly or indirectly more than 15% of a registrar (since the 2001 agreements). ICANN's founding is connected to a core value of fostering competition in the registry and registrar functions. Adding competition at the retail level for domain names is one of ICANN's first major accomplishments.

CRA engaged in interviews with members of the community over the course of several months in the first half of 2008. The Report is based on economics expertise, research and interviews of various stakeholders between February and June 2008. The CRA Report on Revisiting

Registry-Registrar Separation was posted for public comment from 24 Oct to 23 Dec 2008. The CRA Report is available at <http://www.icann.org/en/topics/new-gtld-crai-report-24oct08-en.pdf>.

CRA's report makes certain recommendations regarding the relationship between registries and registrars. The report describes the risks and benefits associated with lifting the current restrictions. CRA notes that ownership separation reduces the risk of discrimination as required by the equal access provision. CRA also notes that some of the proposed new gTLD models would be incompatible with vertical separation (e.g., privately held or ".brand" type TLDs are mentioned). The report suggests that vertical integration could promote the growth of new gTLDs, facilitate registry innovation, and eliminating the 15% restriction may encourage registrars to acquire registries.

It also describes the role of price caps in determining whether restrictions should be lifted. CRA's report suggests that, for registries operating under price caps, the arguments in favor of vertical separation and equal access are less clear-cut. The report recommends lifting the restrictions in a limited way first. The limitations are put in place to guard against the risks identified. For example, completely lifting the restrictions may put at risk the equitable treatment requirement. So a model that limits how many names a registry could "self-register" ameliorates that risk. As the CRA report points out, such a restriction also obviates some of the benefits: innovative bundling of services by cross-owned entities will not occur if the limitation on self-registration is left in place.

In particular, the CRA report makes two proposals that might apply to the implementation of the new gTLD program. These models are meant to inform discussion.

First, CRA proposes that, for single organization TLDs, that organization be permitted to operate both the registry and the registrar that sells second-level domain name subscriptions.

Second, CRA proposes that a registry may own a registrar so long as the wholly-owned registrar does not sell second-level domain names subscriptions in the TLDs operated by the registrar.

After the publication of the CRA report, ICANN convened open consultation sessions to discuss the report and its effects on the proposed new gTLD implementation model.

Recent Consultations. ICANN conducted two open consultation sessions on the CRA report, one in Washington DC on 11 December 2008 and one in Marina del Rey, CA on 19 December 2008. The comments received were summarized (see above), and ICANN is developing a synthesis paper based on the models received in the comments and consultations. Based on the comments and input, ICANN staff is weighing a number of additional models suggested for re-evaluating registry-registrar separation and cross-ownership as part of the new gTLD process.

The comments received on the CRA Report and consultation period generally agree that there should be continued separation of registrar and registry functions, but that a limited form of cross-ownership or self-management may be permitted. There was also general agreement with the GNSO recommendation that registries must use the accredited registrar model. Registrars, registries, and individual commenters noted that registries should treat registrars equitably and provide sufficient notice of domain renewal pricing changes.

**Proposed Position (for this version of the Guidebook)**

Based on the comments and input, a number of additional models suggested for re-evaluating registry-registrar separation and cross-ownership as part of the new gTLD process are being weighed. To clarify the discussion, one model was selected (based on the findings in the CRA report and public discussion of it) for inclusion into the revised Applicant Guidebook. The limited lifting of the restriction also recognizes that entities will work around organizational restrictions in an environment where there are many top-level domains if the restrictions are maintained.

Possible model taking into account public comment, CRA Report, gTLD implementation and practicalities: The key elements of a proposed limited lifting of restrictions on registry-registrar cross-ownership include the following:

- Maintain separation between the registry and registrar functions (with separate data escrow and customer interface);
- Registries continue to use only ICANN-accredited registrars;
- Registries should not discriminate among registrars;
- With a limited exception, a registrar should not sell domain services of an affiliated registry (this limit may be up to a threshold of 100,000 domain names, although the registrar may continue to manage its existing base once the threshold is met); and
- Reasonable notice should be provided before any pricing changes are made on domain renewals.

This model follows the CRA recommendation for a conservative approach by limiting the number of names a registrar could sell in its co-owned registry. The model also supports small, targeted registries (including community-based applicants or single-entity TLDs), and recognizes that limited cross-ownership may provide economic benefit and competitive benefit in the domain name market.

This model has been incorporated into the Guidebook for discussion by updating the proposed Registry agreement clause regarding the treatment of registrars.

#### **XIV. LIST OF RESPONDENTS**

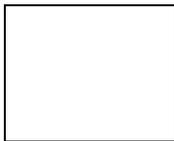
Ken Abbott (K. Abbott)  
Amadeu Abril i Abril (A. Abril i Abril)  
Adobe Systems Incorporated (Adobe)  
Andrew Allemann (A. Allemann)  
Abdulaziz Al-Zoman (A. Al-Zoman)  
American Bankers Association (ABA)  
American Intellectual Property Law Association (AIPLA)  
American Registry for Internet Numbers (ARIN)  
American Society of Association Executives (ASAE)  
Ameriprise Financial, Inc. (Ameriprise)  
Ron Andruff (R. Andruff)  
Anonymous  
Arab Team for Domain Names and Internet Issues (Arab Team)  
Asia Pacific Top Level Domain Organization (APTLTD)  
Asociacion PuntoGal (PuntoGal)  
Association of National Advertisers (ANA)  
AT&T Inc. (AT&T)  
Bank of America Corporation (Bank of America)  
British Broadcasting Corporation (BBC)  
Andreas Baumgart (A. Baumgart)  
Chris Beach (C. Beach)  
.berlin  
Vittorio Bertola (V. Bertola)  
Anders Rosenkrans Birkedal (A. Rosenkrans Birkedal)  
BITS/Financial Roundtable (BITS)  
Gregory Boulter (G. Boulter)  
Eric Brunner-Williams (E. Brunner-Williams)  
Yolanda Busse, Oehen Mendes & Assoc. (Busse)  
Dan Buzzard (D. Buzzard)  
Joe Cady (J. Cady)  
David Carter (D. Carter)  
Michael Castello (M. Castello)  
ccNSO Working Group on Geographic Names (ccNSO WGGN)  
CentralNIC Ltd. (CentralNIC)  
Charles Christopher (C. Christopher)  
Chinese Domain Name Consortium (CDNC)  
Chinese Organizational Name Administration Center (CONAC)  
Citrix Systems, Inc. (Citrix)  
City of New York (NYC)  
Connecting.nyc, Inc. (Connecting.nyc)  
Contessa  
Coalition Against Domain Name Abuse (CADNA)  
Coalition for Online Accountability (COA)  
Computer Sciences Corporation et al. (CSC)  
Lori Cordell (L. Cordell)  
Dale Craig (D. Craig)  
Cyveillance, Inc. (Cyveillance)  
Demand Media Inc.

Demys Limited (Demys)  
DHK Enterprises, Inc. (DHK)  
DOMAINOO  
dotCities  
dotCYM  
dotSCO campaign (dotSCO)  
eBay Inc. (eBay)  
eCOM-LAC  
economiesuisse  
eedlee  
Jill Evans MEP (J. Evans)  
FairWinds Partners (FairWinds)  
Ray Fassett (R. Fassett)  
Marcus Faure (M. Faure)  
Federal Deposit Insurance Corporation (FDIC)  
Robert Fernandez (R. Fernandez)  
Stuart Fyfe (S. Fyfe)  
GE Money van Staden (GE van Staden)  
GE Money Bandon (GE Bandon)  
Go Daddy  
Chuck Gomes (C. Gomes)  
W.W. Grainger Inc. (Grainger)  
Greenberg Traurig Undisclosed Client A (GT- Client A)  
Greenberg Traurig Undisclosed Client B (GT- Client B)  
Philip Gusterson (P. Gusterson)  
Hacker Factor Solution (Hacker)  
Faye Hammersley (F. Hammersley)  
Hearst Corporation  
HP.com  
Intellectual Property Constituency (IPC)  
International Anti-Counterfeiting Coalition (IACC)  
International Olympic Committee (IOC)  
International Trademark Association (INTA)  
InternetBar.org (InternetBar)  
Internet Commerce Association (ICA)  
Internet Commerce Coalition  
Internet Society-Australia (ISOC-AU)  
IP Justice  
ITT Corporation et al. (ITT)  
George Kirikos (G. Kirikos)  
.koln  
Khaled Koubaa (K. Koubaa)  
Joseph Lam (J. Lam)  
Robert Lafaye (R. Lafaye)  
Lego et al. (Lego)  
Lovells LLP (Lovells)  
MarkMonitor Inc. et al. (MarkMonitor)  
MARQUES  
Adam Martin (A. Martin)  
Naomasa Maruyama-JPNIC (N. Maruyama-JPNIC)  
Melbourne IT

Christopher Mendla (C. Mendla)  
Max Menius (M. Menius)  
Microsoft Corporation (Microsoft)  
Andrew Miller (A. Miller)  
Jorge Monasterio (J. Monasterio)  
Steve Morsa (S. Morsa)  
Annette Muehlberg (A.Muehlberg)  
National Association of Manufacturers et al. (NAM)  
National Cable & Telecommunications Association (NCTA)  
National Internet Development of Korea (NIDA)  
NCC Group (NCC)  
NetChoice  
Net Names  
Network Solutions LLC (Network Solutions)  
Jeff Neuman (J. Neuman)  
NeuStar, Inc. (NeuStar)  
News Corporation  
NIC Mexico  
Nike  
Noncommercial Users Constituency (NCUC)  
Mike O'Connor (M. O'Connor)  
Kevin Ohashi (K. Ohashi)  
.ORG The Public Interest Registry (PIR)  
Michael Palage (M. Palage)  
Lee Parsons (L. Parsons)  
Pattishall McAuliffe (Pattishall)  
Karl Peters (K. Peters)  
Katherine Pilna (K. Pilna)  
Kelly Pitts (K. Pitts)  
Plaid Cymru  
Cheryl Preston—BYU Law (C. Preston)  
Fuatai Purcell (F. Purcell)  
Robert Raines (R. Raines)  
Brendan Regan (B. Regan)  
Registrar Constituency (RC)  
Registries Constituency (RyC)  
Retail Industry Leaders Association (RILA)  
Eric Rice (E. Rice)  
Ray Robertson (R. Robertson)  
Rodenbaugh Law (Rodenbaugh)  
Ryan Romano (R. Romano)  
Kristina Rosette (K. Rosette)  
Josh Rowe (J. Rowe)  
SaudiNIC  
Frank Schilling (F. Schilling)  
C. Schuddebeurs  
Searchen Networks  
Securities Industry and Financial Markets Association (SIFMA)  
James Seng (J. Seng)  
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**EXHIBIT JJN-28**



# GNSO Issues Report

## Introduction of New Top-Level Domains

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## ***Summary***

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



## ***B. Objective***

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



### **3. Background**

1. The GNSO is tasked with determining whether to continue to introduce new gTLDs and, if this determination is affirmative, developing robust policy to enable the selection and allocation of new top-level domains.
2. Following discussions at the ICANN meeting in Luxemburg on the strategy for introduction of new gTLDs, ICANN staff and the GNSO Council have cooperated to compile decisions and documents relating to the introduction of new top-level domain names. The compilation covers main documents and decisions since 2000. The latest version is available at <http://gnso.icann.org/issues/new-gtlds/new-tlds-31aug05.htm>. This compilation has been the subject of discussions on the GNSO Council mailing list and the source for an analysis in table format available at:  
<http://www.gnso.icann.org/mailing-lists/archives/council/msg01249.html>.
3. On 1 September 2005 a process proposal was presented at the GNSO Council meeting. At this meeting, the Council recalled the



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original Names Council recommendation of 18-19 April 2000, which stated:

*“The Names Council determines that the report of Working Group C and related comments indicate that there exists a consensus for the introduction of new gTLDs in a measured and responsible manner. The Names Council therefore recommends to the ICANN Board that it establish a policy for the introduction of new gTLDs in a measured and responsible manner, giving due regard in the implementation of that policy to:*

*(a) promoting orderly registration of names during the initial phases;*

*(b) minimizing the use of gTLDs to carry out infringements of intellectual property rights;*

*and (c) recognizing the need for ensuring user confidence in the technical operation of the new TLD and the DNS as a whole.*

*Because there is no recent experience in introducing new gTLDs, we recommend to the Board that a limited number of new top-level domains be introduced initially and that the future introduction of additional top-level domains be done only after careful evaluation of the initial introduction.”*

4. The view of the Council was that ICANN should complete the evaluation of the introduction of a limited number of new top-level domains, as described in the report from the New TLD Evaluation Process Planning Task Force. The report (<http://www.icann.org/committees/ntepptf/final-report-31jul02.htm>) described four aspects to evaluate (technical, business, legal, and process). Part of the evaluation dealing with Policy and Legal issues



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was completed in July 2004 (<http://icann.org/tlds/new-gtld-eval-31aug04.pdf>). Further experience is also available as additional sponsored top-level domains are introduced in 2005 (for example, .travel, .mobi, and .jobs). The Council considered that the evaluation work could proceed in parallel with development of a comprehensive new gTLD policy, with the expectation that the evaluation would be complete before any final policy recommendations were presented to the Board for approval.

5. At a conference call on 22 September 2005 (<http://gns0.icann.org/meetings/agenda-gns0-22sep05.htm>) the Council resolved to request ICANN Staff to produce an Issues Report. On the basis of the Issues Report, a decision would be made to conduct a policy development process on the introduction of new top-level domain names. The issues report should cover the following core issues: whether to continue to introduce new gTLDs; the criteria for approving applications for new gTLDs; the allocation method for choosing new gTLDs and the contractual conditions for new gTLDs.
6. The GNSO Council determined that the Issues Report would cover all four issue areas, with a presumption of an affirmative answer to

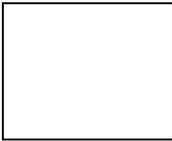


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the first issue area; the question whether to introduce new TLDs.

This document is prepared in response to this request, with four parts corresponding to the issues listed above. The rules for Issues Reports also require that ICANN Staff provide confirmation of the relevance of the work to the GNSO and to the ICANN community. Finally, in compliance with the Issues Report Guidelines, ICANN Staff are required to provide draft Working Group Terms of Reference. These are found at the end of this document.

7. The GNSO Council made a simultaneous request for ICANN Staff to provide a separate background document featuring existing documents and decisions associated with the introduction of internationalized domain names at the top-level. This work would be considered in view of a policy development process to be conducted jointly by the GNSO and ccNSO.
8. In addition to the compilation of ICANN documents mentioned above, reference material is available in studies and reports by other entities such as the OECD, WIPO, the National Research Council and Summit Strategies International which can be found in the Reference List at the end of the document.



#### ***4. Whether to introduce new top-level domains***

9. The work of the DNSO (later to evolve into GNSO and ccNSO) preceding the two-step “proof of concept” introduction of gTLDs produced a policy supporting the introduction of new gTLDs in a measured and responsible manner. Although this was a policy established for a temporary purpose, there is implicit recognition that additional gTLDs would be introduced, subject to evaluation of initial introductions. The evaluation has been made, but not completely, and a conclusion needs to be firmly drawn as to whether new TLDs shall continue to be introduced.
10. As stated above, the GNSO Council has determined that finalizing the evaluation is not seen as a prerequisite for starting working on the other elements of the GNSO Council resolution of 22 September 2005. Accordingly, work can proceed in parallel on these two fronts. Constituencies and other members of the ICANN community will be invited to review the submissions that they made to the original new gTLD policy development process in 1999 and 2000 and thereafter, and consider whether the limited introduction of new gTLDs has changed their views in any significant way.



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11. A short recapitulation of the emergence of top-level domains is provided in the following sections. Prior to ICANN's establishment, Dr. Jon Postel introduced the first generic top-level domains, implying a semantic structuring of the DNS with .COM intended for business users, .ORG for non-profit organizations, .NET intended for network users etc. During the early and mid-1990s, as country code TLDs were being delegated, the root zone was expanding by 10-20 TLDs or more per year for nearly a decade. From 1994 to 1996, 40 or more TLDs were added each year.
12. ICANN was established in November 1998. At the time, the .COM, .NET and .ORG gTLDs were commonly available for registration, while .INT, .EDU, .MIL and .GOV were available for registration by specific communities only. In addition, approximately 246 country code top-level domains were available for countries and territories to enable registrations of local domain names. A full list of all current TLDs, maintained by IANA, can be found at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>.
13. Since 1998 the industry has gone through an unprecedented development. The Internet is available across the globe and the number of users is approaching 1 billion. Internet access and use is



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Whether to introduce new TLDs

now seen as mission critical for many users. ICANN itself has also changed substantially with an increase in the complexity and volume of its work and adaptation of its staffing, organization and working methods.

14. With respect to gTLDs, there are at present nine additional top-level domains. The registry agreements can all be found at <http://www.icann.ORG/registries/agreements.htm> and a full listing of all the registries can be found at <http://www.icann.ORG/registries/listing.html>. A further set of gTLDs will be added as new sponsored top-level domain agreements are signed during the course of 2005.
15. The market for domain names shows continued signs of growth. Domain name market data can be found in a variety of sources, for example in VeriSign's latest report, found at: <http://www.verisign.com/stellent/groups/public/documents/newsletter/030725.pdf>.
16. An article in DNJournal.com, at <http://dnjournal.com/columns/50million.htm>, foresees that if the 30% growth rate experienced in the year 2005 continues, the number of gTLD domain name registrations would double to 100 million in less



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than 3 years. Usage patterns are developing and studies from both the OECD and the NRC show that proven demand for new top-level domains is inconclusive, with contentions about advantages claimed by some in stark contrast to the drawbacks purported by others. The NRC report elaborates at some length on the advantages and drawbacks. The NRC Report also states that, from a security and stability perspective, the introduction of “tens” of new TLDs per year could be done without risks. The report calls for predictability in the introduction of new top-level domains by publishing time schedules as well as applying measures to follow-up and stop the process if need be.

## **CONSIDERATIONS**

17. The decision whether to introduce new top-level domains is informed by reviewing previous constituency statements (see the full list of reports in the Reference List); examining external studies and reports and taking account of developments in Internet use and the domain name registration industry. Some additional considerations are outlined below.



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Whether to introduce new TLDs

18. Introduction of new gTLDs remains a matter of controversy in the Internet community. Additional TLDs are requested by many that see a business opportunity in running a new TLD. Whether there is true market demand for new TLDs from end-users is another matter and is likely to be conditional on multiple factors. There are also negative aspects associated with the introduction of new gTLDs such as the risk of marketplace confusion and additional costs for trade mark protection for intellectual property right holders.
19. While there seems to be a reasonable consensus within the Internet community that a measured introduction of additional TLDs can be undertaken with negligible risks for the security and stability of the Internet, assessments of suitable addition rates do vary. It should be noted in this context that the processes associated with TLD management/administration may set stricter limits than plain security/stability/technical considerations regarding how many TLDs can be added within a given time frame or how many can be maintained after their creation.
20. Additional information can be found in IETF documents, inter alia from [RFC 3071](#) , which provides a different typology of domain



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names and domain use, and from [RFC 3467](#), which elaborates on the uses of the domain name system.

21. Regardless of the chosen approach, the possibility of measuring the success or failure of the approach should be considered.

Accordingly, there is a need to foresee methods to evaluate, correct and possibly halt the process as appropriate.



### ***A. Summary of Previous Selection Criteria***

22. The following sections describe selection criteria which have been used in four previous ICANN TLD assignment processes. They provide a baseline for selection criteria to be applied in future allocations of new TLDs. Further work needs to be done to identify areas where modified or new criteria could be developed. Whilst some similarities exist across each of the four examples, the sections below illustrate the differences in each of the processes. In the interim, analysis of the evaluation of each of the four processes has been left out.

23. Previous GNSO work concluded that TLD strings should be proposed by the applicants and not prescribed by ICANN. However, there is also a need to develop policy that may place possible limits on strings that can be used at the top-level. Further discussion is required about establishing vetting processes which are objective and robust.

24. The selection criteria fit within the categories outlined below and are discussed in detail in the following sections:



25. Technical: The requirement to maintain the Internet's security and stability has been paramount. Through each successive round, the technical criteria have become more stringent and detailed. The technical criteria are designed to ensure that the registry meets all of ICANN's stability and security obligations, enables effective resolution of all domain names and reflects best practice technical developments. These criteria have evolved significantly over the last several years to now include requirements to conduct registry services with strong expectations of data and equipment security; the use of the latest software and hardware; the best technical personnel and ongoing commitment to technical improvements that reflect ICANN's requirements to run a stable and secure Internet architecture.

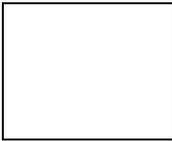
26. Financial and Business: The provision of detailed financial and business plans feature as critical selection criteria which have become more exacting and subject to, for example, international accounting standards, through each subsequent round. The criteria range across the provision of evidence that the applicant is financially viable over the long term; revenue and pricing models that demonstrate detailed understanding of the domain name



registration business; evidence of sufficient qualified staffing; customer service commitments in languages other than English on a 24/7/365 basis; innovative service offerings and the willingness to contribute to ICANN's budget objectives.

27. Legal and Regulatory: These criteria are difficult to analyze as each round had different objectives. The criteria revolve around commitments to ICANN's policy development process; to ICANN's consensus based decision making; to compliance with California-based contractual arrangements; and to public notification of terms and conditions of contracts. However, enhancement of competition in domain name registration services at the registry and registrar level, enhancing the diversity and utility of the domain name system and strengthening policy development procedures have also been key themes.

28. Community Expectations: ICANN's diverse community has very differing expectations but some central themes have emerged. Public comment periods on both selection criteria and evaluation methods are expected. ICANN processes have included deliberate periods of public comment during which the Internet community is able to comment on applicants and their application data. In



addition, applicants are able to ask questions and receive answers about the process which are posted on the ICANN's website. The public comment archives provide useful examples of the kinds of questions that were raised during the comment period. These comments were taken into account by the evaluators, particularly in the sTLD process and the .NET process. See, for example, <http://www.icann.org/org/tlds/net-rfp/net-rfp-public-comments.htm>.

29. Application Processes: The application process has become more stringent and robust with a shift to on-line application processes and full cost recovery fees for applicants. In addition, specific probity arrangements that prevent applicants influencing ICANN Board and Staff members have been established. There are also requirements for willingness to enter negotiations on the basis of draft contracts that set out standard terms and conditions and for availability to conduct follow-up evaluation negotiations.

30. External factors: The common element in the analysis of external factors is that whatever action ICANN takes to expand or modify the domain name space, there is sure to be intense interest from all areas of the Internet community in addition to the Government Advisory Committee and other ICANN entities.



## ***B. Selection Criteria 2000 Generic and Sponsored Top-Level Domain Process***

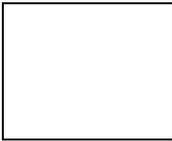
31. On 16 July 2000 the ICANN Board voted on a resolution (<http://www.icann.ORG/tlds/new-tld-resolutions-16jul00.htm#00.460>) to enable the introduction of a limited number of sponsored and unsponsored top-level domains.
32. The 2000 round of new TLDs applications resulted in the introduction of .biz, .info, .name and .pro as unsponsored top-level names and .aero, .museum and .coop as sponsored top-level domains. The formal documentation can be found at <http://www.icann.ORG/yokohama/new-tld-topic.htm> .
33. Instructions for applicants and early discussion about the initial selection criteria can be found at <http://www.icann.ORG/tlds/new-tld-application-instructions-15aug00.htm>. Forty five applications were received in the process. The key criteria in this initial round included the areas set out below.
34. Technical: These criteria can be found at <http://www.icann.ORG/tlds/application-process-03aug00.htm#1e>



and included a technical capabilities plan including “the following topics ...physical plants, hardware, software, facility and data security, bandwidth/Internet connectivity, system outage prevention, system restoration capabilities and procedures, information systems security, load capacity, scalability, data escrow and backup capabilities and procedures, Whois service, zone file editing procedures, technical and other support, billing and collection, management and employees, staff size/expansion capability, and provisions for preserving stability in the event of registry failure.

Required supporting documentation included: company references, diagrams of systems (including security) at each location, personnel resumes and references”.

35. Financial and Business: These criteria were contained in sections relating to the provision of business plans and required “detailed, verified business and financial information about the proposed registry”; company information, current and past business operations, registry/Internet related experience and activities, mission, target market, expected costs/expected budget, expected demand, capitalization, insurance, revenue model, marketing plan, use of registrars and other marketing channels, management and



employees, staff size/expansion capability, long-term commitment/registry failure provisions.

36. Legal and Regulatory: These criteria revolved around the treatment of (then) existing gTLD policies and proposals how new TLDs would be treated. There were no explicit requirements to commit to ICANN's policy development processes. However, explicit plans were expected to address name registration policies and the explanation of why applicants could argue that their application was unique and responded to unmet demand.

37. Community Expectations: There was a lot of discussion within the community about what top-level domains ought to be chosen, the history of which can be found at <http://www.icann.org.org/announcements/icann-pr16nov00.htm>.

38. Application Processes: The application process required the payment of a USD 50,000 non-refundable fee. The application materials differentiated between sponsored and unsponsored applications; required a "fitness disclosure", application for specific dispensation to hold material confidential and hard copies of application material delivered to ICANN's offices. There was a



publicly posted question and answer period and a public comment period.

39. External factors: At the time of the 2000 round, the Internet boom was at its height. There was a lot of industry interest in the potential to expand the domain name space which is evidenced by the number of applications ICANN received and the robust discussion which took place about the selection of seven new TLDs.



## ***5. Selection Criteria 2004 Sponsored Top-Level Domain Process***

40. The second process is the sponsored top-level domain round held in 2004 which, so far, has enabled the introduction of .mobi, .travel, .cat and .jobs. Other applications are still under consideration and include .post, .xxx, .tel (pulver), .tel and .asia.

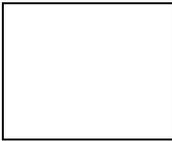
41. The selection criteria for the 2004 sTLD round were posted on ICANN's website and, for the first time, an electronic website based application process was used to collect applicant information. ICANN provided a set of explanatory notes; set out what applicants needed to do to comply with the application process; provided a forum for answering questions about the application process and posted a timeline for applicants to follow.

42. One of the key characteristics in this process was the criteria for establishing a sponsoring community and organisation that would be responsible for domain name registration policies applicable for the top-level domain.



43. Technical: The minimum technical criteria were contained in Part E of the application material. Applicants were required to demonstrate their technical competence by showing how they would, for example, conduct registry operations; what kind of registrar-registry protocols would be required; how zone files would be managed; what facilities would be provided; how data escrow would be handled; what technical support would be available and how data and systems recovery would be managed.

44. Financial and Business: These criteria were contained in Part C and D of the application material which required detailed business plans and financial models. The business plan required appropriate staff to be identified; a marketing plan, plans for registrar management and appropriate fee structures. Most importantly, applicants were required to show why their application was unique and innovative; added community value to the domain name space, enhanced the diversity of the Internet and enriched global communities. In addition, applicants were expected to show how their operations would protect the rights of others through compliance with dispute resolution mechanisms and compliant registration systems.



45. Legal and Regulatory: A key element of the sponsored top-level domain application process was the requirement that applicants adequately define and demonstrate the support of a sponsored TLD community with evidence from a supporting organisation. The applicants were required to demonstrate that the proposed sponsoring organisation was appropriate for the purpose, would participate in ICANN's policy development processes and had support from the broader community.

46. Community Expectations: In this RFP, there were specific efforts made to diversify the domain name space; to demonstrate the attractiveness of different kinds of domain name spaces and to have different policy making processes that would be the responsibility of the sponsoring organisations. The public comments submitted for the sTLD process can be found at <http://forum.icann.ORG/lists/stld-rfp-general>.

47. Application Processes: Part F of the application material contained an Application Checklist to assist applicants in ensuring that their application materials complied with all sections of the RFP.



48. External factors: There were a number of special factors which arose throughout the application process including the status of regional geographic specific sTLDs; the treatment of identical string applications and the influence of the GAC principles of national governments with respect to public policy questions relating to some applications. The sTLD process is ongoing.



## **6. Selection Criteria .ORG Contract Reassignment**

49. The reassignment of the .ORG contract took place during 2002 with the final agreement between Public Internet Registry and ICANN being signed on 3 December 2002. PIR commenced operation on 1 January 2003. There is a wide range of material available on the ICANN website including the selection criteria, application material, staff evaluations and public comments on the process. These are found at <http://www.icann.org.org/tlds/org/rfp-20may02.htm>.

50. The final contract can be found at <http://www.icann.org.org/tlds/agreements/org/>. (Note that the contract is a very large file with numerous appendices.)

51. The key selection criteria for the .ORG contract were contained in an on-line “proposal form” which applicants were required to fill out and submit in hard copy. Ten applications were received by ICANN in a competitive tender process.

52. The selection criteria <http://www.icann.org.org/tlds/org/criteria.htm> on the .ORG reassignment focus on the “need to preserve a stable,



well functioning .ORG registry”, “ability to comply with ICANN’s policies”, “enhancement of competition for registration services”, “differentiation of the .ORG TLD”, “inclusion of mechanisms for promoting the registry’s operation in a manner that is responsive to the needs, concerns, and views of the noncommercial Internet user community”, “level of support for the proposal from .ORG registrants”, “the type, quality, and cost of the registry services proposed”, “ability and commitment to support, function in, and adapt protocol changes in the shared registry system”, “transition considerations”, “ability to meet and commitment to comply with the qualification and use requirements of the VeriSign endowment and proposed use of the endowment” and “the completeness of the proposals submitted and the extent to which they demonstrate realistic plans and sound analysis”. These criteria are consistent with, in particular, those applied in the .NET reassignment. The following sections set out the specifics of the selection criteria.

53. Technical: The RFP made specific reference to the size and complexity of the .ORG registry. In 2002 there were 2,700,000 domain names in the .ORG registry. The RFP asked specifically for applications from companies that already offered registry services



and who could demonstrate the capacity to run a “domain-name registry of significant scale”. The Technical Plan included specific information about transition planning. Other technical requirements were an explanation of registry-registrar models; database capabilities; data escrow and backup; physical facilities; publicly accessible WHOIS; technical support and compliance with technical specifications in RFCs.

54. Financial and Business: The .ORG selection criteria focused specifically on the following key areas: equivalent access for registrars, enhancement of competition, differentiation of the .ORG TLD (also relevant in the “community expectations” section) and supporting documentation (setting out the applicant’s business information, annual reports, business references and community support).

55. Legal and Regulatory: The .ORG RFP required applicants to comply with a draft agreement which was posted during the RFP process, available at <http://www.icann.ORG/announcements/announcement-24oct02.htm>. In addition, applicants were expected to agree to



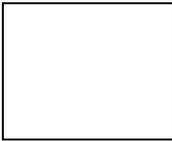
requirements to comply with ICANN's published policies and to participate actively in new policy development initiatives.

56. Community Expectations: Responsiveness to the non-commercial Internet user community was a key selection criterion in the .ORG reassignment. Management of the USD 5 million .ORG endowment and provision of indications of community support also fit into this category.

57. Application Processes: The .ORG applicants were required to pay a fee of USD 35,000 in addition to the cost of preparing the application form. Eleven applications were received. The applicants used the application question period and public comments about the applications were received through the ICANN website. A "fitness disclosure" was also required in addition to a formal statement identifying materials that would remain confidential. The general information about applicants and the statement of information about applicants refers specifically to the emphasis placed on the applicants' ability to operate a large registry including identifying any outsourcing arrangements.

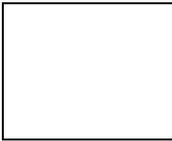


58. External factors: Key external factors were the management of the VeriSign endowment, the transition of a very large existing database and support for the non-profit sector: The process for effecting changes to the .ORG registry services agreement can be found at <http://www.icann.org.org/announcements/announcement-22apr02.htm>.



## ***7. Selection Criteria .NET Reassignment***

59. The fourth example of a process with strict selection criteria was the reassignment of the .NET contract. The .NET registry had approximately six million registered domain names. The GNSO had recommended a distinction between absolute and relative criteria. The absolute criteria were developed with the broader ICANN community to “ensure that the .NET top-level Domain is administered at a very high level of safety, security, efficiency and fairness.” Each applicant had to satisfy all the absolute criteria. Comparisons were then made on the basis of the relative criteria and how well each applicant responded to those criteria.
60. There were five applicants for the .NET contract – VeriSign, NeuStar (as Sentan Registry Services), Afilias, DENIC and CORE. VeriSign was determined to be the successor operator after a comprehensive evaluation process.
61. The current version of the contract can be found at <http://www.icann.org/org/tlds/agreements/net/net-registry-agreement-01jul05.pdf> . A public comment period ran until 10 October 2005 on proposed amendments to the .NET contract.



Reference to the public comment period can be found at

<http://www.icann.org/announcements/announcement-22sep05.htm>.

62. In the RFP, there was a strong focus on absolute technical criteria, similar to those applied in the .ORG reassignment.

63. Technical: These criteria were absolute and included requirements for explicit descriptions (and substantiation) of existing registry operations; a “burdens and benefits” analysis of registry plans and all technical components of planned registry services. In addition, applicants were expected to provide detailed information on name server functional specifications; patch, update and upgrade policies; performance specifications; service level agreements, WHOIS specifications and data escrow arrangements. Explicit compliance with a range of RFCs was also required in addition to the provision of information about technical capabilities; sourcing of expert staff and highly detailed technical plans for ongoing operation in addition to detailed technical migration plans.

64. Security and stability of operations was a critical element of the absolute selection criteria. This included technical and business



failure contingency plans in addition to robust transition and migration plans.

65. Financial and Business: These criteria ranged across the provision of information about directors, officers, key staff and number of employees; the kind of organization and its core business. In addition, applicants were expected to provide pricing plans and demonstrate financial strength and long term viability. A detailed business plan was required, including staffing plans, expense models and cash availability.

66. Legal and Regulatory: These criteria included commitments to ICANN's existing consensus policies and compliance with all future consensus policies; a focus on increasing the competitive supply of registry services and innovative registry services

67. Community Expectations: ICANN processes include deliberate periods of public comment during which the Internet community can state their views. The .NET process outcome was contested and the public comment archives can be found at

<http://www.icann.ORG/tlds/net-rfp/net-rfp-public-comments.htm>.



68. Application Processes: The application process for the .NET contract required payment of a USD 200,000 application fee (with a graduated refund payable depending on the number of applicants). Each unsuccessful applicant received a USD 150,000 refund. There were procedures for non-compliant proposals and a requirement that portions of the application material be made public (and then commented upon by members of the ICANN community). Probity and conflict of interest measures were put in place to prevent applicants from attempting to influence ICANN Board and Staff members.

## **CONSIDERATIONS**

69. Doubts have been expressed about whether it is necessary for ICANN to qualify new gTLDs on the basis of support and sponsorship by a community; the provision of business and financial plans and addition of new value to the name space. The NRC report suggests pre-qualification of applicants on technical capability, basic financial viability, and adherence to registrant protection standards and compliance to ICANN policies.



70. As stated earlier, the presumption is that it should be left to the imagination of potential bidders to propose strings for new gTLDs. From that perspective, an essential aspect to analyze is what character strings are acceptable and under what conditions. This relates to elements such as string length, technical, linguistic, cultural or even political aspects. There is a case for investigating whether there are any external authoritative sources that could be useful for vetting purposes, where both negative and positive list approaches can be considered.
71. The GAC has stated clear views on how to consider certain strings for TLDs, inter alia in a letter to ICANN dated 3 April 2005 (<http://www.icann.org/correspondence/tarmizi-to-twomey-03apr05.htm>)
72. There are examples of negative list approaches concerning domain names on the second level, which may be of relevance also for TLD strings. Reserved names lists are also mentioned in the chapter on contractual conditions. A recent addition on this topic is [the reserved names list](#) for .EU that is now published, covering country names of EU Member States in a plurality of languages.



73. The selection criteria previously used can be assessed for future selection processes from both an overall perspective and from a detailed perspective on each criterion. It is clear that ICANN should strive for process simplicity, especially since simplicity is an integral element of ensuring predictability in its processes.

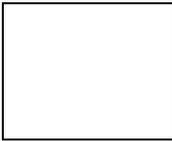


## **8. Contractual Conditions**

74. This section sets out analysis of the key contractual conditions relating to the initial 2000 round of new TLDs, the conditions for the new sTLDs and the contractual arrangements for the .ORG and .NET reassignment processes. The analysis is not intended to be comprehensive across each of the sets of agreements but rather to identify key points and areas where the agreements have evolved.

75. As noted above in the Selection Criteria section, contractual conditions have evolved to reflect the growing maturity of ICANN's organisation and the changing commercial environment in which registries operate. A list of all gTLDs can be found at <http://www.icann.ORG/registries/listing.htm> . All contracts between ICANN and gTLD operators and sponsors can be found at <http://www.icann.ORG/registries/agreements.htm>.

76. The change in approach for the 2005 TLD agreements was designed to streamline the agreement structure and to allow additional flexibility. Basic provisions have been reduced to key points; repetitious items have been removed and appendices have been simplified or eliminated altogether.



77. Other changes from the 2001 generic and sponsored top-level domain agreements include those set out in the following sections.
78. Obligations of Parties: The provisions have been simplified to eliminate clauses that repeated ICANN's mission as set out in the Bylaws. In addition, clauses relating to limitations around certain business practices by registry operators have been eliminated where they are overly prescriptive. Registry operator's obligations have been reduced to those covenants that are of fundamental interest to ICANN.
79. Consensus Policies: The old agreements provided a framework for the development of "consensus policies" including topics on which policies applicable to the registry operator may be developed. Since the original agreements were drafted in 2001, ICANN's restructuring and industry changes have had a significant effect on the way in which ICANN's policy development processes have been codified through the Bylaws. In the new form agreement, the reference to "consensus policies" includes all existing policies as of the date of the agreement, and all policies later developed through the policy development process, as part of ICANN's Bylaws. Some scoping of the development of policies under the agreement is included in the



2005 agreements. However, the Bylaws are intended to be the authoritative guide on the due process and procedure for the development of consensus policies.

80. Zone File Access: The updated registry agreements continue to obligate registry operators to provide zone file access to ICANN and to provide a free copy of the zone file to requesting parties.

81. Reserved Names: The identification of reserved top-level domain strings is simplified in two ways. One, a list on the IANA website that is updated from time to time and two, a list of names reserved from registration consistent with the relevant appendix which would be updated as needed.

82. Registry-Registrar Relationships: The existing framework of agreements for registry operators requires them to do business with (and only with) all ICANN-accredited registrars as well as mandating “equal access” to registry services and resources. The new .NET registry agreement continues this practice. The new .NET agreement prohibits registries from acting as registrars. However, registries may provide for volume discounts, marketing support and other incentive programs provided that the same



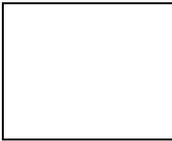
opportunity to qualify for those discounts and programs is available to all registrars.

83. Data Escrow: The 2001 registry agreement required data escrow (zone file copy) by the registry operator. In addition, the 2001 agreement also specified by appendix both the specifications for the data escrow and the form of data escrow agreement. The new .NET agreement also has this requirement.

84. WHOIS Policy: WHOIS policies (including consideration of public WHOIS, requirements for independent providers and ICANN's specifications) remained unchanged in the .NET agreement.

85. Functional and Performance Specifications: The functional and performance specifications were set out in Appendix C to the 2001 TLD agreements. The 2005 agreements set forth the specifications in Appendix 7.

86. Notice and Process for Proposed Registry Services & Product Changes: ICANN's pre-2005 registry agreements did not describe a procedure for ICANN to follow in considering registry requests to introduce new services or otherwise modify the registry agreement. A GNSO policy development process was launched in 2003 to



assist ICANN with developing such a procedure. The work of that GNSO PDP has been incorporated into all recent ICANN registry agreements

87. Dispute Resolution: The provisions governing dispute resolution contain mandatory arbitration provisions and also impose requirements that parties engage in co-operative discussions before proceeding to any arbitration demand. It is important to note that the intention of amending these provisions is to resolve any disputes through early informal processes (although these are mandated procedures). The new .NET provisions also contain specific performance provisions which give options to remedy non-performance through measures other than contract termination.

88. Termination Provisions: ICANN's termination rights revolve around an understanding of uncured and fundamental and material breaches of enumerated provisions relating to registry operator performance including those conditions relating to preserving security and stability; complying with consensus policies; handling of registry data; compliance with the process for approval of new registry services or material changes to existing services; and payment of ICANN fees.



89. Fees and Pricing: These conditions relate to fixed registry fees, transaction based fees and variable fees (essentially pass through of registrar fees when not collected from registrars directly).
90. Term of Agreement and Renewal: These conditions specify the time period for the gTLD assignment and conditions for renewal of the agreement.

## **CONSIDERATIONS**

91. With the current contractual conditions as a starting point, there is a need to select essential contract conditions on which policy decisions are possible. In addition, there is an opportunity to identify policy aspects on new suggestions for contractual provisions.
92. ICANN is moving towards simplification of the registry contracts and standardized contracts could also be considered. Such aspects are especially appropriate to consider if a large number of new top-level domain names are to be added to the root level. A detailed proposal to simplify current agreements has been introduced during a public comment period. When reviewing the contractual conditions, past and current policy debates on TLD use could be



considered. An example would be the discussions about to what extent sponsored TLD registries should be able to set and change policies for domain name registration.

93. Currently, the contractual conditions feature cancellation of the contract as the principal sanction available. This “nuclear option” is clearly only applicable in extreme cases of non-compliance and has never been used. Some recent registry contracts, however, feature arbitration with other sanction possibilities for the compliance regime and such approaches could be considered further.

94. Suggestions put forward in the WIPO report to safeguard the interests of IPR holders are relevant to domain name registration rules.

95. IETF findings and proposals provide input for reviewing certain contractual conditions. Examples are the technical best practices for TLD zones that the DNSOP working group has elaborated and the results from the CRISP working group relating to WHOIS.



## **9. Allocation Methods**

96. There are technical, processing and maintenance limits on the number of new gTLDs that could be introduced within a given time frame. The number of applications that meet stipulated selection criteria may exceed these limits, calling for an allocation method to handle such situations. Accordingly, policy choices about allocation methods need to be made. The policy choices should consider that combinations of such options are possible and could be related to different purposes. [check on RFC reference to numbers of TLDs that can be added]
97. There is a number of allocation methods to choose from and these methods can be grouped into the following categories; sequential or first-come/first-served, random selections in the form of ballots or lotteries, auction models (with increasing or decreasing bidding) and comparative evaluations, commonly known as “beauty contests”.
98. To date, ICANN has only used comparative evaluation methods. These evaluation procedures have differed in the details, by applying different criteria as explained in the selection criteria



chapter above. Evaluations have been performed in different ways; in-house, with mixed teams or by external consultants.

99. In the 2000 “proof-of-concept” round, ICANN used a comparative hearing process conducted by ICANN Staff and Board to select 7 out of the 44 applicants on the respective merits of their cases in fulfilling the specified selection criteria.

100. In the 2004 round for sponsored gTLDs, ICANN issued an open invitation for any applicants to propose new sponsored top-level domains. This time, ICANN engaged a project manager, selected by competitive bidding and assisted by three review panels, to determine whether the selection criteria were fulfilled or not. Allocation of a TLD to an applicant was to be conditional only upon fulfillment of these criteria. This process was designed to have an objective evaluation by experts insulated from lobbying by applicants, who were prohibited from contacting the evaluator. The intention was further to avoid lobbying pressure on ICANN Staff and Board as well as to minimize the risk for potential criticism about subjectivity in the process.



101. The .ORG reassignment was conducted in 2002 as a competitive tender process based on an open RFP with the selection criteria as specified in the previous chapter. Eleven applications were received and the evaluation was performed using a multi-team approach. The evaluation tasks were distributed by topic between consultants, constituencies and ICANN staff (as described in an evaluation report at: <http://www.icann.org/tlds/org/preliminary-evaluation-report-19aug02.htm> ). PIR was selected as the proposed new registry for this gTLD and the ICANN Board resolved in accordance with this proposal.

102. The .NET reassignment was conducted in 2004-2005 as a competitive tender process based on an open RFP with the selection criteria specified in the previous chapter. Five bids were received and the evaluation was conducted by an outside consultant, assigned to this task through competitive bidding and selection by ICANN Staff and Board. The final evaluation and recommendation by the consultant is available at: <http://www.icann.org/announcements/announcement-28mar05.htm>.

## **CONSIDERATIONS**



103. It should be recognized that the final decision to allocate a gTLD lies with the ICANN Board, where contractual arrangements are taken into account for the final approval. This implies that judgments can sometimes become complex, especially when an application attracts intense community and media interest. The .NET reassignment is a case in point, where the Board followed the consultant's recommendation to reappoint VeriSign as registry for .NET. However, community concerns were raised about the contractual conditions which, in response to those concerns, have been renegotiated, posted for public comment and presented to the Board.

104. ICANN has considerable experience in comparative evaluation methods. Two other allocation methods mentioned initially, first-come/first-served and random selection, are self-explanatory. ICANN has no experience of either model or of using auctions. Information about auction methods can be found in a variety of publications a selection of which are found in the Reference List.

105. The choice of allocation method has significance only if the number of valid applications is higher than the number of available slots for new TLDs. With criteria defined for a successful



application, it could be considered reasonable to accept them on a first-come/first-served as long as they meet the criteria, provided that the number of such applications is lower than, or equal to, the number of available slots for new TLDs. However, experience with “land rush” effects in domain name registrations show that first-come/first-served does not work when many valid applications are supplied at the same time. With this in mind, it is prudent to foresee the need for another allocation method from the outset.

106. The NRC report states that “If new gTLDs are to be created, the currently employed comparative hearing or expert evaluation processes should not be assumed to be the only processes for selecting their operators” and suggests that if the number of qualified applicants turns out to be less than the number of available slots, all would be chosen; if not, a market-based selection process, i.e. an auction, could be used to select among the applicants. The report further contends that “because of the wide range of intents and corresponding designs of such processes, they must be carefully designed, drawing on the wide range of previous experience in the design of auctions”.



107. In the process of determining the preferred allocation method, ICANN is constrained by some legal requirements that may limit the options for choosing allocation methods. Such limitations need to be investigated in parallel as soon as preferred allocation methods start to emerge in the selection process.



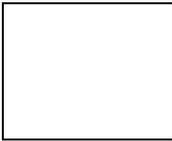
## ***10.Relevance***

108. Issues surrounding the creation of new top-level domains and the policies for undertaking that work are directly relevant to the GNSO's mission and the ICANN Bylaws. It is anticipated that very close consultation will take place between other parts of ICANN's organisation including the ccNSO, the Government Advisory Committee and expert technical working groups.

109. This work will have a lasting value and applicability and will establish a framework for future decision making. The work will also have an impact on existing policies for registry services.

### ***C. Staff Recommendation***

110. It is recommended that the GNSO launch a focused policy development process on the issues outlined in the 22 September 2005 resolution in close consultation with the broader ICANN community including the Government Advisory Committee (on the public policy aspects of new top-level domains) and the ccNSO on (internationalized domain names).



### ***D. Proposed Working Group Terms of Reference***

111. The draft Working Group Terms of Reference reflects very diverse objectives across the ICANN community. The GNSO is tasked with determining whether to continue to introduce new gTLDs and, if that is affirmative, developing robust policy to enable the selection and allocation of new top-level domains. The proposed Terms of Reference found below could be used as a guide for further work.

112. Term of Reference One: Should new top-level domain names be introduced?

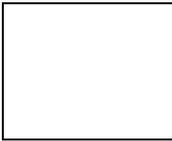
- (a) Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top-level domains. If this is the case the following additional terms of reference are applicable.

113. Term of Reference Two: Selection Criteria for New top-level Domains



New Top-Level Domains  
Staff Recommendations & Proposed Terms of Reference

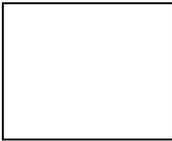
- (a) Using the existing selection criteria from previous top-level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top-level domains can meet demands for broader use of the Internet in developing countries.
- (b) Examine whether preferential selection criteria could be developed which would encourage new and innovative ways of addressing the needs of Internet users.
- (c) Examine whether distinctions between restricted, unrestricted, sponsored and unsponsored top-level domains are necessary and how the choice of distinctions meets the interests of relevant stakeholders.
- (d) Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.



- (e) Examine whether additional criteria can be developed to normalize and simplify the administrative process of selecting and implementing new top-level domains.

#### 114. Term of Reference Three: Allocation Methods for New Top-Level Domains

- (a) Using the experience gained in previous rounds of top-level domain name application processes, develop modified or new criteria which simplify and standardize the allocation methods for selecting new top-level domain names.
- (b) Examine the full range of allocation methods including auctions, ballots and comparative evaluation processes to determine the most predictable and stable method of implementing additions to the Internet root.
- (c) Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.



115. Term of Reference Four: Contractual Conditions for New Top-Level Domains

- (a) Using the experience of previous rounds of top-level domain name application processes and the recent amendments to registry services agreements, develop modified or new contractual criteria which are publicly available prior to any application rounds.
- (b) Examine whether additional contractual conditions are necessary to improve ICANN's contractual compliance regime to provide predictability and security of registry services.
- (c) Examine whether a registry services code of conduct, in addition to contractual conditions, would improve a compliance regime which is easily understandable and recognizes differences in approaches to offering registry services whilst, at the same time, ensuring the stability and security of the Internet.

116. At the Council meeting on 28 November 2005, it was resolved to adopt Terms of Reference as follows:



New Top-Level Domains  
Staff Recommendations & Proposed Terms of Reference

117. Should new generic top-level domain names be introduced?

- (a) Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top-level domains. If this is the case the following additional terms of reference are applicable.

118. Selection Criteria for New Top-Level Domains

- (a) Taking into account the existing selection criteria from previous top-level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top-level domains can meet demands for broader use of the Internet in developing countries.
- (b) Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage



New Top-Level Domains  
Staff Recommendations & Proposed Terms of Reference

new and innovative ways of addressing the needs of Internet users.

- (c) Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.

119. Allocation Methods for New Top-Level Domains

- (a) Using the experience gained in previous rounds, develop allocation methods for selecting new top-level domain names.
- (b) Examine the full range of allocation methods including auctions, ballots, first-come first-served and comparative evaluation to determine the methods of allocation that best enhance user choice while not compromising predictability and stability.
- (c) Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.



## 120. Policy to Guide Contractual Conditions for New Top-Level Domains

- (a) Using the experience of previous rounds of top-level domain name application processes and the recent amendments to registry services agreements, develop policies to guide the contractual criteria which are publicly available prior to any application rounds.
- (b) Determine what policies are necessary to provide security and stability of registry services.
- (c) Determine appropriate policies to guide a contractual compliance programme for registry services.



## ***Reference List***

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Johnson, David and Susan Crawford, *A Concrete "Thin Contract Proposal"*, submitted 23 August 2003 as comments on new TLD contracts. On line version including proposed draft contract available at <http://forum.icann.org/mtg-cmts/stld-rfp-comments/general/msg00039.html>.

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Reference List

Organisation for Economic Cooperation and Development, *Generic Top-Level Domain Names: Market Development and Allocation Issues*. Working Party on Telecommunications and Information Services Policies. Paris: 2004.

DSTI/ICCP/TISP(2004)/2Final. On line version at <http://www.oecd.org/dataoecd/56/34/32996948.pdf>.

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World Intellectual Property Organisation, *New Generic Top-Level Domains: Intellectual Property Considerations*, WIPO Arbitration and Mediation Center, 2004. On line version at <http://arbiter.wipo.int/domains/reports/newgtld-ip/index.html>.

## ICANN Links

*GNSO gTLDs Committee Final Report on New gTLDs, May- June 2003*

9 May, v4: <http://www.dnso.org/dnso/notes/20030509.gTLDs-committee-conclusions-v4.html>

21 May, v5: <http://www.dnso.org/dnso/notes/20030521.gTLDs-committee-conclusions-v5.html>

02 Jun, v6: <http://www.dnso.org/dnso/notes/20030602.gTLDs-committee-conclusions-v6.html>

12 Jun, v7: <http://www.dnso.org/dnso/notes/20030612.gTLDs-committee-conclusions-v7-1.html>

IANA alphabetical listing of all TLD domains - <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>.

List of Registry Agreements <http://www.icann.ORG/registries/agreements.htm>



List of Registries

<http://www.icann.ORG/registries/listing.html>.

**EXHIBIT JJN-29**

## PART ONE -- POLICY DEVELOPMENT PROCESS

Last Updated:31 August 2009

**Date:**

01 August 2007

**GNSO new TLDs Committee**

**Part B: Final Report****Introduction of New Generic Top-Level Domains****Table of Contents**

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PART FOUR – RESERVED NAMES WORKING GROUP FINAL REPORT

PART FIVE – PROTECTING THE RIGHTS OF OTHERS WORKING GROUP FINAL REPORT

PART SIX – GOVERNMENTAL ADVISORY COMMITTEE PUBLIC POLICY PRINCIPLES

PART SEVEN – CONSTITUENCY IMPACT STATEMENTS

PART EIGHT -- REFERENCE MATERIALS

**Return to Final Report: Part A**

1. This section provides detailed information about the progress of the policy development process and the documentation produced throughout the series of teleconferences and face-to-face consultations that have taken place since December 2005, through 2006 and 2007. All of the meetings were open to observers and many different stakeholders attended the meetings taking an active part in the discussion. In addition, all

meetings were open to remote participation by teleconference and file-sharing technology for some meetings. Participation data is provided in Part Two below.

2. The first step of the policy development process was the release of the *Issues Report* on 5 December 2005. The *Report* sets out an early collation of issues that the GNSO wished to take into account in developing the Terms of Reference for future rounds. For example, the selection criteria used in previous application rounds for new top-level domains were used to guide the development of Term of Reference Two in this PDP. An evaluation of the selection criteria and methods used in the re-bidding of the .org and .net registry contracts was also conducted. The *Issues Report* contained Staff Recommendations about potential terms of reference and, in the main, those Recommendations were adopted by the GNSO Council. The *Report* is found at <http://gnso.icann.org/issues/new-gtlds/gnso-issues-rpt-gtlds-05dec05.pdf>.

3. A Public Comment Period was launched on 6 December 2005 to solicit input from the ICANN community about the proposed Terms of Reference (found at <http://www.icann.org/announcements/announcement-06dec05.htm>). The Public Comment Period ran until 31 January 2006. For this PDP public comment periods have been used in different ways than in the past. In general, public comment calls have been far more targeted and highly structured to get responses on particular areas of concern to the Committee. This was a successful initiative enabling information to be collected in a consistent way that improved the quality of subsequent *Reports*. The archive of comments can be found at <http://forum.icann.org/lists/new-gtlds-pdp-comments/>).

4. In addition to a Public Comment Period, a *Call for Expert Papers* was announced on 3 January 2006 (found at <http://icann.org/announcements/announcement-03jan06.htm>). The request for input was advertised widely in the international press and yielded eleven responses from a diverse range of stakeholders. The authors of the papers were invited to present their papers and participate in a question and answer session at the 23 - 25 February 2006 Washington meeting. A full listing of all the inputs, including the *Expert Papers*, can be found at <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>.

5. The ICANN Board has been regularly updated on the progress of and taken a keen interest in the work of the new TLDs Committee. For example, the Board meeting of 10 January 2006 shows discussion within the Board about its involvement in new TLDs policy development process (found at <http://www.icann.org/minutes/minutes-10jan06.htm>). The Board passed a resolution at the March 2006 Wellington meeting urging the Committee to work as quickly and efficiently as possible.

6. A draft *Initial Report* was released on 19 February 2006 (found at <http://icann.org/topics/gnso-initial-rpt-new-gtlds-19feb06.pdf>) and a request for public comments was announced at the same time that was open between 20 February 2006 and 13 March 2006. The archives for those comments are found at <http://forum.icann.org/lists/new-gtlds-pdp-initial-report/>. The draft *Initial Report* was used to facilitate discussion at subsequent Committee meetings and to give some guide to the broader community about the Committee's progress in its early stages.

7. The GNSO's new TLDs Committee held a three day meeting in Washington DC between 23 and 25 February 2006. The meeting notes can be found on the GNSO's Committee archive at (<http://forum.icann.org/lists/gtld-council/msg00030.html>). A central element of the discussion focused on re-visiting ICANN's Mission and Core Values to ensure that the deliberations on the Terms of Reference were tightly constrained. The substantive discussion over the three-day meeting also included discussion on whether to introduce new top-level domains (<http://forum.icann.org/lists/gtld-council/msg00027.html>) and potential selection criteria which could be used in a new round of top-level domain applications (<http://forum.icann.org/lists/gtld-council/msg00026.html>).
8. Analysis of the lessons learned from previous TLD rounds was included in the broader discussions held in Washington DC (<http://forum.icann.org/lists/gtld-council/msg00030.html>). In addition to discussing general selection criteria, detailed discussion of technical requirements also took place (<http://forum.icann.org/lists/gtld-council/msg00028.html>). Following the Washington meetings, it was clear that further information about technical criteria was necessary to inform the Committee's work. On 15 March 2006 a formal call was made for additional information on technical criteria (found at <http://gnso.icann.org/issues/new-gtlds/tech-criteria-15mar06.htm>). No responses were received to that specific call but, in the resulting recommendations, particular attention has been paid to addressing relevant technical standards across the full range of registry operations, including those that relate to Internationalised Domain Names.
9. In response to the Committee's work and to discussions at the March 2006 Wellington meeting, the Board indicated its intention to facilitate the implementation of new top-level domains (found at <http://www.icann.org/minutes/minutes-31mar06.htm>.)
10. The new TLDs Committee met in Brussels between 11 and 13 May 2006 to discuss, in further detail, the work that had been undertaken on refining the selection criteria and allocation methods. In addition, a full day was spent on discussing policies for contractual conditions with a special presentation from ICANN's Deputy General Counsel. The Committee has archived, on 18 May 2006, records of the Brussels discussion and output from the meeting can be found at <http://forum.icann.org/lists/gtld-council/msg00133.html>
11. At the Brussels meeting, a revised work plan was devised (found at <http://forum.icann.org/lists/gtld-council/msg00130.html>) which include a high level commitment to producing an *Initial Report* in time for discussion at ICANN's June 2006 Marrakech meeting.
12. A draft *Initial Report* was released on 15 June 2006 (found at <http://gnso.icann.org/issues/new-gtlds/issues-report-15jun06.pdf>) and further discussion took place on the Committee's mailing list prior to the Marrakech meeting.
13. The ICANN Board meeting of 30 June 2006 showed, again, the Board's interest in facilitating the policy development process on new top-level domains, particularly in encouraging ongoing discussions with the GAC. (found at <http://www.icann.org/minutes/resolutions-30jun06.htm>). After inputs from the Marrakech

meeting a final version of the *Initial Report* was released on 28 July 2006 (found at <http://gnso.icann.org/drafts/newgtlds-issues-report-01-28jul06.htm>).

14. The Committee conducted another set of face-to-face consultations in Amsterdam between 29 and 31 August 2006 to further refine the Committee's findings and to develop a set of draft *Recommendations*. Prior to the Amsterdam meeting, a comprehensive public comment period was conducted. These public comments (found at <http://forum.icann.org/lists/gtld-council/msg00189.html>) were used as working materials for the Committee to consider, in addition to Constituency Statements, the previous set of Expert Papers and comprehensive commentary for a wide variety of observers to the meetings.

15. The Committee met with the GAC on four occasions during the course of the consultations – in Wellington, Marrakech, Sao Paulo and San Juan – where progress on the Committee's work was shared with GAC members. In addition, at the San Juan meeting, GAC members were given a presentation about how the GAC's Public Policy Principles had been incorporated directly into the Committee's principles, recommendations and implementation guidelines.

16. Considering all the materials derived from the face-to-face meetings, discussions on email lists, expert materials and expert papers, on 14 September 2006 a set of draft *Recommendations* was released by the Committee for broader consideration (found at <http://gnso.icann.org/issues/new-gtlds/recom-summary-14sep06.htm>).

17. Between 14 September and 5 October 2006 email discussion took place that improved and clarified the language of the *Recommendations* and ensured that Constituencies had sufficient time to rework their recommendations where necessary.

18. On 5 October 2006, the Committee conducted a two-hour teleconference to discuss the draft *Recommendations* (the MP3 recording can be found at <http://forum.icann.org/lists/gtld-council/msg00224.html>). The purpose of the meeting was to confirm that the *Recommendations* reflected the intentions of the Committee and to conduct further work on refining elements of the *Recommendations*, particularly with respect to the selection criteria and allocation methods to resolve contention between string applications.

19. On 11 October 2006, the GNSO Committee Chairman and GNSO Chair, Dr Bruce Tonkin, sent formal correspondence to the Chair of the Governmental Advisory Committee and the Chair of GAC Working Group I, requesting the GAC's assistance with the public policy impacts of the introduction of new TLDs (found at <http://gnso.icann.org/mailing-lists/archives/council/msg02891.html>).

20. Based on the substantive nature of the Committee's email traffic on the draft *Recommendations*, a further update was released to the Committee on 18 October 2006 (found at <http://forum.icann.org/lists/gtld-council/msg00234.html>) for consideration whilst the drafting of the *Final Report* takes place.

21. The Committee met again at ICANN's Sao Paulo meeting in December 2006 and continued their work with the release of an updated version of the *Final Report* (found at <http://gnso.icann.org/drafts/GNSO-PDP-Dec05-FR13-FEB07.htm>).

22. From February 2007 until May 2007 a series of working groups continued with separate streams of work. The Internationalised Domain Names Working Group (IDN-WG) released its *Final Report* on 22 March 2007

(found online here <http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>). The Reserved Names Working Group (RN-WG) released its first report on 16 March 2007 (found online here <http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf>) and its *Final Report* on 23 May 2007 (found online here <http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>). The Protecting the Rights of Others Working Group (PRO-WG) completed its *Final Report* on 1 June 2007 (found online here <http://gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>).

23. After the June 2007 San Juan meeting, the Committee continued to meet on a weekly basis with small sub-groups working on, in particular, Recommendation 6 and 20 and more detailed implementation guideline

24. The updated version of the draft *Final Report: Part A* was released on 30 July for a Committee "last call" on the package of recommendations.

25. The following timetable was released in conjunction with the updated draft to enable the completion of the Committee's work prior to the ICANN Board meeting on 2 November 2007.

- i. Committee comment 30 July to 6 August
- ii. Committee meeting 6 August
- iii. Public comment period begins 9 August
- iv. Public comment period ends 29 August
- v. Synopsis of public comments released to Committee for consideration
- vi. GNSO Council vote on recommendations

26. After the GNSO Council's vote, the Board Report can be prepared.

	Washington DC	Wellington, NZ	Wellington, NZ	Brussels			Telecon
	24/25 Feb 06	Mar-23	Mar-24	May-11	May-12	May-13	
<b>CBUC</b>							
Marilyn Cade	x	x	x	x	x	x	aa
Philip Sheppard	absent	x	x	x	x	x	
Alistair Dixon	Grant Forsyth RP	x + Grant F.		RP	RP		x
Mike Rodenbaugh							
<b>ISPC</b>							
	Mark McFadden						

Tony Holmes	RP	x	x	na	na	na	aa	)
Tony Harris	M.Mansourkia	x	x	x	x	x	x	)
Greg Ruth	RP	x		na	na	na	x	)
<b>IPC</b>								
L.Nichols/K.Rosette	x	absent		x	x	x	aa	)
Ute Decker	Steve Metalitz	absent		x	x	x	aa	)
Kiyoshi Tsuru	x	x	x	na	na	na	a	)
<b>NCUC</b>								
Robin Gross	na	x	x	na	na	na	x	)
Mawaki Chango	x	absent		x	x	x	a	)
Norbert Klein	na	x	x	na	na	na	a	)
<b>Registrars</b>								
Bruce Tonkin	x	x	x	x	x	x	x	)
Ross Rader	x	x	x	na	na	na	a	)
Tom Keller	na	absent		na	na	na	a	)
<b>Registry</b>								
Cary Karp	na	x	x	na	na	na	x	)
Ken Stubbs	x	x	x	x	x	x	x	)
June Seo		x	x	na	na	na	a	)
Edmon Chung								)
<b>Nominating Com</b>								
Avri Doria	RP	x	x	x	x	x	x	)
Sophia Bekele	x	x	x	a	a	a		)

Maureen Cubberley	RP	x	x	na	na	na		
Jon Bing								
<b>ALAC</b>								
Bret Fausett	RP	x		RP	RP	RP		
Alan Greenberg								
<b>GAC</b>								
Suzanne Sene	x							
<b>Observers</b>								
Neal Blair								
Marcus Faure								
Chuck Gomes	x	x	x	x	x	x	x	
Werner Staub		x	x	x	x	x	x	
Ray Fassett	x	x	x	x	x	x		
Elmar Knipp								
David Maher	x ry	x	x					
Kristina Rosette	x ipc							
Matthew Embrescia	x ry	x	x					
Danny Younger	xncuc							
Dirk Krischenowski	RP	x	x	x	x	x		
Alexander Schubert		x	x	x	x	x		

Jon Nevett		x	x	x	x	x
Philipp Grabensee				x	x	x
M. M-Schönherr				x	x	x
Becky Burr		x	x			
Keith Drazak	x	x	x			
Sebastien Bachelot		x	x			
eNOM participant						
Bhavin						
Jon Nevett	I believe in Amsterdam he came on the phone?					
Amadeu Abril   Abril						
Jordi Iparraguirre						
observers						
steve metalitz						
mike palage						
Steve Crocker						
Victoria McEvedy						
Johannes Lenz-Hawlizcek						
Susan Crawford						
Stuart Duncan						
Ken Stubbs						
Marilyn Cade						
<b>Staff</b>						

Liz Williams	x	x	x	x	x		x	)
Olof Nordling	x	x	x	x	x	x	x	
Denise Michel								
Glen de Saint Gery	x	x	x	x	x	x	x	)
Dan Halloran		x	x					)
Kurt Pritz	x				x	x	x	)
Donna Austen								
Craig Schwartz								)
Maria Farrell	x	x	x					
Tina Dam		x	x					
Paul Twomey								
John Jeffrey		x	x					
Patrick Jones								
Tim Denton								
Karen Lentz								
a = absent								
aa = absent apologies								
na= not available- one constit member paid for, or other conflict								
RP= remote participation								







**GAC PRINCIPLES REGARDING NEW gTLDs**

Presented by the Governmental Advisory Committee

March 28, 2007

1.1 The purpose of this document is to identify a set of general public policy principles related to the introduction, delegation and operation of new generic top level domains (gTLDs). They are intended to inform the ICANN Board of the views of the GAC regarding public policy issues concerning new gTLDs and to respond to the provisions of the World Summit on the Information Society (WSIS) process, in particular *"the need for further development of, and strengthened cooperation among, stakeholders for public policies for generic top-level domains (gTLDs)"*[2] and those related to the management of Internet resources and enunciated in the Geneva and Tunis phases of the WSIS.

1.2 These principles shall not prejudice the application of the principle of national sovereignty. The GAC has previously adopted the general principle that the Internet naming system is a public resource in the sense that its functions must be administered in the public or common interest. The WSIS Declaration of December 2003 also states that *"policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues."*[3]

1.3 A gTLD is a top level domain which is not based on the ISO 3166 two-letter country code list[4]. For the purposes and scope of this document, new gTLDs are defined as any gTLDs added to the Top Level Domain name space after the date of the adoption of these principles by the GAC.

1.4 In setting out the following principles, the GAC recalls ICANN's stated core values as set out in its by-laws:

- a. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.
- b. *Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.*
- c. *To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.*
- d. *Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.*
- e. *Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.*
- f. *Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*
- g. *Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development*

*process.*

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

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

*j. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.*

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

## **2. Public Policy Aspects related to new gTLDs**

When considering the introduction, delegation and operation of new gTLDs, the following public policy principles need to be respected:

### Introduction of new gTLDs

#### 2.1 New gTLDs should respect:

a) The provisions of the Universal Declaration of Human Rights<sup>[5]</sup> which seek to affirm "*fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women*".

b) The sensitivities regarding terms with national, cultural, geographic and religious significance.

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2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

2.3 The process for introducing new gTLDs must make proper allowance for prior third party rights, in particular trademark rights as well as rights in the names and acronyms of inter-governmental organizations (IGOs).

2.4 In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced.

### Delegation of new gTLDs

2.5 The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.

2.6 It is important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service-provider diversity.

2.7 Applicant registries for new gTLDs should pledge to:

a) Adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD.

b) Ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

2.8 Applicants should publicly document any support they claim to enjoy from specific communities.

2.9 Applicants should identify how they will limit the need for defensive registrations and minimise cyber-squatting that can result from bad-faith registrations and other abuses of the registration system

#### Operation of new gTLDs

2.10 A new gTLD operator/registry should undertake to implement practices that ensure an appropriate level of security and stability both for the TLD itself and for the DNS as a whole, including the development of best practices to ensure the accuracy, integrity and validity of registry information.

2.11 ICANN and a new gTLD operator/registry should establish clear continuity plans for maintaining the resolution of names in the DNS in the event of registry failure. These plans should be established in coordination with any contingency measures adopted for ICANN as a whole.

2.12 ICANN should continue to ensure that registrants and registrars in new gTLDs have access to an independent appeals process in relation to registry decisions related to pricing changes, renewal procedures,

service levels, or the unilateral and significant change of contract conditions.

2.13 ICANN should ensure that any material changes to the new gTLD operations, policies or contract obligations be made in an open and transparent manner allowing for adequate public comment.

2.14 The GAC WHOIS principles are relevant to new gTLDs.

### **3. Implementation of these Public Policy Principles**

3.1 The GAC recalls Article XI, section 2, no. 1 h) of the ICANN Bylaws, which state that the ICANN Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues. Insofar, therefore, as these principles provide guidance on GAC views on the implementation of new gTLDs, they are not intended to substitute for the normal requirement for the ICANN Board to notify the GAC of any proposals for new gTLDs which raise public policy issues.

3.2 ICANN should consult the GAC, as appropriate, regarding any questions pertaining to the interpretation of these principles.

3.3 If individual GAC members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them.

3.4 The evaluation procedures and criteria for introduction, delegation and operation of new TLDs should be developed and implemented with the participation of all stakeholders.

N.B. The public policy priorities for GAC members in relation to the introduction of Internationalised Domain Name TLDs (IDN TLDs) will be addressed separately by the GAC.

ICANN GNSO new TLDS report 2007 – impact statement on behalf of the Commercial and Business Users Constituency (BC)

### **Background**

Under ICANN existing guidelines within the Policy Development Process constituencies are asked under section 11c to provide: "an analysis of how the issue would affect each constituency, including any financial impact on the constituency".

There are innumerable uncertainties to the outcome of the PDP for TLDs including:

- the number of TLDs
- the nature of the TLDs
- the ability of ICANN to implement the safeguards discussed by the GNSO
- the number of those safeguards that reach consensus support within the GNSO
- the weight given by the Board to those safeguards.

For this reason the BC impact statement is necessarily written in terms of what the impact may look like given certain implementation scenarios.

#### **A world of healthy competition and good faith**

If the outcome is the best possible there will be a beneficial impact on business users from:

- a reduction in the competitive concentration in the Registry sector
- increased choice of domain names
- lower fees for registration and ownership
- increased opportunities for innovative on-line business models.

#### **A world of increased opportunity for abusive competitive practises and fraud**

There are a number of recommendations that seek to control abusive competitive practices as well as opportunities for consumer and business fraud such as cyber-squatting, typo-squatting, phishing and other forms of bad faith activity:

- graduated sanctions for contract compliance by Registries and Registrars
- avoiding confusingly similar domain names
- avoiding infringement of third party prior rights especially trade mark rights
- clear, quick and low-cost procedures for dispute resolution and the removal of bad faith registrations
- measures to prevent abuse of personal data or other commercially-valuable data.

If ICANN fails to implement the above recommendations there will be a negative impact on business users from:

- user confusion about site ownership and subsequent reputational damage to well-known businesses
- costs from diminished user confidence in e-commerce
- wasted costs of defensive registrations and online brand monitoring and enforcement

- wasted costs in legal and other actions to prevent avoidable criminal and cyber-squatting activity
- wasted costs and fraudulent losses to businesses and their customers from phishing and malware sites.

In the worst case scenario the negative impact on business users globally both directly and indirectly from reputation and confidence-related loss could be billions of dollars.

END

#### The Intellectual Property Constituency Impact Statement Regarding the Introduction of New gTLDs

	<b>PRINCIPLE</b>	<b>IPC IMPACT</b>
<b>A</b>	<b>New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.</b>	<b>To the extent that new gTLDs are introduced, the IPC strongly agrees with this principle, especially with respect to the need for an orderly introduction. However, the IPC still takes issue with the notion that new gTLDs must be introduced. Based on past experience, the addition of new gTLDs will likely result in numerous defensive registrations of otherwise unnecessary domain names by IP owners (which we note include all trademark owners such as Registrars, Registries, ISPs, etc.). Such an introduction not only places a significant burden and cost to IP owners, it results in absolutely no value whatsoever to IP owners, not to mention Internet users in general. In fact, while arguments are made that the introduction of new gTLDs will increase competition and thus lower registration costs for domain name owners, this is not the case. In October of 2007, Verisign will increase the registry fee for registering domain names for .com, .org and .net domain names. To the extent that there has been any rise in the registration of domain names, the IPC submits that this is not as a result of increased demand, but rather represents in large part the practice of defensive registrations or the abusive practices of domain name tasting, parking, kiting and the like. Finally, it is critical that appropriate mechanisms be in place to address conflicts that may arise between any proposed new gTLD and the IP rights of others.</b>

**The IPC believes that many of these concerns may be minimized by limiting any new gTLDs to those that offer a clearly differentiated domain name space with mechanisms in place to ensure compliance with the purposes of a chartered or sponsored TLD. Market differentiation will create a taxonomic or directory-style domain name structure, ensuring that certainty and confidence are part of the user experience and that registrants will find a unique name space where they want to be and in which they can easily be located.**

<p><b>B</b> Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.</p>	<p>As mentioned above, appropriate mechanisms must be in place to address conflicts that may arise between any proposed new gTLD and the IP rights of others.</p>
<p><b>C</b> The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity. [Consistent with GAC Principle 2.6]</p>	<p>To begin with, there has been little empirical evidence that the introduction of new gTLDs has, in fact, promoted competition, or added to consumer choice or market differentiation, even though it might have the potential to do so. Any proposed new gTLD must be clearly targeted at a particular industry, economic sector, or cultural or language community, with a requirement that there is sufficient support or demand the relevant industry, economic, cultural or language sector to minimize the concerns set forth with respect to Principal A above. The mere introduction of competition for registry services must be outweighed by the burdens and costs to IP owners and Internet users et forth with respect t Principal A above. ICANN does not need to and should not encourage registry competition in the absence of a clear need for a new gTLD, without which will only create a gTLD replete with defensive registrations and no added value to consumers.</p>
<p><b>D</b> A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.</p>	<p>IPC agrees that technical and operational stability are imperative to any new gTLD introduction.</p>

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<b>E</b>	A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement.	ICANN should be in a position to inquire whether a registry applicant will depend for its financial viability on defensive registrations, and if so to withhold approval of such applicant.
<b>F</b>	<b>A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.</b>	<b>To be feasible, the terms of registry agreements should be aligned with policies adopted by ICANN and allow enforcement by ICANN of any non-compliance. The impact of the absence of such criteria or the lack of enforcement thereof on the IPC and Internet users in general is evidenced in ICANN's 2006 Consumer Complaint Analysis (see, <a href="http://www.icann.org/compliance/pie-problem-reports-2006.html">http://www.icann.org/compliance/pie-problem-reports-2006.html</a>) In particular, the lack of access to Whois data, or the false or inaccurate submission thereof, significantly impacts the time and resources of and costs to IP owners vis-à-vis the handling of infringements on the Internet.</b>

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NUMBER	RECOMMENDATION	IPC Comment
1	<p><b>ICANN must implement a process that allows the introduction of new top-level domains.</b></p> <p><b>The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process. [GAC2.5]</b></p>	<p><b>See comments with respect to Principle A.</b></p>
2	<p>Strings must not be confusingly similar to an existing top-level domain.</p> <p>In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced. [GAC2.4]</p>	<p>Agreed.</p>
3	<p>Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.</p> <p>The process for introducing new gTLDs must make proper allowance for prior third party rights, in particular trademark rights as well as rights in the names and acronyms of inter-governmental organizations (IGOs). [GAC2.3]</p>	<p>Agreed, and as stated before, appropriate mechanisms must be in place to address conflicts that may arise between any proposed new string and the IP rights of others.</p> <p>While the IPC notes that GAC has made a specific reference to trademark rights, the IPC agrees with NCUC that such rights could include "freedom of expression" rights to the extent they are recognized and enforceable under generally accepted and internationally recognized principles of law provided that such rights do not infringe the existing legal rights of others as set forth in the first paragraph.</p>
4	<p>Strings must not cause any technical instability.</p>	<p>IPC agrees that technical and operational stability are imperative to any</p>

		new gTLD introduction.
5	<p>Strings must not be a Reserved Word.</p> <p>ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities. [GAC2.2]</p>	<p>Agreed, to the extent that a Reserved Word is such that its use could cause technical or operational instability to the DNS.</p>
6	<p><b>Strings must not be contrary to generally accepted legal norms relating to morality and public order.</b></p> <p>New gTLDs should respect:</p> <p>a) The provisions of the Universal Declaration of Human Rights which seek to affirm "fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women".</p> <p>b) The sensitivities regarding terms with national, cultural, geographic and religious significance. [GAC2.1]</p>	<p><b>The IPC simply concurs with NCUC regarding the implementation issues raised by such a recommendation.</b></p>
7	<p><b>Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.</b></p>	<p><b>IPC supports this recommendation.</b></p>
8	<p>Applicants must be able to demonstrate their financial and organisational operational capability.</p> <p><b>An application will be rejected or otherwise deferred if it is determined, based on public comments or otherwise, that there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support.</b></p>	<p>ICANN should be in a position, through various mechanisms, to determine that adequate resources exist to ensure that the applicant will not be dependent on defensive registrations for financial viability.</p> <p>Moreover, the IPC believes that the ability to reject an application as set forth in the second provision of this recommendation is an important feature for many members of the IPC (if there is substantial opposition, this raises the concerns set forth in our comments with respect to Principle A) and thus specifically and wholeheartedly endorses it.</p>

9	<b>There must be a clear and pre-published application process using objective and measurable criteria.</b>	<b>IPC supports this recommendation.</b>
10	<b>There must be a base contract provided to applicants at the beginning of the application process.</b>	<b>IPC supports this recommendation.</b>
11	<b>Staff Evaluators will be used to make preliminary determinations about applications as part of a process which includes the use of expert panels to make decisions.</b>	<b>IPC supports this recommendation, and in doing so stresses the need for ICANN to continue to increase its staffing resources to maintain the security and stability of the DNS.</b>
12	<b>Dispute resolution and challenge processes must be established prior to the start of the process.</b>	<b>IPC supports this recommendation.</b>
13	Applications must initially be assessed in rounds until the scale of demand is clear.	<b>IPC supports this recommendation</b>
14	<b>The initial registry agreement term must be of a commercially reasonable length.</b>	<b>IPC supports this recommendation.</b>
15	<b>There must be renewal expectancy.</b>	<b>IPC supports this recommendation.</b>
16	<b>Registries must apply existing Consensus Policies and adopt new Consensus Polices as they are approved.</b>	<b>IPC supports this recommendation.</b>
17	<b>A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.</b>	<b>IPC supports this recommendation assuming the process will have "teeth" and assuming ICANN's continued monitoring and enforcement of registry contractual obligations.</b>
18	If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.	IPC supports this recommendation.
19	Registries must use ICANN accredited registrars.	IPC supports this recommendation, assuming accreditation of registrars is held to high standards to avoid a "Register Fly" situation.

Implementation Guideline

IPC Comments

IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	To the extent that the submission of applications is encouraged, it should be because of the clear need for a new TLD.
IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.  Application fees may differ for applicants.	ICANN should be a position, through various mechanisms, to determine that adequate resources exist at an applicant to ensure that the applicant will not be dependent on defensive registrations for financial viability.
IG C	ICANN will provide frequent communications with applicants and the public including comment forums which will be used to inform evaluation panels.	IPC supports a requirement for public posting of string applications in internationally recognized publications and comment forums on applicants.
IG D	A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary.  Applications will be time and date stamped on receipt.	Based on experience with the 'land rush' effect in domain name registration, it is apparent that first-come, first-serve simply does not work when many valid applications are received at the same time. IPC endorses the use of comparative evaluation methods to allocate new gTLDs. IPC strongly advises against the use of auctions or lotteries (that have nothing to do with the competence and financial viability of an applicant) to resolve competition between applicants.
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	Given the potential impact any new gTLD will have on the IPC, ICANN must ensure that there will also be an adequate time period for public comment once applications are submitted.
IG F	<b>If there is contention for strings, applicants may:</b>  i) <b>resolve contention between them within a pre-established timeframe</b>  ii) <b>if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application</b>	i) Yes.  ii) Yes. IPC prefers the market driven approach and encourages the sponsorship by a well defined community. However, the "priority" for a claimed community support

iii) **If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;**

should be subject to Recommendation 8, second paragraph).

iii) Yes.

iv) **the ICANN Board may be used to make a final decision, using advice from staff and expert panels.**

iv) Yes.

IPC urges ICANN to ensure that its review of applications continues to be vigorous to keep a high standard to meet the selection criteria.

IPC urges caution in presenting any proposal that would eliminate those aspects of the gTLD application process providing for the security and stability of the DNS. This concerns not only technical matters, but those aspects of the Internet DNS and registry operation designed to safeguard users and the general public, including, e.g. the examination of proposals to protect intellectual property.

IG G

**Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exception:**

Yes, again subject to Recommendation 8, second paragraph. IPC again strongly advises against the use of auctions or lotteries to resolve competition between applicants.

i) **the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application**

A comparative evaluation process will best meet ICANN's goals of fostering competition in registration services and encouraging a diverse range of registry service providers.

Under this exception, Staff Evaluators will devise criteria and procedures to investigate the claim.

IG I

External dispute providers will give decisions on complaints.

IPC supports the use of external dispute providers in the same manner as existing UDRP mechanisms, but simply notes that this should not be necessarily to the exclusion of the ICANN Board. There may be decisions that only the ICANN Board can resolve and such issues should not be overlooked or not dealt with

		simply because there is no external dispute provider available to resolve it.
IG J	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	IPC does not support the warehousing of TLD strings and supports a timeframe after applicant grant by which the TLD string must be operational.
IG K	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	No comment
IG L	ICANN should take a consistent approach to the establishment of registry fees.	No comment
IG M	The use of personal data must be limited to the purpose for which it is collected.	Personal data collected by the registry should be used in ways that are not incompatible with the purposes for which it was collected, taking into account the full range of public policy considerations.
IG N	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way which no longer requires all participants in the conversation to be able to read and write English.	IPC support multilingual effective communication on important Internet governance functions.
IG O	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	The IPC does not object <i>per se</i> to the use of a reduced fee scheme, but is skeptical that the positive effect of such a scheme will outweigh the negative impact of an underfunded applicant's inability to meet the selection criteria set by ICANN. We strongly recommend that any graduated fee structure be viable and significant enough to ensure compliance with appropriate registry selection criteria, as well as eliminate bad-faith actors who might seek to pay a minimal entry fee and then conduct unscrupulous activities.

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IG P	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	IPC supports the dissemination of information about the process in multiple languages.
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ISPCP Constituency Statement on Impacts – New TLDs Page 1

Internet Service Provider and Connectivity Provider Constituency

## Statement on Impacts – Introductions of New Top Level Domains

### Overview

This is the ISPCP's statement on Impacts relating to the GNSO PDP Dec 05 – Introduction of New Top Level Domains – Consolidated Recommendations.

### Section 1 – Principles

The ISPCP is highly supportive of the principles defined in this section of the PDP, especially with regards to the statement in (A):

***"New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way."***

Network operators and ISPs must ensure their customers do not encounter problems in addressing their e-mails, and in their web searching and access activities, since this can cause customer dissatisfaction and overload help-desk complaints. Hence this principle is a vital component of any addition sequence to the gTLD namespace.

The various criteria as defined in D,E and F, are also of great importance in contributing to minimize the risk of moving forward with any new gTLDs, and our constituency urges ICANN to ensure they are scrupulously observed during the applications evaluation process.

### Section 2 – Proposed Recommendations

Here the ISPCP would like to make the following observations:

With regards to recommendation 2:

***"Strings must not be confusingly similar to an existing top-level domain."***

This is especially important in the avoidance of any negative impact on network activities.

The same applies to recommendation 4:

***"Strings must not cause any technical instability."***

The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organizational and operational capability of the applicant are the evaluators' instruments for preventing potential negative

impact of a new string on the activities of our sector (and indeed of many other sectors). ISPCP Constituency Statement on Impacts – New TLDs Page 2

With regards to recommendation 13:

***"Applications must initially be assessed in rounds until the scale of demand is clear."***

This is an essential element in the deployment of new gTLDs, as it enables any technical difficulties to be quickly identified and sorted out, working with reduced numbers of new strings at a time, rather than many all at once. Recommendation 18 on the use of IDNs is also important in preventing any negative impact on network operators and ISPs.

### **Section 3 – Implementations Guidelines**

We consider that guideline B, which states:

***"Application fees may differ for applicants."*** ,

has some potential for negative impact on our sector. Our recollection is that this caveat was proposed with a view to reducing the application fee for certain categories of applicants, as a mechanism for avoiding exclusion based on application cost. Recent discussions in the GNSO have exposed some opinions that question the 'fairness' of the application fee (as it has been applied heretofore), on the grounds that it constitutes an entry barrier and disenfranchises legitimate potential applicants. The risk in proceeding with such a policy, is that it paves the way for hasty, last minute me-too applications, that have not really developed a solid project, and are simply trying their luck in getting a string...Perhaps when such arguments on exclusion are expounded, then the '.cat' sTLD can be pointed at as a prime example of a well-planned 'grass-roots' community TLD, which successfully applied for a string without any 'special' cost considerations. A potential profusion of hasty, ill-conceived new gTLDs is not something the ISPCP would view as beneficial to our sector.

### **Section 4 – IDN Working Group Areas of Agreement**

The ISP community believes that areas of agreement 5, 6, and 9 are essential to the careful implementation of IDN TLDs. Without careful adherence to these recommendations, the implementation of IDNs may be successful on a technical level but will result in support and user confusion problems amongst the customers of ISPs. The ISPCP believes that these "Areas of Agreement" are essential to implement **prior** to any pursuit or proposal for IDN TLDs.

The ISP community also believes that the third "Area of Agreement" will be particularly difficult to implement in practice. The ISP community would be significantly impacted if the mechanism for gathering language community input on new IDN gTLD strings included a process that reached out to general, public Internet users through the community that provides access and connectivity. The ISPCP believes that a process for **"Language Community Input for Evaluation of new IDN gTLD Strings"** must be clearly established and vetted prior to allowing introduction of new IDN gTLD string. Failure to do so will impact many sectors, including the ISP and connectivity community. ISPCP Constituency Statement on Impacts – New TLDs Page 3

### **Section 5 – Reserved Name Working Group Recommendations**

The ISP community accepts and agrees with the ICANN and IANA recommendations of Section 5 and finds no negative impact on ISP operations or support. The ISPCP is also support of, and finds no negative impacts for, the recommendation on symbols in new gTLDs.

The ISPCP community notes that recommendation 6 – reservation of single letters at the top level – is an important and critical recommendation to the ISP community. We believe that there are old resolvers in

operation in developing countries that would be severely impacted (e.g. not work correctly) in the presence of single letters at the top level. Specifically we believe that very old versions of BIND – potentially in use in very small, underfunded ISPs in economically challenged areas – may not process incoming resolution requests properly. The ISP community strongly supports recommendation 6 and believes that further research, at a later date, would be necessary before all impacts on ISPs and connectivity providers could be identified.

The ISPCP notes that an unavoidable impact of these recommendations is problems resulting from poorly written application layer software. The ISP community was severely impacted during the introduction of TLDs that had more than 3 ASCII characters. Many pieces of software incorrectly filtered these TLDs – most likely because software designers thought that there could not be TLDs whose length was greater than three characters. During the first 18 months of introduction of those TLDs there were many calls to ISPs to "fix" the problem with the new TLDs – despite the fact that the ISP and connectivity community were not responsible for issues at the application layer. We fully expect that some software and application designers have also made assumptions about TLDs that will be contradicted by the new recommendations in section 5. The unavoidable impact on ISPs and connectivity providers will mirror the problems that occurred during the introduction of TLDs such as .areo, .travel, or .coop. The ISP community suggests that the existence of so-called "Controversial Names" will also lead to potential regulatory or community pressure impacts on those who provide connectivity.

#### **Section 6 – PRO Areas of Agreement**

The ISPCP believes that the six "Areas of Agreement" in the area related to PRO will have no significant impact on ISPs or connectivity providers.

#### **Section 7 – Areas of Broad Agreement**

The ISPCP sees the Principles and Recommendations in this section, as reasonable safeguards to a measured and controlled expansion of the generic domain namespace, subject to the comments expressed above.

### **COMMENTS FROM ICANN'S NON-COMMERCIAL USERS CONSTITUENCY (NCUC)**

#### **The GNSO New TLD Committee's Draft Final Report On The Introduction Of New Generic Top Level Domains**

#### **GNSO Policy Development Process (GNSO PDP- Dec05)**

**12 June 2007**

#### **Overview**

ICANN's Non-Commercial Users' Constituency (NCUC) appreciates this opportunity to comment on the GNSO Draft Recommendations for New GTLD Policy. While much progress has been made in recent weeks to resolve differences, much work remains before a consensus policy can be reached. The NCUC refers to its earlier constituency statements on the introduction of new gTlds, in particular, its statement of December 2006.<sup>[1]</sup>

Our overall concern remains that despite platitudes to certain, transparent and predictable criteria—the GNSO's draft recommendations create arbitrary vetoes and excessive challenges to applications. There are some for incumbents; for trademark rights holders; for the easily offended, for repressive governments and worst of all, for "the public". It's a wolf in sheep's clothing. A recipe for irregularity, discretion and uncertainty in the new domain name space.<sup>[2]</sup>

Among the more troubling proposals is the introduction of criteria in which strings must be 'morally' acceptable and not contrary to 'public order' (Recommendation #6). A concept borrowed from trademark law without precedent in the regulation of non-commercial speech.<sup>[3]</sup> NCUC opposes any string criteria related to 'morality' or 'public order' as beyond ICANN's technical mandate.

Following recent discussions and revisions, the draft now refers<sup>[4]</sup>, in passing, to 'freedom of speech' rights, but concerns remain that a restriction on certain expression in part of the world will be extended outside that nation, possibly even to the entire world, through ICANN policy. If the GNSO disagrees with NCUC and ultimately include string criteria on morality and public order in its final report, then the recommendations should make clear that ICANN policy on this matter will not be more restrictive than the national law in which an applicant operates.

NCUC remains particularly troubled with Recommendation #20 that would allow the showing of a "substantial opposition" to entirely reject an application. It swallows up any attempt to limit string criteria to technical, operational, and financial evaluations. Recommendation #20 violates internationally recognized freedom of expression guarantees and insures that no controversial string application will ever be granted.

NCUC continues to reject Recommendation 11 and an expanded role of ICANN staff and outside expert panels to evaluate string criteria that is not technical, financial, nor operational.

#### **Recommendation 1.**

This is a laudable Recommendation and we support it. We support the broad introduction of many new gTLDs.<sup>[5]</sup> We welcome the recognition that there are no technical constraints to introducing new gtlds and we hope to see consumer choice and demand served by a more robust approach in the future. ICANN's role is not to second guess the market place and decide which ideas are likely to succeed, but rather, to facilitate the process for the consumer's decision.

We refer to our concerns above as to the relationship between transparent, predictable criteria and vetoes over applications from unlimited sources.<sup>[6]</sup> By the many grounds for challenge introduced, criteria will be created and applied *ex post facto* by those responsible for determining challenges. We are also concerned that "normally" in this context be defined more precisely. These issues must be addressed if the objectives of this Recommendation are to be achieved. In particular, a public opposition period is in direct contraction with Recommendation 1 and Implementation Principle A: "New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way."

#### **Recommendation 2**

It is beyond dispute that the DNS does not mirror trade mark regulation. Rather it grants plenary rights in words,<sup>[7]</sup> without any of the compromises in the requirements for recognition, the limits to infringement and the defenses.<sup>[8]</sup> This is best reflected in the serious issue in the DNS, whereby— *all* rights-holders now seek protection from dilutive use —when only truly famous marks are entitled to that protection in trade mark law.

The Recommendation is vague and thus a general veto for incumbents at the top level. We refer to Professor Christine Haight Farley's legal briefing paper (Attachment A) as to the meaning of confusingly similar. <sup>[9]</sup> We also refer to Professor Jacqueline Lipton's legal briefing paper (Attachment B) and its discussion regarding the limitations within trademark law on the rights of trademark holders to regulate speech.

The GNSO's draft recommendations cherry pick from trade mark law to create a pastiche of 'values' — divorced from context and structure.<sup>[10]</sup> No account is taken of the legal requirement of use in commerce<sup>[11]</sup> — yet trade mark law requires this. What about fair use, comment, nominative use, criticism, parody and tribute? All protected at law. Under the US Anti-Cybersquatting Consumer Protection Act (ACPA) for example, unless inherently distinctive (i.e. made up words), marks comprised of descriptive (ordinary dictionary) words

must acquire secondary meanings in order to become distinctive, otherwise famousness must be made out.<sup>[12]</sup> Even then there is the safe harbor for fair and lawful use of another's trademark in a domain name.<sup>[13]</sup> These balancing requirements are not reflected in the Recommendation—although lip service is paid to them.<sup>[14]</sup> Defined criteria are absent and the promised balance and protection—a blank page open to numerous interpretations.

This Recommendation fails to adequately accommodate non-commercial speech and fair use of trademarks. Presumably what this all really means is that no "sucks" gTLDs (cyber-gripes) will ever be granted, nor indeed notdotcom, or anything that refers to or discusses an association with an existing trademark. Real competition often requires overlapping services that offer consumers choice.<sup>[15]</sup>

### Recommendation 3.

This ground for challenge is for rights holders. The language is vague and overbroad— *"existing legal rights of others."*<sup>[16]</sup>

There is no recognition that trade marks (and other legal rights) have legal limits<sup>[17]</sup>and — *defenses.*<sup>[18]</sup> This Recommendation should also state that *such legal rights are subject to their legal limits* under their own national law. Without this—only half of trade mark law is adopted—the claimed rights, *but none of the defenses.*

After recent discussion and forthcoming revisions, the draft now refers to 'Freedom of Speech'.<sup>[19]</sup> We welcome the amendment to the Recommendation, although believe it should use the term "Freedom of Expression" since that is the term used in international treaties and agreements. We remain concerned however that general references to Conventions and Treaties must be translated into real protection for the right of the public to make use of their legal rights to language and free speech.

Bizarrely, the level of support for the rights-holder seems to be thought to be determining—rather than the validity or extent of his claimed rights and the existence of defences:

"ii. An application may be rejected or deferred if it is determined, based on public comments or otherwise, that there is **substantial opposition** to it from significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support. **ICANN staff will develop criteria and procedures for making this determination**, which may be based upon ICANN's procedures which were used to examine the 2003 round of sponsored TLD applications."

What is provided for here is discretion.<sup>[20]</sup> This (now recommendation #20) cannot be meaningfully considered absent the criteria. We also oppose the *"substantial opposition"* formula—used again elsewhere. This is not predictable criteria and nor in this case is it of any relevance whatsoever to the nature and quality of the rights claimed and the existence of limits and defences. We refer to the objectives of Recommendation 1 and their contradiction with a public opposition period.

### Recommendation 5

We oppose any attempts to create lists of reserved names. Even examples are to be avoided as they can only become prescriptive.

We are concerned that geographic names should not be fenced off from the commons of language and rather should be free for the use of all. This has been the traditional approach of trade mark law and remains the case in many nations.<sup>[21]</sup> Moreover the proposed recommendation does not make allowances for the duplication of geographic names outside the ccTLDs—where the real issues arise and the means of resolving competing concurrent use and fair and nominative use.

### Recommendation 6

Again, we welcome the amendment to include recognition of rights to Freedom of Expression.<sup>[22]</sup> It is quite clear that this applies to single words and to strings, see *Taubman v. Webfeats* 319 F.3d 770 (6th Circuit 2003) ("*The rooftops of our past have evolved into the Internet domain names of our present. We find that the domain name is a type of public expression, no different in scope than a billboard or a pulpit, and [defendant] has a First Amendment right to express his opinion about [plaintiff], as long as his speech is not commercially misleading, the Lanham Act cannot be summoned to prevent it*)."

We welcome the deletion of GAC Public Policy principle 2.1 from the GNSO's recommendations. We objected in the strongest possible terms to the vague standard of "*sensitivities*," which would subject all to the most restrictive views and had no place in the international legal order. GAC quoted selectively from the preamble to the 1948 Universal Declaration of Human Rights (UDHR) without reference to the enumerated specific right to Freedom of Expression in Article 19.<sup>[23]</sup> The UDHR Art. 29(2) provides the only permitted limits.<sup>[24]</sup> Similarly, the European Convention on Human Rights (ECHR) mandates Freedom of Expression should only be subject to limits prescribed by law<sup>[25]</sup> and necessary in a democratic society for one of the enumerated purposes, see Article 10<sup>[26]</sup> which also applies to commercial expression.<sup>[27]</sup> Strict scrutiny is applied to any attempt to limit the free expression of an idea.<sup>[28]</sup>

This Recommendation is borrowed from trade mark law<sup>[29]</sup> and the French concept of '*ordre public*.'<sup>[30]</sup> This is now subject to Article 10 ECHR<sup>[31]</sup> and Freedom of Expression and the modern standard is high.<sup>[32]</sup> While a few nations limit Free Expression by laws preventing hate speech, and incitement to violence, lowering the threshold to '*sensitivities*' is tantamount to mandating political correctness,<sup>[33]</sup> forced hegemony, and is dangerous and to be resisted in every context. It does not matter how laudable the public policy objective, ICANN should remain content neutral.<sup>[34]</sup>

We oppose any string criteria based on morality and public order. The context is not exclusively commercial speech so trade mark law is not an analogy as registration of marks on government Registers involves an element of state sanction<sup>[35]</sup> that is not true of the DNS (though many seek it).<sup>[36]</sup> There is no consensus on the regulation of morality in non-commercial speech in international law. We refer to the quote from *Taubman* (above)—the TLDs are billboards. *Democracies do not have laws requiring people to speak or behave morally*. Some nations do have such rules – undemocratic theocracies mainly.

ICANN should stick to its technical remit, which it risks grossly exceeding here. It should defer to applicable national laws on matters of public order and morality. Applicants should comply with the content laws in the countries in which they operate.<sup>[37]</sup> The only real issue is, in any event, public order which is already served by nations' own laws on obscenity, fighting words, hate speech and incitement.

Please be aware that criticism, satire, parody of others and their beliefs are a fundamental tenant of Freedom of Expression<sup>[38]</sup> which includes the right to offend. ICANN must ensure this *in practice* and mere references to Treaties and Conventions do not go far enough.

#### **Recommendation 7**

We record that this must be limited to transparent, predictable and minimum technical requirements only. These must be published. They must then be adhered to neutrally, fairly and without discrimination.

#### **Recommendation 8**

We support this recommendation to the extent that the criteria is truly limited to minimum financial and organizational operational capability. We remain concerned that in implementation of this recommendation, burdensome, expensive, and unnecessary criteria could be applied. All criteria must be transparent, predictable and minimum. They must be published. They must then be adhered to neutrally, fairly and without discrimination.

**Recommendation 9**

We strongly support this recommendation and again stress the need for all criteria to be limited to minimum operational, financial, and technical considerations. We also stress the need that all evaluation criteria be objective and measurable. We note that a 'public opposition process' as contemplated by Recommendation 20 and the use of ICANN staff and expert panels (Rec. #11) to evaluate any additional criteria will significantly detract from the goals of Recommendation 9.

**Recommendation 11**

The use of ICANN staff to evaluate applicant criteria should be limited to the function of determining whether objective operational, technical, and financial criteria are met only. ICANN staff should not be making evaluations about morality or other public policy objectives. We furthermore strongly oppose any use of "Expert" panels to adjudicate someone's right to use a domain name. Neither ICANN staff nor expert panels can provide any level of public accountability or legitimacy to adjudicate fundamental rights. This will only invite insider lobbying and gaming. Getting this issue right in the policy gives meaning to the rest of the recommendations. Without objectivity, neutrality, impartiality and accountability here –all of the other Recommendations are meaningless platitudes. This function should be tendered out – just as the validation process in the Sunrise Rights Protection Mechanism has been in some cases. Arms length contractors should perform this task.

**Recommendation 12**

Our position in relation to Recommendation 11 applies mutandis mutandi. This should be tendered to qualified professionals, selected by rota, at arms-length who apply certain criteria.

**Recommendation 20**

As discussed above, we strongly oppose the '*substantial opposition*' criteria for rejecting a domain. A public opposition period grants a veto on the creation of a domain for any vocal (or well-financed) minority, or for any competitor in the marketplace of ideas or services.

Recommendation #20 is *totally* incompatible with internationally recognized Freedom of Expression guarantees. Not even trade mark applicants must have everyone agree –they can still succeed in the face of an opposition. This Recommendation will insure that no controversial gtlds will exist and provides the means for killing the following types of applications for new gtlds:

- The Catholic Church objects to the Church of England's application for ".christian";
- China objects to an application of ".humanrights" in Chinese characters;
- A competing bank applies for a ".bank";
- Competing factions within the same community each claim to be the rightful owner;
- The Moral Majority objects to Planned Parenthood's application for ".abortion".

Recommendation 20 swallows up any attempt to narrow the string criteria to technical, operational and financial evaluations. It asks for objections based on entirely subjective and unknowable criteria and for unlimited reasons and by unlimited parties. ICANN should endeavor to keep the core neutral of these types of policy conflicts, both because they invite disaster for ICANN to become entwined in such issues, but also because such a policy is incompatible with freedom of expression rights. In short, Recommendation #20 is bad policy for the public and it is bad policy for ICANN.

**ATTACHMENT A TO NCUC STATEMENT****LEGAL BRIEFING FROM LAW PROFESSOR CHRISTINE HAIGHT FARLEY****Professor of Law and Associate Dean for Faculty and Academic Affairs****American University Washington College of Law****RESPONSE TO THE DRAFT FINAL REPORT OF THE GNSO NEW GTLDS COMMITTEE ON THE INTRODUCTION OF NEW GENERIC TOP-LEVEL DOMAINS****June 6, 2007****Statement by Christine Haight Farley****Professor of law****American University Washington College of Law**

I want to begin by commending the GNSO New TLDs Committee on their policy recommendations and implementation guidelines for the introduction of new top-level domains. Through the Draft Final Report ICANN has explicitly stated its intention to make the GTLD application process open and transparent. The Draft Final Report has focused the issues and prompted a useful discussion. However, because I believe that the Draft Final Report includes a number of misstatements of domestic and international trademark law, I offer my legal analysis of these provisions.

I will address my remarks only to Recommendations 2, 3 and 6 as these recommendations rely heavily on trademark law concepts.

Before I make observations specific to these recommendations, I would like to offer some general remarks about the overall incongruence between trademarks and domain names. It is important to note at the outset this general lack of equivalence between trademark law and domain name policy. For instance, trademark law the world over is fundamentally based on the concept of territoriality. Thus trademark law seeks to protect regionally and market-based marks without implication for the protection or availability of that mark in another region. In contrast, domain names have global reach, are accessible everywhere and have implications for speech around the world.

Likewise, trademark protections hinge on what the relevant consumer thinks. Again, the law considers the viewpoints of consumers of a particular country, region or market, and acknowledges the variability of these viewpoints across regions. Domain names are not directed to a certain class or geographical region of consumers—they are accessible to all. Therefore in order to take account of consumers' viewpoints, it would be necessary to consider a global public. The resulting one-size-fits-all approach would be anathema to trademark law in that it would leave consumers confused in one place while unjustifiably denying speech rights in another.

Finally, trademarks rights are not applied abstractly of in theory, but are always considered in context. Thus, in order to determine whether the use of a mark by another would likely cause confusion, it is necessary to analyze how mark is used in commerce. Consideration will be given to what goods or services it is applied to, what design or color scheme accompanies the use, what the level of consumer sophistication is, what marketing channels are used, etc. Generic top-level domains are necessarily abstract. We can not know in advance what the content of a website hosted at a certain address will be. It is therefore impossible to make fine-tuned conclusions about the appropriateness of certain domains. For these reasons, I strongly urge domain name policy makers to consider carefully the appropriateness of importing trademark law concepts into domain name policy.

**Recommendation 2: "Strings must not be confusingly similar to an existing top-level domain."**

In this recommendation, the Committee seems to be collapsing two distinctly different concepts: confusing similarity and likelihood of confusion. The Draft Final Report states that "'confusingly similar' is used to mean that there is a likelihood of confusion."<sup>[39]</sup> However, confusingly similar is a different legal standard than likelihood of confusion. The Committee appears to base this recommendation on Section 3.7.7.9 of the ICANN Registrar Accreditation Agreement, which it cites, implying that the legal standard is consistent. But that section of the ICANN Agreement explicitly employs the standard of infringement, which is likelihood of confusion.

A determination about whether use of a mark by another is "confusingly similar" is simply a first step in the analysis of infringement. As the committee correctly notes, account will be taken of visual, phonetic and conceptual similarity. But this determination does not end the analysis. Delta Dental and Delta Airlines are confusingly similar, but are not likely to cause confusion, and therefore do not infringe. As U.S. trademark law clearly sets out, the standard for infringement is where the use of a mark is such "as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive..."<sup>[40]</sup> While it may be that most cases of confusing similarity are likely to cause confusion, because the infringement standard takes account of how the mark is used, some cases of confusing similarity will not likely cause confusion.

In trademark law, where there is confusing similarity and the mark is used on similar goods or services, a likelihood of confusion will usually be found. European trademark law recognizes this point perhaps more readily than U.S. trademark law. As a result, sometimes "confusingly similar" is used as shorthand for "likelihood of confusion." However, these concepts must remain distinct in domain name policy where there is no opportunity to consider how the mark is being used. As applied to domain names, the only level of analysis is the first level of analysis: confusing similarity.

A related problem with this recommendation is that it equates domain names with trademarks as legally protectable properties. They are not. Trademarks are legally protected intellectual property because it is believed that the commercial use of a mark by another that is likely to cause confusion would injure consumers. Trademarks are legally protectable intellectual property also because their owners have developed valuable goodwill in the marks. Neither of these conditions of legal protection apply in the case of domain names.

Moreover, it is not clear what consumers would be confused about when encountering a string that is confusingly similar to an existing top-level domain. Because, unlike trademarks, strings are not inherently commercial communication means, it does not follow that consumers would incorrectly assume that the string would indicate source of origin. For example, <http://nmhm.washingtondc.museum/> does not suggest to consumers a connection with [www.museum.com](http://www.museum.com).

Beyond top-level domains, the Draft Final Report states that "strings should not be confusingly similar either to existing top-level domains like .com and .net or to existing trademark and *famous names*."<sup>[41]</sup> The

Draft Final Report notes that the Committee relied on "a wide variety of existing law" to reach this standard. [42] And yet, "famous names" is not a legal category under any trademark law. International trademark law grants rights to "well-known marks"[43] and to "trade names,"[44] and U.S. law grants rights to "famous marks,"[45] but "famous names" seems to be a construct created by the Committee. Clearly, the domain name policy should protect only recognized intellectual property.

**Recommendation 3: "Strings must not infringe the existing legal rights of others that are recognized or enforced under generally accepted and internationally recognized principles of law."**

There are simply too many legally recognized trademarks in the world to make this recommendation workable. The United States alone registers well over 100,000 trademarks each year[46] and there were 1,322,155 active certificates of registration last year. In the United States, state registered trademarks and common law trademarks are also legally recognized. Protected trademarks include generic terms, geographical terms, names, and fanciful words.

**Recommendation 6: "Strings must not be contrary to generally accepted legal norms relating to morality and public order."**

The Committee is correct that a variety of trademark legislation restrict registrations based on some notion of offense or immorality. Unfortunately, the Committee seeks to extend this trademark law concept to domain name policy. This extension is not a natural one and presents many problems in its application.

Where these content restrictions exist in trademark law they are understood as merely restricting the registration of trademarks, not the use of such trademarks. That is, under certain legislation a trademark may be deemed unregistrable but the trademark owner may still use the trademark in commerce and may even have the benefit of legal protection over the trademark. The only restriction is that the trademark owner is denied certain benefits of registration.

The United States has such a content restriction in its trademark law.[47] What saves this legislation from violating the First Amendment is that it is not a restriction on use; it is merely a restriction on certain legal benefits deriving from federal registration. Any restriction of the use of the trademark would need to comply with the First Amendment. For instance, a mark may be restricted from use where it has been found to be obscene. Obscenity is a legal category whose threshold is well above the category of immoral or offensive speech.

The restriction of a generic top-level domain is more akin to the restriction on use than to the restriction on federal trademark registration. Because restricting offensive words in Generic top-level Domains would concomitantly restrict the ability of all speakers, commercial and non-commercial, ICANN should consider legal models outside of trademark law that better address the balance of speech rights.

This recommendation also illustrates the lack of fit between trademark law and domain name policy. Because trademark law is territorial in nature, legal standards reflect the consumer perspectives of the particular state. These standards are thus expected to vary from state to state as the way consumers respond to marks in one state may differ from the way consumers would respond to the same mark in another state. Trademark content restrictions are similar in approach. For instance, under U.S. trademark law, a mark will be refused registration if it is deemed to be scandalous or immoral when considered from the perspective of "a substantial composite of the general public." [48] The "public" is understood to mean the U.S. public. In order to extend this legal standard to domain names it would be necessary to consider a substantial composite of the general public of the entire world. This is obviously an unworkable standard.

Moreover, trademark law standards are always applied in the context of how a consumer would encounter the mark. Thus, the USPTO and the courts consider the entire label, what products or services are sold under the mark and what channels of commerce and marketing will be used. As a result, marks

challenged as being scandalous may in fact be found to have a double entendre.[49] The extension of this trademark law standard to domain name policy thus risks prohibiting words as generic top-level domains that could well be used in inoffensive ways.

A few other observations are in order. First, under U.S. trademark law, in cases of doubt or ambiguity, both the USPTO and the Federal Circuit will pass the mark to publication to give others the opportunity to object. [50] If ICANN finally decides to employ any content restrictions, erring on the side of permitting the speech should be the rule.

Second, the Paris Convention permits rather than requires content restrictions. Article 6*quinquies* of the Paris Convention merely allows a Member state to deny registration to a mark duly registered in another Member state on the grounds of morality or public order.[51] This article makes clear the expectation that a mark may be acceptable in one state, while it is offensive in another. The WTO TRIPS Agreement is silent on content restrictions.[52]

Finally, although some trademarks have been denied registration under U.S. trademark law, this remains a little known or utilized provision of U.S. trademark law. Furthermore, the majority of challenges brought under this provision are brought by third parties and not the USPTO.

Thank you for your consideration.

Respectfully submitted,

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#### **ATTACHMENT B TO NCUC STATEMENT**

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#### **LEGAL BRIEFING FROM LAW PROFESSOR JACQUELINE LIPTON**

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**New Top Level Domain Name Introduction Proposals**

**Briefing Paper: Some Legal Issues**

**Professor Jacqueline Lipton**

**June 6, 2007**

## **Background**

I have been asked to prepare a brief legal issues paper for IP Justice, by its Executive Director, Robin Gross. The paper is in respect of ICANN's recent Proposed Recommendations for the introduction of new generic Top Level Domain Names (gTLDs) and the Noncommercial Users' Constituency's (NCUC) suggested amendments to those recommendations.[53]

### **Issues Raised by IP Justice and NCUC (ICANN Recommendations 3, 6, 8, and 11)**

The current ICANN recommendations contemplate that ICANN should implement a process that would accommodate the introduction of new gTLDs that are not currently available to Internet domain name registrants or registries. In its recommendation paper,[54] it contemplates several principles for deciding on strings of characters that may be utilized in a new gTLD. These principles include:

- New strings should not infringe the existing legal rights of others (*Recommendation 3*).
- New strings should not be contrary to generally accepted legal norms relating to morality/public order (*Recommendation 6*).
- Applications for new strings should be rejected or deferred if there is substantial opposition to a relevant string from 'among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support' (*Recommendation 8*).
- ICANN staff evaluators will make preliminary determinations about applications for new gTLD strings (*Recommendation 11*).

The NCUC and IP Justice have raised particular concerns about aspects of these recommendations.[55] Specifically, they are concerned that some of ICANN's proposals give too much weight to trademark holders' interests without giving sufficient weight to other competing legal interests in words and phrases, such as those arising from legal concepts of free speech.[56] They have also voiced concerns that under Recommendation 6, ICANN may by default be trying to legislate internationally for morality and public order and that this may not be an appropriate burden for ICANN, as opposed to national lawmakers. They raise related concerns with respect to ICANN Recommendations 8 and 11 in the sense that these recommendations focus more on international legal and cultural norms than on the technical capacities and functions of ICANN. Recommendation 8 also raises the specter of censorship in the introduction/use of new gTLDs by bodies that have not been clearly defined in the ICANN proposals. It is also unclear how decisions would be made as to the rejection or deferral of new strings on this basis. Which organizations would be consulted? Whose policies would be applied? What experts, if any, would ICANN consult?

### **ICANN Recommendations 5, 9 and 12**

I would add some similar concerns about the following ICANN recommendations:

- New strings should not include country, territory or place names or words describing countries, territories, languages or peoples in the absence of agreement with relevant governments or public authorities (*Recommendation 5*).
- Applications for new gTLDs must entail a clear and pre-published application process using 'objective' and 'measurable' criteria (*Recommendation 9*).

- Dispute resolution processes must be established prior to the start of the relevant process (*Recommendation 12*).

**Recommendation 5.** This recommendation raises the specter of government censorship or control of particular gTLDs. This may or may not prove to be a problem in practice given the existence of two character country-code top level domains (ccTLDs) within the current system. These ccTLDs have apparently not, to date, created major problems, at least as compared with some of the issues arising under currently available gTLDs. However, it is possible that a new gTLD string pertaining to a country would prove to be more desirable than a corresponding ccTLD and this recommendation may give imbalances of power or control over particular new gTLDs to certain governments or public authorities. In some ways this concern mirrors the concerns of IP Justice and the NCUC about Recommendation 8 to the extent that it is unclear under that recommendation whose policies should be protected in the decision to defer or reject registration of a particular gTLD string. An associated concern with recommendation 5 is that it may not always be clear who is the relevant government or public authority who would need to agree to the use of a particular new gTLD: for example, would all Asian countries have to agree to the use of a '.asia' gTLD and, if so, how should 'Asian country' be defined in this context and who should define it?[57] Moreover, who should decide which 'public authorities' should be consulted about use of particular new gTLDs? How should 'public authority' be defined here?

**Recommendation 9.** This recommendation calls for the use of pre-published 'objective' and 'measurable' criteria in the application process for new gTLDs. It is not clear how ICANN *per se* would establish such criteria. If it is contemplated that ICANN would consult relevant national and international bodies or individuals in discharging this problem, then perhaps this recommendation is not so problematic. However, such a consultation process would likely take a long time and may slow down the introduction of new gTLDs for a considerable period. Such a process would entail: (a) identifying relevant expert bodies; (b) consulting with them on relevant issues: and, (c) translating relevant issues into a set of pre-published objective and measurable criteria for the new gTLD application process. This further assumes that such issues are indeed transferable to objective and measurable criteria.

**Recommendation 12.** Dispute resolution processes may be much more problematic in practice than contemplated by ICANN's recommendation 12. My assumption is that Recommendation 12 refers to simple dispute resolution processes for new gTLDs such as those currently in effect under the Uniform Domain Name Dispute Resolution Policy (UDRP)[58] for some existing gTLDs. The problem here is that dispute resolution processes that take account of multiple legal interests outside commercial trademark interests are not easy in practice. Different jurisdictions, and different bodies within the same jurisdiction, may diverge widely in attitudes and even in laws on free speech, public order etc. Arbitrators under simple UDRP-style dispute resolution processes may not be equipped to handle these kinds of disputes. Dispute resolution procedures may therefore have to be somewhat more complex than is currently contemplated by ICANN if they are to take account of a variety of competing legal interests, rather than merely trademark interests. For example, while there are some things a simple arbitration process can handle well, there are other things that are much more complex and difficult and may need to be turned over to national courts or experts.[59]

### **General Discussion**

It is important to start re-focusing the regulation of the Internet domain name system generally on interests outside of pure trademark interests. The introduction of new gTLDs and the development of processes for introducing them may provide a good opportunity for achieving this goal. However, any attempt to regulate broad policy issues relating to social and cultural norms on speech, public order and morality in domain names will be very difficult for any national or international body or group. ICANN also faces the practical

difficulty that its major area of expertise is technical and functional. It is therefore important for ICANN to clarify what groups, bodies or individuals it might utilize in carrying out future legal and social developments within development of its domain name processes. In particular, ICANN should consider more specifically who to consult in formalizing specific processes for: (a) the introduction of new gTLD strings; (b) establishing dispute resolution procedures for those strings; and, (c) deciding whether the introduction of particular new strings should be deferred or rejected.

It should also be noted at the outset that many of the key problems identified by ICANN, IP Justice and the NCUC reflect legal issues that have arisen in the past with respect to existing gTLDs, although perhaps in slightly different contexts. In other words, the balance between trademark interests and other legitimate interests in Internet domain names, for example, has already proved problematic in situations involving disputes about registration and use of domain names under existing gTLDs (notably .com, .org and .net). Thus, in many ways, the 'balance of interests' questions in the new gTLD debates could be regarded as an extension of unresolved issues under current domain name laws and policies. The addition of new gTLD processes will likely exacerbate existing legal problems. The upside of this is that it may, and hopefully will, provide a new forum for addressing some of these problems.

In my view, it is important to put the debate about new gTLD processes into its historical context in order to properly address the concerns that have been raised here. So please bear with me for a couple of paragraphs while I describe this context and why it is important now. The current framework for regulating disputes relating to '.com', '.net' and '.org' domain names has been focused largely on the protection of commercial trademark holders against cybersquatters.[60] There is little harmonized attention paid to the protection of other legitimate interests in relevant Internet domain names within this framework. This is evidenced in the drafting of the UDRP and the American Anti-Cybersquatting Consumer Protection Act (ACPA).[61] While these regulations do make allowances for 'legitimate interests' in domain names where relevant domain names have not been registered or used in bad faith,[62] they do not set out rules to affirmatively protect non-trademark-based registrations and uses of .com, .org or .net domain names.[63] This is not particularly surprising because it was not the intention behind these rules to do so.

The historical focus on the protection of trademarks against bad faith cybersquatters is understandable within its context. These were key concerns of relevant regulators in the mid to late 1990s when e-commerce was in its infancy, and governments wanted to encourage this new medium of commerce. It was widely thought – although not universally agreed – that bad faith cybersquatting *per se* was a socially wasteful activity that potentially harmed the development of electronic commerce without producing any associated social benefits.[64] There is probably nothing inherently wrong with the UDRP and ACPA in this respect. They did deal with a real world problem and, in many respects, they are now old news. Presumably, this is why debates today about the introduction of new gTLD processes do not dwell on the rules and regulations implemented in 1999. However, those rules and regulations have raised new post-1999 problems that have not yet been addressed in a systematic way.[65]

Issues under the existing domain name system that relate to the balance of trademark interests with other legitimate interests in domain names do include the need to balance trademark interests with interests such as: interests in personal names, cultural and geographic indicators, free speech (including the right to parody, comment on and criticize a trademark holder), other basic human rights, and rights to free and democratic government.[66] ICANN has identified some of these issues in its recommendations. IP Justice and the NCUC have raised concerns about clarification of, as well as appropriate implementation of, ICANN's stated goals here.

The main problem for ICANN in identifying and implementing these kinds of 'interest balancing ideals' is that, as with its administration of existing gTLDs, ICANN's expertise is largely technical and functional. It is not a body staffed with people whose main expertise is to deal with these difficult balances of competing legal and

social interests in multiple societies around the world. Effectively bringing debates about international public order and morality, as well as free speech and human rights generally, into a predominantly technical process comes at a high cost. However, failing to address these issues in a relevant forum also comes at a high cost, as previous and current experiences have shown us.

What is needed at this point is a combination of the following: (1) ensuring that the technical aspects of this process do not somehow become a default proxy to legislate for important and complex national and international social, cultural and legal norms; (2) more clearly identifying bodies or individuals who can appropriately identify and make recommendations on relevant issues within the development of the more technical aspects of the process; and, (3) ensuring that these bodies are brought into the relevant process in time to prevent damage to important legal and social interests. To some extent, that may be what is happening at the moment, but this process may need to be more formalized to avoid exacerbating some of the problems that have arisen in the past under the current domain name system.

### **Conclusions**

The aim of this briefing paper has been to raise awareness of ideas that may be pertinent in the ongoing process to develop new gTLDs. My hope is that this paper generates, or at least facilitates, useful debate in this context. There are, as yet, no clear solutions to many of the problems addressed. We seem to be at a point in the development of the new gTLD processes where it would be useful to more fully identify and discuss relevant legal and social issues, as well as bodies and individuals that may be best suited to advise on them, and ultimately help draft and implement regulations about them where possible. This is an important time in the development of the domain name system and this kind of debate and development would prove extremely useful, particularly in order to avoid some of the practical problems with respect to new gTLDs that are already evident in the administration of domain names registered under existing gTLDs.

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[1] Available online at: [http://www.ipjustice.org/ICANN/NCUC\\_Comments\\_on\\_New\\_gTLDs.pdf](http://www.ipjustice.org/ICANN/NCUC_Comments_on_New_gTLDs.pdf)

[2] Indeed— one of its refrains is a '*substantial opposition*' formula. This is not rule based predictable criteria.

[3] ICANN should defer to nations' laws on obscenity and not attempt to gold-plate them with unrelated concepts from trade mark law.

[4] This was added to the draft on 7 June 2007 to Recommendation 6.

[5] We note the defensive and cautious approach employed in the discussion on this recommendation is symptomatic of the suspicion with which the creation of new a gTLD has historically been approached— as the grant of an indulgence. This has led to the artificial scarcity of today.

[6] We also welcome standard contracts albeit that we believe that everyone would be also served by stronger analysis and recommendations on standardization in Rights Protection Mechanisms.

[7] G. Dinwoodie, *(National) Trademark Laws and the (Non National) Domain Name System*, 21 U. PA. J. Int'l Econ. L. 495 (2000) p. 520.

[8] Those include the requirements that marks be well-known or famous before dilution can be claimed; the limits to dilution, the requirement that the speech must be commercial and the infringing use— use as a trade mark, the prohibition on generic and descriptive marks; honest concurrent use; geographic and territorial limits and others.

[9] It says in (iii)"In addition, the concept of "confusingly similar" is used to mean that there is a likelihood of confusion on the part of the relevant public. In international trade mark law, confusion may be visual, phonetic or conceptual. The Committee used a wide variety of existing law to come to some agreement that strings should not be confusingly similar either to existing top-level domains like .com and .net or to existing trademark and famous names"

[10] The pre 7 June draft, referred to consumer confidence and security. These have now gone. No criteria replace them to provide any qualifications.

[11] See §10(6) of the UK 1994 Trade Marks Act 1994 which requires use in the course of trade for infringement. See also Art. 5 of the Trade Marks Directive (89/104). In *Arsenal Football Club v Matthew Reed* [2003] R.P.C. 9 the ECJ affirmed the proprietor cannot prohibit the use of a sign identical to the trade mark for goods also identical, if that use cannot affect his interests as proprietor having regard to its functions—so that certain uses for purely descriptive purposes are excluded from the scope of Art. 5(1). This includes use creating the impression of a link in trade, so that the use must be in the course of trade and in relation to goods within Art. 5(1). If there is identity of sign and goods or services, the protection under Art.5(1) (a) is absolute, whereas Art.5(1) (b) also requires a likelihood of confusion, see *Anheuser-Busch v Budejovicky Budvar NP* Case C -245/02 [2005] E.T.M.R 27. See also §10(6) which enables comparative advertising —also permitted by Directive (97/55/EC)—but also reference to and identification of genuine goods and services of the proprietor provided honest. See Lanham Act, 15 U.S.C. §1114(1)(a) which defines infringement as use of "a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive...". Further under the Federal Trademark Dilution Act (FTDA) a claimant alleging a violation must prove inter alia: " the defendant is making a commercial use of the mark in commerce." The Anticybersquatting Consumer Protection Act 1999 (ACPA) requires bad faith *intent to profit*. See *Taubman v. Webfeats* 319 F.3d 770 (6th Circuit 2003) ("The Lanham Act is constitutional because it only regulates commercial speech, which is entitled to reduced protections under the First Amendment" many expressions of a mark were not a 'trademark use' and not likely to cause confusion and therefore "outside the jurisdiction of the Lanham Act and necessarily protected by the First Amendment."). See *Bosley Med. Inst. v. Kremer*, 403 F.3d 672 (9th Cir. 2005)(non-commercial expression of opinion was not a "trademark use" subject to regulation by the mark holder). See also *1-800 Contacts v. WhenU.com* 414 F3d 400 (2d Cir. 2005), (the vast majority of uses were outside the scope of trademark law and only those specific uses visually associated with the sale of goods/services could be regulated by trademark).

[12] The following factors are to be considered in relation to distinctiveness and famousness under 15 U.S.C. §1125(c)(1): (A) the degree of inherent or acquired distinctiveness of the mark; (B)the duration and extend of use of the mark in connection with the goods or services with which the mark is used; (C)the duration and

extent of advertising and publicity of the mark; (D)the geographical extent of the trading area in which the mark is used; (E)the channels of trade for the goods and services with which the mark is used; (F) the degree of recognition of the mark in the trading areas and the channels of trade used by the marks' owner and the person against whom the injunction is sought; (G)the nature and extent of use of the same or similar marks by third parties; and (H) the Act by which it was registered.

[13] 15 U.S.C. §1125(B)(ii).

[14] See (ix) *"The proposed implementation plan deals with a comprehensive range of potentially controversial (for whatever reason) string applications which balances the need for reasonable protection of existing legal rights and the capacity to innovate with new uses for top level domains that may be attractive to a wide range of users"* In fact –this claimed balance is entirely absent. We can only assume it refers to implementation guideline 6 *"ICANN will provide for the ability to settle conflicts between applicants (such as string contention) at any time. A defined mechanism and a certain period for resolution of identified conflicts will be provided."*

[15] Muller & McKnight, *The Post .com Internet*, (2003) at p. 11, [www.digital-convergence.info](http://www.digital-convergence.info).

[16] Prior to 7 June, it also employed *"prior third party rights"* and gave the examples of trade marks and rights in names and acronyms of inter-governmental organizations.

[17] E.g.—commercial use; geographic and territorial limits; the Nice Classification system for classes; requirements of true fame for dilution.

[18] E.g. fair use; genericness/descriptiveness; honest concurrent use; own name; invalidity; deceptiveness, geography, etc.

[19] We would also like to see recognition of the rights of all to the commons of language. These include but are not limited to the rights of the public to free speech and to use descriptive and generic words, including where permitted by the law of the nation state where they reside, to use words which may be subject to Legal Rights in particular classes of the Nice Classification System—outside those classes. In relation to unregistered Legal Rights, they include the right to use words that are not subject to protection in their nation state or where no goodwill or reputation arises in their nation state in relation to such a word. They include the right to make fair and legitimate use of words in which others may claim Legal Rights. Trade mark law does this—via the limits, and the highly sophisticated compromises in the defenses.

[20] Further, it continues: iii. There are a number of ways in which ICANN could approach the resolution of this type of problem which includes the full range of "ICANN saying nothing; ICANN identifies a possible issuing and ICANN files a complaint; ICANN identifies a possible issue but relies on a complainant to file it formally; ICANN identifies an issue, makes a decision and the applicant can appeal." iv. The final approach to this set of potentially controversial problems will be resolved through ongoing discussions with members of the Committee and ICANN's implementation team. This is Byzantine and esoteric. To the uninitiated it is also meaningless. To the initiated it represents the ability to lobby against a particular application. We refer the Council to the admirable aims expressed in Recommendation 1.

[21] The UK 1994 Trade Marks Act provides at §3(1)(c) that trade marks which consist exclusively of signs or designations which serve to indicate geographical origin should not be registered and the ECJ has interpreted this as requiring that geographical names which are liable to be used as undertakings must remain available to such undertakings as indications of the geographical origin of the category of goods concerned, see *Windsurfing Chiemsee* [1999] ETMR 585. See however the European Regulation 2081/92 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, as amended by Regulation 535/97, which allows protections for these products.

[22] This change was made on 7 June 2007.

[23] "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

[24] " (2) *In the exercise of his rights and freedoms, everyone shall be subject only to such limitations **as are determined by law solely for the purpose** of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*"

[25] This binds all in the UK because it binds the courts who must interpret all law in accordance with it, §6 Human Rights Act 1998.

[26] "(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...(2) The exercise of these freedoms, since it carries with it duties and responsibilities, *may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society*, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

[27] See *Casado Coca v Spain* (1994) 18 EHRR 1 §§33-37

[28] Art 10's limitations must be justified by objectives in the public interest, in so far as those derogations are in accordance with the law, motivated by one or more of the legitimate aims under those provisions and necessary in a democratic society, that is to say justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued, see Case C-112/00 *Schmidberger Internationale Transporte und Planzuge v Austria* [2003] 2 CMLR 34, p.1043.

[29] Art. 6 quinquies, paragraph B3 of the Paris Convention of 20 March 1883 (as last revised at Stockholm on 14 July 1967) provides for refusal and invalidity of registration in relation to trade marks that are 'contrary to morality or public order'. See Art. 7(1)(f) of the Community Trade Mark Regulation and Art. 3(1)(f) of the Trade Marks Directive. In the UK §3(3)(a) of the Trade Marks Act 1994, trade marks shall not be registered if they are 'contrary to public policy or accepted principles of morality'.

[30] *Philips Electronics NV v Remington Consumer Products* [1998] RPC 283 at 310 per Jacob J. See also the use of the words 'contrary to ... public order' in the English text of Article 6 quinquies of the Paris Convention and the words 'qui sont contraires à l'ordre public' in the French language versions of Article 7(1) (f) of the Community Trade Mark Regulation and Article 3(1)(f) of the Trade Marks Directive.

[31] This is treated as falling within prevention of disorder as the relevant enumerated purpose. That is, by accommodating the concept of '*ordre public*' within the '*prevention of disorder*' (in the French text of the Convention '*à la défense de l'ordre*') under Article 10. However, the right to freedom of expression predominates and any real doubt as to the applicability of the objection must be resolved by upholding the right to freedom of expression, hence acceptability for registration.

[32] See Case R 111/2002-4 *Dick Lexic Limited's Application* (25 March 2003) the Fourth Board of Appeal of the Community Trade Marks Office at §9 "these words merely designate things but they do not transmit any message; secondly, the association of the two words does not necessarily reinforce the connotation of the mark.... In principle, the mark does not proclaim an opinion, **it contains no incitement, and conveys no**

*insult*. In the Board's opinion, in these circumstances, the mark should not be regarded as contrary to either public policy or accepted principles of morality." See also IN THE MATTER OF Application No. 2376955, to register a trade mark in classes 25 & 26 by Sporting Kicks Ltd, Decision by C Hamilton 11 November 2005 where the level was a badge of antagonism and likely to cause alarm or distress.

[33] The only measure we are aware of is the Additional Protocol (to the European Convention on Cybercrime) concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems in force in 2006. The US did not sign or ratify due to its conflict with First Amendment Free Speech and nor did the UK.

[34] In *Reno v. American Civil Liberties Union*, 117 St. Ct. 2329 not even the legitimate and important congressional goal of protecting children from harmful materials, was to abridge the freedom of speech protected by the First Amendment.

[35] For the US position see, *Moral Intervention in the Trademark Arena: Barring the Registration of Scandalous and Immoral Trademarks* (1993) 83 TMR 661 by Stephen R. Baird

[36] Further, trade mark laws are territorially limited and ccTLDs are premised on the assumption that a nation is monocultural with a unitary legal system and a generally accepted standard of morality and taste often with only one or two dominant religions. No such standards can be extrapolated globally in a multicultural context.

[37] If the proposed name would infringe **a law** in a nation state which objects to the application—the application could be granted with conditions restricting or preventing its use in the objecting state(s) which we understand is technically possible. This would prevent one State imposing its laws on others.

[38] We refer to the Parliamentary Assembly of the Council of Europe Resolution 1510 (2006) on Freedom of Expression and Respect for Religious Beliefs: "10. *Human rights and fundamental freedoms are universally recognized, in particular under the Universal Declaration of Human Rights and international covenants of the United Nations. The application of these rights is not, however, universally coherent. **The Assembly should fight against any lowering of these standards**.....* 11.. *What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place.* 12. *The Assembly is of the opinion that freedom of expression as protected under Article 10 of the European Convention on Human Rights **should not be further restricted to meet increasing sensitivities of certain religious groups**. At the same time, the Assembly emphasises that hate speech against any religious group is not compatible with the fundamental rights and freedoms guaranteed by the European Convention on Human Rights and the case law of the European Court of Human Rights."*

[39] See Draft Final Report of the GNSO New TLDs Committee on the Introduction of New Generic Top-level Domains, 2.iii (2007), available at <http://gnso.icann.org/drafts/pdp-dec05-draft-fr.htm> (as of June 6, 2007).

[40] See Lanham Act, 15 U.S.C. § 1051 (3) (d).

[41] See Draft Final Report of the GNSO New TLDs Committee on the Introduction of New Generic Top-level Domains, 2.iii (2007) (emphasis added), available at <http://gnso.icann.org/drafts/pdp-dec05-draft-fr.htm> (as of June 6, 2007).

[42] *Id.*

[43] See Paris Convention, at Article 6*bis* (1979), available at [http://www.wipo.int/treaties/en/ip/paris/trtdocs\\_wo020.html](http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html) (as of June 6, 2007).

[44] See Paris Convention, at Article 1 (stating "[t]he protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition."), available at [http://www.wipo.int/treaties/en/ip/paris/trtdocs\\_wo020.html](http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html) (as of June 6, 2007).

[45] 15 U.S.C. § 1127 (c).

[46] In 2006, the USPTO reported that 147,118 trademarks were registered. See [http://www.uspto.gov/web/offices/com/annual/2006/50315\\_table15.html](http://www.uspto.gov/web/offices/com/annual/2006/50315_table15.html) (as of June 6, 2007).

[47] Under U.S. law, marks can be refused registration if they are regarded as "immoral or scandalous." 15 U.S.C. § 2 (a). However, even if a mark is found to be immoral and therefore unregistrable, a mark owner may still use the mark to market its goods in commerce and may still avail itself of federal trademark protections including bringing suit in U.S. courts.

[48] See e.g., *In re Mavety Media Group*, 33 F.3d 1367 (Fed. Cir. 1994).

[49] See e.g., *In re Hershey*, 6 U.S.P.Q.2d 1470 (T.T.A.B. 1988) (where the mark was considered in the context of the design that accompanied it and found not to be scandalous).

[50] *McCarthy on Trademarks and Unfair Competition*, § 19.77.

[51] See Paris Convention, at Article 6*quinquies* (stating that marks duly registered in another Member state *may* be refused registration "when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. "), available at [http://www.wipo.int/treaties/en/ip/paris/trtdocs\\_wo020.html](http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html) (as of June 6, 2007).

[52] See TRIPS:Agreement on Trade Related Aspects of Intellectual Property Rights §2, available at [http://www.wto.org/english/tratop\\_e/trips\\_e/t\\_agm3\\_e.htm#2](http://www.wto.org/english/tratop_e/trips_e/t_agm3_e.htm#2) (as of June 6, 2007).

[53] Available at <http://www.ipjustice.org/ICANN/062007.html>, last viewed on June 5, 2007.

[54] Available at <http://www.ipjustice.org/ICANN/GNSORecomOverview11May2007.htm>, last viewed on June 5, 2007.

[55] These concerns are voiced at on IP Justice's website in NCUC's Recommended Amendments to the ICANN proposals: <http://www.ipjustice.org/ICANN/062007.html>, last viewed on June 5, 2007.

[56] See for example recommendation 3 which specifically mentions 'trademark' rights under the original ICANN proposal, but would additionally include free expression rights under the suggested NCUC amendments.

[57] In Australia, for example, 'Asia' colloquially tends to refer to Asia-Pacific countries such as Malaysia, Thailand, Indonesia etc, while in the United Kingdom, the term is more likely to be used to refer to countries such as India and Pakistan, with the term 'oriental' often reserved for Asia-Pacific countries.

[58] Full text available at: <http://www.icann.org/udrp/udrp-policy-24oct99.htm>, last viewed on June 6, 2007.

[59] For example, an arbitrator can generally quite easily tell if a domain name has been registered for a socially wasteful purpose (eg registering a domain name and offering it up for sale without using the relevant website for any other purpose). This can be established by simply looking at the website and probably comes under a heading like 'socially wasteful bad faith cybersquatting'. However, if the relevant website contains some content and is being used in some way to communicate a message – whether complimentary or not - about an associated trademark holder or other entity, it is much more difficult for an

arbitrator to establish respective rights and interests in the relevant domain name. This kind of situation (eg unauthorized fan website, unauthorized political commentary, unauthorized gripe site or parody site about a trademark holder) will entail balancing free speech interests against the legal rights of the complainant. Those legal rights themselves may be based in a variety of laws such as trademark, privacy, unfair competition etc. Any dispute resolution mechanism that truly attempts to balance these interests effectively, either in an existing domain space or with respect to an application to register a new gTLD, is going to have to be a lot more complex than existing systems like the UDRP. The question is how to establish such a system and who should administer it. ICANN may not be best charged with this function at the end of the day. See also discussion in Conclusion section of: Jacqueline Lipton, *Who Owns 'Hillary.com'? Political Speech and the First Amendment in Cyberspace*, Boston College Law Review, (forthcoming, spring 2008), draft available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=982430](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=982430).

[60] "Cybersquatting, according to the United States federal law known as the Anti-Cybersquatting Consumer Protection Act, is registering, trafficking in, or using a domain name with bad-faith intent to profit from the goodwill of a trademark belonging to someone else. The cybersquatter then offers to sell the domain to the person or company who owns a trademark contained within the name at an inflated price." (definition from Wikipedia, available at: <http://en.wikipedia.org/wiki/Cybersquatting>, last viewed on June 6, 2007).

[61] 15 U.S.C. § 1125(d).

[62] 15 U.S.C. § 1125(d)(1)(B)(ii); UDRP, para. 4(c).

[63] With the exception of 15 U.S.C. § 1129 from the ACPA which does protect personal names against bad faith cybersquatters regardless of trademark status.

[64] See, for example, discussion in Jacqueline Lipton, *Beyond Cybersquatting: Taking Domain Name Disputes Past Trademark Policy*, 40 Wake Forest Law Review 1361, 1369-1371 (2005) (full text available at: <http://www.law.wfu.edu/prebuilt/w08-lipton.pdf>, last viewed on June 5, 2007). The most cited example of traditional cybersquatting is probably the case of Dennis Toeppen who registered reportedly around 100 domain names corresponding with well known marks in the hope of making significant amounts of money for transfer of the names to relevant trademark holders. Today, Toeppen chronicles his own story at: <http://www.toeppen.com/>, last viewed on June 5, 2007. Many have written about conduct such as Toeppen's and about its place in the development of the current gTLD regulation system. For a summary of these legal developments in the late 1990s and more detail on the concerns I raise here, see: Jacqueline Lipton, *Beyond Cybersquatting: Taking Domain Name Disputes Past Trademark Policy*, 40 Wake Forest Law Review 1361 (2005) (full text available at: <http://www.law.wfu.edu/prebuilt/w08-lipton.pdf>, last viewed on June 5, 2007).

[65] Despite some attempts to refer certain issues to the World Intellectual Property Organization ('WIPO'): for example, the need to balance trademark interests against interests in personal names and geographic and cultural indicators. These issues are discussed in the Second WIPO Internet Domain Name Process, Chapters 5-6, available in full text at: <http://www.wipo.int/amc/en/processes/process2/report/html/report.html>, last viewed on June 5, 2007.

[66] I have written previously, and in detail, about many of these issues in the following articles: Jacqueline Lipton, *Beyond Cybersquatting: Taking Domain Name Disputes Past Trademark Policy*, 40 Wake Forest Law Review 1361 (2005) (full text available at: <http://www.law.wfu.edu/prebuilt/w08-lipton.pdf>); Jacqueline Lipton, *Commerce vs Commentary: Gripe Sites, Parody and the First Amendment in Cyberspace*, Washington University Law Review (forthcoming, summer 2007), draft available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=925691](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=925691); Jacqueline Lipton, *Who Owns 'Hillary.com'? Political Speech and the First Amendment in Cyberspace*, Boston College Law Review, (forthcoming, spring 2008), draft available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=982430](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=982430).

## Impact Statement of the Registrars Constituency

### Regarding the Draft Final Report on the

### Introduction of New Generic Top-Level Domains

July 4, 2007

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Recommendation 1	ICANN must implement a process that allows the introduction of new top-level domains.	IMPACT: New gTLDs present an opportunity to Registrars in the form of additional products and associated services to offer to its customers. However, that opportunity comes with the costs of implementing the new gTLDs as well as the efforts required to do the appropriate business analysis to determine which of the new gTLDs are appropriate for its particular business model.
Recommendation 2	Strings must not be confusingly similar[15] to an existing top-level domain.	IMPACT: Registrars would likely be hesitant to offer confusingly similar gTLDs due to customer service and support concerns. On the other hand, applying the concept too broadly would inhibit gTLD applicants and ultimately limit choice to Registrars and their customers.
Recommendation 3	Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.	IMPACT: Very little direct impact.
Recommendation 4	Strings must not cause any technical instability.	IMPACT: This is important to Registrars in that unstable registry and/or zone operations would have

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a serious and costly impact on its operations and customer service and support.

Recommendation 5	Strings must not be a Reserved Word.	IMPACT: Depends on what Words are reserved and what, if any, the process is for adding Words to the reserved list. If applied too broadly it would inhibit gTLD applicants and ultimately limit choice to Registrars and their customers.
Recommendation 6	Strings must not be contrary to generally accepted legal norms relating to morality and public order.	IMPACT: If applied too broadly it would inhibit gTLD applicants and ultimately limit choice to Registrars and their customers.
Recommendation 7	Applicants must be able to demonstrate their technical capability to run a registry operation.	IMPACT: This is very important to Registrars in that inefficient registry operations would have a serious and costly impact on its operations and customer service and support. Minimum technical requirements should be applied, but not to the extent that it inhibits new entrants.
Recommendation 8	Applicants must be able to demonstrate their financial and organisational operational capability.	IMPACT: This is important to Registrars insofar as it might impact stable operations of the registry and/or zone. However, only minimal requirements should be applied so as not to inhibit new entrants or an open market.
Recommendation 9	There must be a clear and pre-published application process using objective and measurable criteria.	IMPACT: Important in that clear, objective, and measurable criteria will encourage applicants resulting

in more choice for Registrars and their customers.

Recommendation 10	There must be a base contract provided to applicants at the beginning of the application process.	IMPACT: This would benefit Registrars in that they would have a clear understanding of the policies and operational rules that will impact their and their customers' relationships with Registry Operators.
Recommendation 11	Staff Evaluators will be used to make preliminary determinations about applications as part of a process which includes the use of expert panels to make decisions.	IMPACT: Very little direct impact assuming that costs are recouped from application fees and not increases in Registrar fees.[AK1]
Recommendation 12	Dispute resolution and challenge processes must be established prior to the start of the process.	IMPACT: Very little direct impact assuming that costs are recouped from application fees and not increases in Registrar fees.
Recommendation 13	Applications must initially be assessed in rounds until the scale of demand is clear and there is a reduction to zero of applications for the same string.	IMPACT: Very little direct impact assuming that costs are recouped from application fees and not increases in Registrar fees.
Recommendation 14	The initial registry agreement term must be of a commercially reasonable length.	IMPACT: Same as for Recommendation 10.
Recommendation 15	There must be renewal expectancy.	IMPACT: Same as for Recommendation 10, except that this must also be qualified with clear

and reasonable termination provisions.

Recommendation 16	Registries must apply existing Consensus Policies[16] and adopt new Consensus Polices as they are approved.	IMPACT: Same as for Recommendation 10.
Recommendation 17	A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.	IMPACT: Same as for Recommendation 10.
Recommendation 18	If an applicant offers an IDN service, then ICANN's IDN guidelines[17] must be followed.	IMPACT: Creates a stable and consistent experience for Registrars and their customers, reducing the cost of implementation, operations, and customer service and support.
Recommendation 19	Registries must use ICANN accredited registrars.[AK2]	IMPACT: Registrars support this requirement that registries provide domain names only through ICANN-accredited registrars. Registrars have invested considerable resources to establish themselves under the Accreditation paradigm and are governed by ICANN's contract and policies. Permitting the use of non-ICANN accredited registrars would threaten the security and stability of the DNS, as ICANN would have no contract with – and therefore no control over – the providers or their activities. Allowing the use on non-accredited registrars or allowing Registries to offer registration services direct to consumers also would place accredited registrars at a competitive disadvantage as they

are required to follow certain ICANN-imposed requirements. Similarly, permitting registries to sell directly to consumers would place registrars at an unfair advantage and create certain antitrust concerns. Recent events have made it clear that some improvements to the Accreditation process may be warranted, but overall it has worked well in creating competition, reducing costs to consumers, and improving the quality of services offered.

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Recommendation 20	<p>An application will be rejected if it is determined, based on public comments or otherwise, that</p> <p>there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support.</p>	Very little direct impact
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### **Impact Statement from the gTLD Registry Constituency regarding the Introduction of New gTLDs 6 June 2007**

With regard to the GNSO Dec05 PDP (Introduction of New gTLDs) and in response to the requirement in the ICANN Bylaws Annex A (GNSO Policy-Development Process) for the GNSO Council to provide to the ICANN Board "(a)n analysis of how the issue would affect each constituency, including any financial impact on the constituency", the gTLD Registry Constituency (RyC) hereby provides the following information.

#### 1. General Impact on the RyC

The introduction of new gTLDs directly impacts members of the RyC and the constituency as a whole by:

1. Increasing competition for existing gTLD registries
2. Enlarging the potential members of the RyC
3. Expanding the diversity of the RyC.

Regarding increased competition, the RyC has consistently supported the introduction of new gTLDs because we believe that:

- There is clear demand for new gTLDs
- Competition creates more choices for potential registrants
- Introducing TLDs with different purposes increases the public benefit
- New gTLDs will result in creativity and differentiation in the domain name industry
- The total market for all TLDs, new and old, will be expanded.

In the RyC consensus statement submitted at the beginning of the New gTLD PDP, we listed the following specific benefits of new gTLDs:

- Added choices for Internet users, not only in terms of the ability to obtain a domain name registration in a given new TLD, but also in terms of security options, trust features, use policies, and other innovative factors that vary by registry operator or sponsor
- Expansion of Internet usage through the market development efforts of new and existing providers of registry services
- Opportunity to test user demand for specific TLDs
- Particularly in case of TLDs with a focused and defined community, opportunity to develop a resource that best serves the needs of that community while providing intrinsic value to all internet users.

With regard to potentially enlarging the potential member base of the RyC and expanding the diversity of the RyC, we believe that this could have both negative and positive consequences. The RyC started out with one member, later expanded to eight members, then nine, and now has 15 members plus one pending member. Doing business as a constituency in some ways is much easier with a smaller number of members, so as the constituency continues to grow it can be expected that participating in the GNSO will become more complicated for the RyC. Attempting to reach consensus positions as part of the policy development process will sometimes be more difficult. On the other hand, as the RyC membership has increased, the diversity of ideas and varied experiences of constituency members have expanded and thereby broadened the perspective of the entire membership. We believe that the challenges that come with a larger membership are manageable and are worth the benefits that come from new ideas and different points of view.

## 2. Financial Impact on the RyC

The financial impact on the RyC may best be divided into two categories: impact on RyC members and impact on the Constituency as a whole.

The financial impact on individual gTLD registry operators and sponsors will vary depending on many factors such as, but not limited to, the following: 1) whether or not they are involved in any new gTLDs; 2) what effects increased competition has on their current business; 3) the extent to which they may be able to

leverage the investments they have made in their existing business model into new opportunities; 4) their ability to market their offerings in an expanded market; and 5) any changes in RyC fees as a consequence of increased membership and/or changes in expenses.

The financial impacts on the Constituency as a whole will be dependent on how many new members join the RyC and whether or not Constituency expenses grow in proportion to membership size or possibly can be used more effectively. At this point in time, the RyC believes that the financial impact on the RyC may be neutral. Some expenses may increase as the membership grows (e.g., Secretariat costs, luncheon meetings with the Board during ICANN meetings); other expenses may remain constant or rise at a rate that is lower than the membership growth. Regardless, the Constituency will have the ability to adjust RyC member fees up or down as needed to accommodate actual expenses approved by the membership.

### 3. Impact of Selected New gTLD Recommendations on the RyC

Recommendations included in the Draft Final New gTLD PDP Report that may have impact on the RyC and/or its members are listed below in italic font followed by discussion of possible impacts.

#### Recommendation 2

*Strings must not be confusingly similar to an existing top-level domain.*

This recommendation is especially important to the RyC. At least one gTLD registry has already received a customer service call that demonstrates user confusion with regard to an IDN version of an existing gTLD using an alternate root. It is of prime concern for the RyC that the introduction of new gTLDs results in a ubiquitous experience for Internet users that minimizes user confusion. gTLD registries will be impacted operationally and financially if new gTLDs are introduced that create confusion with currently existing gTLD strings or with strings that are introduced in the future.

There is strong possibility of significant impact on gTLD registries if IDN versions of existing ASCII gTLDs are introduced by registries different than the ASCII gTLD registries. Not only could there be user confusion in both email and web applications, but dispute resolution processes could be greatly complicated.

It is also critical to remember that there are several hundred thousand domain name registrants who have registered IDN domain names at the second level in existing gTLDs who would likely desire in most cases to expand their IDN registration at the top level. If confusingly similar versions of existing gTLDs are introduced, would those registrants have to defensively register their names in the new gTLDs? If so, that could have large impact on those gTLD registries that have in good faith introduced IDN second-level domain names in response to user demand from the non-English speaking Internet community.

#### Recommendation 9

There must be a clear and pre-published application process using objective and measurable criteria.

This recommendation is of major importance to the RyC because the majority of constituency members incurred unnecessarily high costs in previous rounds of new gTLD introductions as a result of excessively long time periods from application submittal until they were able to start their business. We believe that a significant part of the delays were related to selection criteria and processes that were too subjective and not very measurable. It is critical in our opinion that the process for the introduction of new gTLDs be predictable in terms of evaluation requirements and timeframes so that new applicants can properly scope their costs and develop reliable implementation plans.

There is nothing that can be done now to correct the flaws in previous new gTLD rounds, but on behalf of new organizations that may consider applying and potentially become members of the RyC, we strongly support this recommendation and firmly believe that it has the chance of reducing the impact on them.

#### Recommendation 10

There must be a base contract provided to applicants at the beginning of the application process.

Like the comments for Recommendation 9, we believe that this recommendation will facilitate a more cost-effective and timely application process and thereby minimize the negative impacts of a process that is less well-defined and objective. Having a clear understanding of base contractual requirements is essential for a new gTLD applicant in developing a complete business plan.

#### Recommendations 14 and 15

The initial registry agreement term must be of a commercially reasonable length.

There must be renewal expectancy.

The members of the RyC have learned first hand that operating a registry in a secure and stable manner is a capital intensive venture. Extensive infrastructure is needed both for redundant registrations systems and global domain name constellations. Even the most successful registries have taken many years to recoup their initial investment costs. The RyC is convinced that these two recommendations will make it easier for new applicants to raise the initial capital necessary and to continue to make investments needed to ensure the level of service expected by registrants and users of their TLDs.

These two recommendations will have a very positive impact on new gTLD registries and in turn on the quality of the service they will be able to provide to the Internet community.

#### Recommendation 19

Registries must use ICANN accredited registrars.

The RyC has no problem with this recommendation for larger gTLDs; the requirement to use accredited registrars has worked well for them. But it has not always worked as well for very small, specialized gTLDs. The possible impact on the latter is that they can be at the mercy of registrars for whom there is not good business reason to devote resources.

In the New gTLD PDP, it was noted that this requirement would be less of a problem if the impacted registry would become a registrar for its own TLD, with appropriate controls in place. The RyC agrees with this line of reasoning but current registry agreements forbid registries from doing this. Dialog with the Registrars Constituency on this topic was initiated and is ongoing, the goal being to mutually agree on terms that could be presented for consideration and might provide a workable solution.

Davis and Holt, *Experimental Economics*, Princeton University Press, Princeton: 1993. (Materials for auction models is also available at the University of Haifa website <http://www.gsb.haifa.ac.il>)

DNJournal, *Global TLD Registrations Pass 50 Million as New Users Stream*

*Online.* July 30 2005. On line version at <http://dnjournal.com/columns/50million.htm>.

Guermazi, Boutheina and Isabel Neto, *Mobile License Renewal: What are the issues? What is at stake?*, available at <http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2005/09/23>

[/000016406\\_20050923113019/Rendered/PDF/wps3729.pdf](http://000016406_20050923113019/Rendered/PDF/wps3729.pdf)

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Klensin, John, *RFC 3071 (Reflections on the DNS, RFC 1591, and Categories of Domains)*. 2001. On line version at <http://rfc.net/rfc3071.html>.

Klensin, John, *RFC 3467 (Role of the Domain Name System)*. 2003. On line version at <http://rfc.net/rfc3467.html>.

Mannheim, Karl and Lawrence Solum. "The Case for gTLD Auctions." Research Paper #2003-11, Loyola Law School. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=515183](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=515183)

Matsui, Masayuki, *Comparing Domain Name Administration in OECD Countries*, available at <http://www.oecd.org/dataoecd/46/38/2505946.pdf>

Mueller, Milton and Lee McKnight. "The Post-.com Internet: Toward Regular and Objective Procedures for Internet Governance." *Telecommunications Policy* 28 (7/8), 487-502 (2004) <http://dcc.syr.edu/miscarticles/NewTLDs2-MM-LM.pdf>

National Research Council, *Signposts in Cyberspace: The Domain Name System and Internet Navigation*, Committee on Internet Navigation and the Domain Name System: Technical Alternatives and Policy Implications; Washington, DC: 2005. ISBN: 0309096405. Executive summary found at [http://www.nap.edu/execsumm\\_pdf/11258.pdf](http://www.nap.edu/execsumm_pdf/11258.pdf) ).

Paltridge, Sam and Masayuki Matsui, *Generic Top-level Domain Names: Market Development and Allocation Issues*, Working Party on Telecommunications and Information Services Policies. Paris: 2004. DSTI/ICCP/TISP(2004)/2Final. On line version at <http://www.oecd.org/dataoecd/56/34/32996948.pdf>

Perset, Karin and Dimitri Ypsilanti, *The Secondary Market for Domain Names*, available at <http://www.oecd.org/dataoecd/14/45/36471569.pdf>

Summit Strategies International, Evaluation of the New gTLDs: Policy and Legal Issues, August 2004. On line version at <http://icann.org/tlds/newgtldeval&#173;31aug04.pdf>. On line version of presentation at ICANN's Rome meeting <http://www.icann.org/presentations/sapiroforumrome04mar04.pdf.&#160;>

VeriSign, *The Domain Name Industry Brief*, Volume 2, Issue 2, May 2005. On line version at

<http://www.verisign.com/stellent/groups/public/documents/newsletter/030...>

World Intellectual Property Organisation, *New Generic TopLevel Domains: Intellectual Property Considerations*, WIPO Arbitration and Mediation Center, 2004. On line version at <http://arbitr.wipo.int/domains/reports/newgtld&#173;ip/index.html>.

#### ICANN Links

For a full listing of all inputs including Constituency Statements, Public Comment archives and Expert Papers, <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>.

GNSO gTLDs Committee Final Report on New gTLDs, May June 2003

9 May, v4: <http://www.dnso.org/dnso/notes/20030509.gTLDscommitteeconclusionsv4...>

21 May, v5: <http://www.dnso.org/dnso/notes/20030521.gTLDscommitteeconclusionsv5...>

02 Jun, v6: <http://www.dnso.org/dnso/notes/20030602.gTLDscommitteeconclusionsv6...>

12 Jun, v7: <http://www.dnso.org/dnso/notes/20030612.gTLDscommitteeconclusionsv7...>

IANA Listing of all TLDs

<http://data.iana.org/TLD/tldsalpha&#173;>

bydomain.txt.

List of Registry Agreements <http://www.icann.ORG/registries/agreements.htm>

### **Return to Final Report: Part A**

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[1] The Participation Table will be completed after the GNSO Council meeting on 6 September 2007.

[2] See paragraph 64 of the WSIS Tunis Agenda, at <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>

[3] See paragraph 49.a) of the WSIS Geneva declaration at <http://www.itu.int/wsis/docs/geneva/official/dop.html>

[4] See: <http://www.icann.org/general/glossary.htm#G>

[5] See <http://www.un.org/Overview/rights.html>

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[AK1]Note – this has been deleted on the most recent version.

[AK2]Registrars have suggested the following wording – "Registries must use only ICANN accredited registrars in registering domain names and may not discriminate between such accredited registrars."

**EXHIBIT JJN-30**



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### Call for papers -- Policy Development for introduction of new gTLDs

3 January 2006

The GNSO Council has voted to launch a Policy Development Process on new gTLDs and to establish a work program in consultation with the ICANN staff and the Board. As part of this process, the GNSO Council has extended the public comment process until January 31, 2006 (see <http://www.icann.org/announcements/announcement-06dec05.htm> (<http://www.icann.org/announcements/announcement-06dec05.htm>)). In addition, in order to inform the recently launched Policy Development

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Process on new gTLDs, the GNSO is inviting organizations and individuals to submit substantive papers on the issue areas identified in the Terms of Reference for this PDP:

**1. Should new generic top-level domain names be introduced?**

Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top-level domains. If this is the case the following additional terms of reference are applicable.

**2. Selection Criteria for New Top-Level Domains**

- (a) Taking into account the existing selection criteria from previous top-level domain application processes and relevant criteria in registry services reallocations, develop modified or new criteria that specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top-level domains can meet demands for broader use of the Internet in developing countries.
- (b) Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage new and innovative ways of addressing the needs of Internet users.
- (c) Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.

**3. Allocation Methods for New Top-Level Domains**

- (a) Using the experience gained in previous rounds, develop allocation methods for selecting new top-level domain names.
- (b) Examine the full range of allocation methods including auctions, ballots, first-come / first-served and comparative evaluations to determine the methods of allocation that best enhance user choice while not compromising predictability and stability.
- (c) Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.

**4. Policy to Guide Contractual Conditions for New Top-Level Domains**

[\(/en/announcements/details/request-for-proposal-middle-east-domain-name-industry-study-2023-08-06-2023-en\)](#)

[ICANN Releases Full Schedule for Asia Pacific DNS Forum 2023 \(/en/announcements/details/releases-full-schedule-for-asia-pacific-dns-forum-2023-08-06-2023-en\)](#)

[ICANN Request for Proposal: The Grant Program \(/en/announcements/details/request-for-proposal-the-grant-program-05-06-2023-en\)](#)

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(a) Using the experience of previous rounds of top-level domain name application processes and the recent amendments to registry services agreements, develop policies to guide the contractual criteria which are publicly available prior to any application rounds.

(b) Determine what policies are necessary to provide security and stability of registry services.

(c) Determine appropriate policies to guide a contractual compliance program for registry services.

The purpose of this additional request for substantive contributions is to gather detailed input from experts, interested parties and individuals to inform the policy development process. Submitters of papers should address the topics or sub-topics related to the above areas and should provide reasoned background analysis and references for statements expressed. Contributions can be submitted until 31 January 2006 as text documents and/or as PowerPoint presentations to the GNSO Secretariat by email to [gns.secretariat@gns.icann.org](mailto:gns.secretariat@gns.icann.org) (<mailto:gns.secretariat@gns.icann.org>). Received papers will be considered for oral presentations to the GNSO Council during February 2006, via scheduled conference calls with the GNSO Council.

## You May Also Like

[ICANN Board Moves to Begin Preparations for the Next Round of New gTLDs \(/en/announcements/details/icann-board-moves-to-begin-preparations-for-the-next-round-of-new-gtlds-16-03-2023-en\)](#)

[ICANN Delivers Operational Design Assessment of SubPro Recommendations to Board \(/en/announcements/details/icann-delivers-operational-design-assessment-of-subpro-recommendations-to-board-12-12-2022-en\)](#)

[ICANN Seeks Input: Final Report on Specific Curative Rights Protections for IGOs \(/en/announcements/details/icann-seeks-input-final-report-on-specific-curative-rights-protections-for-igos-28-11-2022-en\)](#)

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**EXHIBIT JJN-31**

## Input received on the policy development process on new gTLDs

Last Updated:31 August 2009

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[GNSO Home](#) | [issues](#) | [new-gtlds](#) | [new-gtld-pdp-input.htm](#)

This page contains links to all the input received by the GNSO regarding its the policy development process on new gTLDs. It includes the public comments received in response to ICANN's request for comments on the terms of reference of the policy development process (PDP) on new gTLDs. The public comments section also includes links to relevant discussions archived on the General Assembly mailing list and a wiki organised independently by the At-Large Advisory Committee to ICANN. There are links to the statements of each constituency of the GNSO on the terms of reference of the PDP. Finally, this page links to the input received in response to the GNSO's call for substantive papers on the issue areas identified in the Terms of Reference for New gTLDs (deadline; 31 January, 2006).

### Public comments

[Public comments on the terms of reference for the new gTLDs PDP](#)

[Public comments on the GA list](#)

[ALAC Wiki](#)

### Constituency Statements

["Registrar Statement on GNSO New gTLD Terms of Reference, January 31, 2006, Revised March 2, 2006", Registrar Constituency](#)

["Business Constituency Position: The 2006 GNSO policy development process for new generic top-level domain names", CBUC](#)

["gTLD Registry Constituency Comments regarding Terms of reference for new gTLDs", gTLD Registry Constituency](#)

["Comments of the Intellectual Property Constituency Terms of Reference for New gTLDs", IPC](#)

["ISPCP Position on New gTLD Expansion", ISPCP](#)

["Noncommercial Constituency Comments Submitted to the GNSO in Response to the Call for Comments on the Terms of Reference for New gTLDs", NCUC](#)

["Registrar Commentary on GNSO New gTLD Terms of Reference, January 31, 2006", Registrar Constituency](#)

### Responses to the call for papers on new gTLDs

"A Principles-Based Approach to the Introduction of New TLDs", by Bret Fausett (submitted in my personal capacity, not on behalf of the ALAC)

"The Zoning Board Approach: a discussion paper", Danny Younger

"New Way To Squat Without Getting Caught: The Case of the \$750,000 Generic Domain Name - It's Time to Revamp the Internet Domain Name System", Angela A. Stanton

"Making Choices: Thoughts on Implementing a Permanent gTLD Allocation Process", Elliot Noss and Ross Rader

"More TLDs: why and how", John Levine and Paul Hoffman

"ALAC on New TLDS", ICANNWiki

"Recommendations on Policy Development for introduction of new gTLDs", Rahul Goel and Ashutosh Mehta

"In support of new sponsored TLDs", Peter Gerrand

"Should new generic top-level domain names be introduced?", dotcym

"GNSO Call for Papers on Terms of Reference for new gTLDs -- The dotBERLIN View", dotberlin

"Response to GNSO new gTLD PDP Call for Comments and Call for Papers", CORE Internet Council of Registrars

"NEW gTLDs -- NEED FOR PROMOTION OF INTERNET IN DEVELOPING COUNTRIES POLICY DEVELOPMENT FOR INTRODUCTION OF NEW gTLDs", Rahul Bhonsle

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**EXHIBIT JJN-32**



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### Minutes | Regular Meeting of the Board | 31 March 2006

A regular meeting of the ICANN Board of Directors was held in Wellington, New Zealand on 31 March 2006, and was called to order shortly after 8:30 a.m. local time.

Chairman Vinton G. Cerf presided over the entire meeting. The following other Board Directors participated in all or part of the meeting: Raimundo Beca, Susan Crawford, Mouhamet Diop, Demi Getschko, Hagen Hultzs, Joichi Ito, Veni Markovski, Alejandro Pisanty, Hualin Qian, Njeri Rionge, Vanda Scartezini, Peter Dengage Thrush and Paul Twomey.

Liaisons present included Steve Crocker (SSAC), Daniel Dardailler (TLG), Roberto Gaetano (ALAC), Thomas Narten (IETF), Mohamed Sharil Tarmizi (GAC), and Suzanne Woolf (RSSAC). John Jeffrey, General Counsel and Board Secretary, was also present. Other staff present included Kurt Pritz, Vice President, Business Operations, and Daniel Halloran, Deputy General Counsel.

The entire meeting was held in public and was streamed in video on the Internet. Also, a real-time transcription was posted on the ICANN website following the meeting, and is available at <  
<http://www.icann.org/tlds/agreements/xxx/proposed-xxx-agmt-09aug05.pdf>>.

### **ICM Registry sTLD Application**

Veni Markovski introduced a resolution, seconded by Hagen Hultzsich:

Whereas, on 1 June 2005, the ICANN Board authorized the President and General Counsel to enter into negotiations with ICM Registry LLC relating to proposed commercial and technical terms for the .XXX sponsored top-level domain.

Whereas, on 9 August 2005, the proposed .XXX sponsored TLD registry agreement was posted on the ICANN website <<http://www.icann.org/tlds/agreements/xxx/proposed-xxx-agmt-09aug05.pdf> (<http://www.icann.org/tlds/agreements/xxx/proposed-xxx-agmt-09aug05.pdf>)> and submitted to the ICANN Board for approval.

Whereas, on 15 September 2005, the ICANN Board directed staff to discuss possible additional contractual provisions or modifications for inclusion in the .XXX Registry Agreement, to ensure that there are effective provisions requiring development and implementation of policies consistent with the principles in the ICM application, and to return to the board for additional approval, disapproval or advice.

Whereas, discussions between ICANN and ICM Registry have continued, and additional public input has been received concerning the terms of the proposed sTLD agreement.

Whereas, on 30 March 2006, ICANN's Governmental Advisory Committee issued a communique identifying public policy issues relating to the ICM Registry application <<http://gac.icann.org/web/communiqués/gac24com.pdf> (<http://gac.icann.org/web/communiqués/gac24com.pdf>)>.

Resolved (06.12), the President and the General Counsel are directed to analyze all publicly received inputs, to continue negotiations with ICM Registry, and to return to the Board with any recommendations regarding amendments to the proposed sTLD registry agreement, particularly to ensure that the TLD sponsor will have in place adequate mechanisms to address any potential registrant violations of the sponsor's policies.

Following discussion, a vote was taken on the resolution, which the Board adopted by a 12-0 vote with three abstentions (Michael Palage, Alejandro Pisanty, and Hualin Qian abstained for reasons stated in the real-time transcription <<http://www.icann.org/meetings/wellington/captioning-board-31mar06.htm> (<http://www.icann.org/meetings/wellington/captioning-board-31mar06.htm>)>).

### **Consideration of ccNSO's Recommendation 3 on Proposed ICANN Bylaws Changes**

Peter Dengate Thrush introduced a resolution, seconded by Michael Palage:

Whereas, the ccNSO Council has considered a number of issues which are understood to stand in the way of a number of ccTLD managers joining the ccNSO.

Whereas, the ccNSO Council resolved on 28 May 2005, to initiate a ccNSO Policy Development Process to consider changes to ICANN Bylaws Article IX (Country-Code Names Supporting Organisation), Annex B (ccNSO Policy-Development Process) and Annex C (the scope of the ccNSO) to address the matters outlined in paragraphs A to M of section 3.2 of the Issues Report as published on 7 June 2005.

Whereas, the ccNSO has conducted the ccPDP in accordance with Annex B of the ICANN Bylaws.

Whereas, the ccNSO Council resolved on 2 December 2005, to approve the Board Report containing eight ccNSO Recommendations for changes to improve and clarify the ICANN Bylaws on the ccNSO and the ccPDP in the interest of the ccNSO membership, the ccNSO Council and other stakeholders.

Whereas, the Issue Manager has submitted the Board Report <<http://ccnso.icann.org/announcements/ccnso-board-report-04dec05.pdf> (<http://ccnso.icann.org/announcements/ccnso-board-report-04dec05.pdf>)> to the Board for consideration on 2 December 2005.

Whereas, the proposed ccNSO Bylaw changes have been posted for public comment on the ICANN webpage <<http://www.icann.org/announcements/announcement-21dec05.htm> (<http://www.icann.org/announcements/announcement-21dec05.htm>)> for over 21 days, and one comment concerning Recommendation 3 was received.

Whereas, Recommendation 3 suggested the addition of a new subsection 3 to ICANN Bylaws Article IX, Section 6, which would require that "Any change of this article IX shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP as stated in Annex C to these bylaws, and shall be subject to approval by the Board."

Whereas, the General Counsel has advised the Board that adopting the ccNSO Recommendation 3 may raise issues regarding corporate governance and might adversely impact ICANN's organizational structure.

Whereas, the Board believes that it is essential that the Board maintain its role of independent oversight of the organization and its Bylaws, and that this independence is one of the key elements which makes ICANN free from capture by any particular interested party or industry sector.

Resolved (06.11), that the Board hereby rejects ccNSO Recommendation 3, and directs staff to communicate to the ccNSO that it is amenable to receiving further input from the ccNSO through its processes for a supplemental recommendation regarding good faith notice and consultation, before the amendment of any provision of Article IX of the ICANN Bylaws.

Following discussion, a vote was taken on the resolution, which the Board adopted by a 15-0 vote.

#### **SSAC Report on Alternative TLD Name Systems and Roots**

Alejandro Pisanty introduced a resolution, seconded by Hagen Hultzsich:

Whereas, on 30 March 2006, ICANN's Security and Stability Advisory Committee (SSAC) submitted a comprehensive report entitled Alternative TLD Name Systems and Roots: Conflict, Control and Consequences. The report was the subject of a valuable workshop presented by the SSAC at these meetings in Wellington.

Whereas, the SSAC report describes the operational models and the technical mechanisms alternative TLD name system and root operators employ to provide name resolution and registration services, and considers the impact on Internet users and service providers (ISPs), domain name registrants, and registries that operate under agreements with ICANN.

Resolved (06.13), the ICANN Board hereby accepts the Report, and thanks SSAC Chair Steve Crocker, SSAC Fellow Dave Piscitello, the members of SSAC, and all other contributors for their efforts in the creation of the report.

Resolved (06.14), the ICANN Board directs staff to forward the Report to ICANN's advisory parties for their consideration in connection with the IDN TLD policy development process.

Following discussion, a vote was taken on the resolution, which the Board adopted by a 15-0 vote.

#### **SSAC Report on DNS Distributed Denial of Service (DDoS) Attacks on TLD and Root Name System Operators**

Hagen Hultzsich introduced a resolution, seconded by Veni Markovski:

Whereas, on 30 March 2006, ICANN's Security and Stability Advisory Committee (SSAC) submitted a security advisory on DNS Distributed Denial of Service (DDoS) Attacks. The advisory was the subject of a valuable workshop presented by the SSAC at these meetings in Wellington.

Whereas, the SSAC Advisory describes recent incidents, identifies the impacts, and recommends countermeasures that TLD name server operators can implement for immediate and long-term relief from the harmful effects of these attacks.

Resolved (06.15), the ICANN Board hereby accepts the Report, and thanks SSAC Chair Steve Crocker, SSAC Fellow Dave Piscitello, the members of SSAC, and all other contributors for their efforts in the creation of the Advisory.

Resolved (06.16), the ICANN Board directs staff to forward the Report to Internet service providers and operators, to ICANN's advisory committees and supporting organizations, and to other interested parties for their consideration.

Resolved (06.17), the ICANN Board urges interested parties to consider a strategy to encourage the broad adoption of BCP 38, RFC 2827, Network Ingress Filtering: Defeating Denial of Service Attacks which employ IP Source Address Spoofing and SSAC004, Securing The Edge to reduce or mitigate entirely not only the threats posed by DNS DDoS attacks, but other, similar DDoS attacks as well.

Following discussion, a vote was taken on the resolution, which the Board adopted by a 15-0 vote.

#### **Consideration of and Approval of ICANN's Strategic Plan**

Paul Twomey introduced a resolution, seconded by Michael Palage:

Whereas, ICANN's 2006-2009 Strategic Plan is based on many rounds of consultation with the community through workshops at ICANN meetings, through Supporting Organizations and Advisory Committees and through public forums on the ICANN website.

Whereas, the 2006-2009 Strategic Plan gives a brief description of challenges and opportunities that ICANN is likely to face in the next few years and outlines five strategic objectives for the ICANN community.

Whereas, the strategic objectives in the plan will form the framework around which the 2006-2007 Operational Plan is constructed.

Whereas, members of the community have been very generous with their time and the Board appreciates the work that they have done.

Resolved (06.18), the Board approves the 2006-2009 Strategic Plan, and directs the President and staff to move forward with the community-based operational planning process based on the strategic objectives as set forth in the plan.

Following discussion, a vote was taken on the resolution, which the Board adopted by a 15-0 vote.

#### **Review of Recommendations 06.01 and 06.02 of the Board's Reconsideration Committee**

Vanda Scartezini introduced a resolution:

Whereas, on 28 February 2006, the Board approved a set of agreements to settle the legal disputes between VeriSign, Inc. and ICANN.

Whereas, in requests for reconsideration RC 06-1 and 06-2, various parties requested reconsideration of that Board decision;

Whereas, the Reconsideration Committee has reviewed the reconsideration requests and has submitted its recommendations to the Board, as posted at

<http://www.icann.org/committees/reconsideration/reconsideration-recommendation-06-1.htm>

(<http://www.icann.org/committees/reconsideration/reconsideration-recommendation-06-1.htm>)> and

<http://www.icann.org/committees/reconsideration/reconsideration-recommendation-06-2.htm>

(<http://www.icann.org/committees/reconsideration/reconsideration-recommendation-06-2.htm>)>.

Resolved (06.19), that the Reconsideration Committee's Recommendation RC 06-1 is adopted for the reasons stated in that recommendation.

Resolved (06.20), that the Reconsideration Committee's Recommendation RC 06-2 is adopted for the reasons stated in that recommendation.

Following discussion, a vote was taken on the resolution, which the Board adopted by a 14-1 vote (Raimundo Beca voted against).

#### **Internationalized Domain Names Discussion**

Mouhamet Diop and Hualin Qian led a discussion on the status of ICANN's IDN efforts, including discussions on IDN technical implementation tests planned for later in 2006.

#### **Appointment of Lyman Chapin as the Chairman of the Registry Services Technical Evaluation Panel**

Hualin Qian introduced a resolution, seconded by Veni Markovski:

Whereas, on 8 November 2005, the ICANN Board approved the consensus policy adopting a process for the implementation of proposed new registry services <http://www.icann.org/minutes/resolutions-08nov05.htm> (<http://www.icann.org/minutes/resolutions-08nov05.htm>)>.

Whereas, according to the consensus policy, the technical evaluation of proposed registry services will be conducted by a standing panel of experts coordinated by a Chair "who is agreeable to both ICANN and the

registry constituency of the supporting organization then responsible for generic top level domain registry policies."

Whereas, ICANN and the gTLD Registry Constituency of the GNSO have reached an agreement that Lyman Chapin is an outstanding candidate for the Chair position.

Whereas, Lyman Chapin is eminently qualified to take on such a position.

Resolved (06.21), the President and the General Counsel are directed to enter into an agreement with Lyman Chapin to undertake the duties of Chair of the Registry Services Technical Evaluation Panel.

Following discussion, a vote was taken on the resolution, which the Board adopted by a 15-0 vote.

### **Notice of Intent to Advance Implementation of New gTLD Process**

Susan Crawford introduced a resolution, seconded by Veni Markovski:

Whereas, ICANN's Core Values support the introduction and promotion of choice and competition in the registration of domain names where practicable and beneficial in the public interest; and

Whereas, ICANN's Generic Names Supporting Organization ("GNSO") has launched a policy development process designed to determine specific mechanisms for the additional introduction of new generic Top Level Domains (gTLDs); and

Whereas, consistent with the timelines for policy development specified in ICANN's Bylaws, the GNSO should complete its initial report on new gTLDs before ICANN's next public meeting in Marrakech, Morocco in June 2006; and

Resolved (06.22), ICANN Staff is authorized and instructed to post a "Notice of Intent to Advance Implementation of New gTLD Process," as soon as practicable, stating that ICANN intends to advance the implementation of a new gTLD process on or before 1 January 2007. The Notice should instruct interested parties to monitor and participate in the public process now underway in the GNSO; and,

Resolved (06.23), the Board asks the GNSO to make its best efforts to complete its initial report on new gTLDs at or before ICANN's next public meeting in Marrakech, Morocco so that the GNSO's report can be posted for public comment, considered by the Board and the rest of the ICANN community, and implemented by Staff in accordance with the Board's instructions, with sufficient time to allow for advancement of a new gTLD process on or before 1 January 2007.

Resolved (06.24), the Board asks the Chair to communicate this action to ICANN's supporting organizations and advisory committees.

Following discussion, the Board adopted the resolution unanimously (by "wave").

**Board Minutes and Reporting**

Alejandro Pisanty led a discussion on preparation for, and reporting on, ICANN's Board meetings.

**Thanks to Scribes, Sponsors, and Staff**

Vint Cerf introduced a resolution:

The Board wishes thanks to the Government of New Zealand for significant contribution to hosting the GAC, and most particularly to the Honorable David Cunliffe and the Honorable Winnie Laban for opening the ICANN meeting in Wellington.

The Board extends its thanks to all sponsors of the meeting, including Public Interest Registry, Afilias, auDA, Melbourne IT, VeriSign, City Link and especially Andy Linton who has managed the technical aspects for the host FX Networks and AsianetCom for international bandwidth, ICMP, Domainz, Catalyst, State Services Commission, Logic Boxes, Skenzo FabulousDomains, ausRegistry, Overstock, Internet Users Society of Niue.

Special thanks go to Laura Virgo and team, the Conference Organisers, Conference On Line.

We would like to acknowledge the effort made by the staff of the Wellington Convention Center to meet all of our many requests.

The Board expresses its great appreciation to the ICANN staff present here in Wellington; Laura Brewer; and Terri Darrenougue and the rest of the ICANN staff for their dedicated efforts in ensuring the smooth operation of the meeting.

The Board adopted the resolution by acclamation.

**Thanks to Local Hosts**

Peter Dengate Thrush introduced a resolution:

Whereas, ICANN has successfully completed its 2006 Meeting in Wellington, New Zealand.

Resolved (06.25), the ICANN Board expresses its deep appreciation and thanks, on its own behalf and on behalf of all participants, to .nz Registry Services, the Office of the Domain Name Commissioner, and InternetNZ. Special thanks to InternetNZ's Colin Jackson, President, David Farrar, Vice President and Chair of the ICANN meeting committee, and Keith Davidson, Executive Director of InternetNZ.

Vint Cerf adjourned the meeting at 11:25 a.m. local time.

### Related Documents

[Regular Meeting of the Board Preliminary Report \(/en/board-activities-and-meetings/materials/preliminary-report-regular-meeting-of-the-board-31-03-2006-en\)](#)

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**EXHIBIT JJN-33**



## GNSO Initial Report

### Introduction of New Generic Top-Level Domains

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## Executive Summary

1. This document is the third draft *Initial Report* which sets out the key findings that have emerged from a four-phase policy development process. The key elements of that process have been formal Constituency Statements, a Call for Expert Papers and a Public Comment Period. In addition, the GNSO Council's new top-level domains Committee (new TLDs Committee) has conducted three separate face-to-face consultations to discuss each Term of Reference. These meetings have been open to observers. In addressing the Terms of Reference, very close attention has been paid to understanding ICANN's Bylaws, Mission and Core Values.
2. The following sections set out each Term of Reference, the findings that have emerged and, at the end of each section, offer some recommendations for the next steps which could take place. Background information, summaries of Constituency Statements, Call for Expert Paper responses and a summary of the first Public Comment Period are found in the Appendices. In addition, the Appendices include information about how the PDP has been conducted, lists meeting attendees, explains the use of communication technology which has broadened remote participation opportunities and facilitated face-to-face meetings.
3. There are two other GNSO policy development processes that have a direct bearing on the work here. The PDP Feb 06

on Policies for Contractual Conditions for Existing TLDs<sup>1</sup> and the work which has been undertaken on internationalised domain names (IDNs)<sup>2</sup>. The results of these two additional workstreams need to be taken into account when making final recommendations about the introduction of new top level domain names. In addition, there are close links between the establishment of a PDP's terms of reference, the results of the PDP and the final Request for Proposal for any new application round. The final link in the chain is the resulting contract which enables the registry operator to start its service.

4. Any policy development process calls for implementation planning to be established to ensure that appropriate resources are made available. Early work will be undertaken by staff to facilitate a timely implementation of the policy outcomes as they emerge.
5. The GNSO's Committee will meet to discuss this Report on Thursday 15 June 2006 to prepare the final version of the Report for discussion at the June 2006 ICANN meeting in Marrakech. This document will also be used to facilitate discussion with the full range of ICANN Supporting Organisations, the Governmental Advisory Committee and the broader community.
6. The GNSO Committee has been discussing a definition for a new TLD. So far, "...a gTLD is a generic TLD and is a top or

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<sup>1</sup> The *Preliminary Taskforce Report* can be found at <http://forum.icann.org/lists/pdp-pcceg-feb06/msg00085.html>. The *Internationalised Domain Names Issues Report* can be found at <http://gns0.icann.org/issues/idn-tlds/issues-report-28may06.htm>

<sup>2</sup> The *Internationalised Domain Names Preliminary Issues Report* can be found at <http://gns0.icann.org/issues/idn-tlds/issues-report-28may06.htm>



first level Internet domain name that is unique and defined through an exclusive contract with ICANN. It includes but is not limited to the current sponsored and unsponsored TLDs.”<sup>3</sup>

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<sup>3</sup> For further discussion, see the GNSO mail archive found at <http://forum.icann.org/lists/gtld-council>.

## Term of Reference 1: Recommendations

*Term of Reference 1. Should new generic top level domain names be introduced?*

*Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top level domains. If this is the case the following additional terms of reference are applicable.*

1. This Term of Reference was the subject of detailed discussion at the 24 & 25 February 2006 face-to-face consultations held in Washington DC. It was clear from the results of that meeting, and the subsequent discussion which has taken place about the three other Terms of Reference, that there is support to introduce new top level domains. Subsequently, at the 31 March 2006 ICANN Board meeting in Wellington, the Board made clear its intention to proceed with the introduction of new top level domains<sup>4</sup>.
2. The Washington DC meeting notes<sup>5</sup> indicate that there were a wide variety of reasons to be cautious about the introduction of new TLDs including “ [the] selection and implementation process was time consuming, expensive and unpredictable; [the] limitation on the number added caused problems for other

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<sup>4</sup> See Board resolution at <http://www.icann.org/minutes/resolutions-31mar06.html>.

<sup>5</sup> See the full text of notes at <http://forum.icann.org/lists/gtld-council/msg00030.html>.

applicants that met selection criteria; some selection criteria were not objective, clearly defined, and measurable enough to allow independent evaluation to be effective...". These concerns have been addressed in subsequent discussions about selection criteria, allocation methods and policies for contractual conditions.

3. Multiple reasons for supporting the introduction of new gTLDs were put forward in the Constituency Statements and Call for Papers responses. These included enhancement of competition at the registry level; increased choice for registrants or end-users, innovative new services for both existing and emerging markets and avoidance of the proliferation of alternative roots.
4. The Washington DC meetings showed that there were additional reasons for introducing new gTLDs including "[a] small TLDs [is] OK if it meets the needs of the community that has put [the idea] forward and doesn't exclude others that are within that community; the new gTLDs introduced so far do not yet cater for parts of the international community that use characters sets other than the limited set from the ASCII character range; a policy is required for the introduction of IDNs at the top level, and [we] need to consider the political and cultural environments as demand for these IDNs is increasing...". Part of this work is being addressed through the IDN *Issues Report* referred to earlier and the proposal to work jointly with the ccNSO.
5. There were some common elements articulated by meeting participants which indicated that the following selection criteria

“baskets” were useful<sup>6</sup> including sound business, technical and operational plans; operational stability, reliability, security and global interoperability; and simplicity and predictability of domain name registration rules.

6. The consistent underpinning of the discussion was that, whatever action is taken, it is consistent with ICANN's limited technical co-ordination mission; that an enabling and competitive environment for the provision of domain name management be fostered and that domain name registration rules are clear. GNSO new TLDs Committee Chairman, Bruce Tonkin, released the following statement after the Washington DC meeting which enabled the Committee to move forward with consideration of the remaining Terms of Reference, “...taking into account the lessons learnt from the limited introduction of new TLDs since 2000, the GNSO supports the continued introduction of new gTLDs. Prior to introducing new TLDs, the GNSO recognises that the lessons learnt, the submissions made in response to PDP-Dec05 and further input, should be taken into account to identify and develop [C]onsensus on the selection criteria, allocation methods, and implementation processes. Note that there was no formal vote taken on the statement above, and the intent of identifying a "rough consensus" was to allow the committee to move forward to the topic of selection criteria.”<sup>7</sup> It is useful to refer to other expert reports in this area, including the

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<sup>6</sup> See the full notes at <http://forum.icann.org/lists/gtld-council/msg00028.html>.

<sup>7</sup> See Bruce Tonkin's 26 February 2006 [gtld-council] Discussion on whether to continue with the introduction of new gTLDs.

work of the OECD on domain names, the Summit Strategies Report and the World Bank report. In particular, there is detailed expert work about selection criteria and requests for proposals with the Asian Development Bank, the OECD and the World Bank. The bibliography found at the end of the document contains references to a selection of other work that has informed the GNSO Committee.

- 7. Recommendation on Term of Reference 1: That work proceeds to enable the introduction of new top level domains, taking into account the recommendations found in the following sections.**

## Term of Reference 2: Recommendations

### Term of Reference 2. Selection Criteria for New Top Level Domains

- a) *Taking into account the existing selection criteria from previous top level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top level domains can meet demands for broader use of the Internet in developing countries.*
- b) *Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage new and innovative ways of addressing the needs of Internet users.*
- c) *Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.*

1. This Term of Reference was the subject of detailed discussion during two day face-to-face meetings on 24 & 25 February 2006 in Washington DC and on 25 & 26 March 2006 in Wellington, New Zealand, as part of ICANN's regular round of meetings. There was consensus around both the principles for developing selection criteria that map directly to ICANN's Bylaws, Mission and Core Values and the practical impact of providing

appropriate policy guidance to the Board about criteria that could be used in further rounds of new top-level domain applications<sup>8</sup>.

2. There was agreement that further work needed to be done with respect to technical criteria and a supplementary Call for Information from Constituencies was made on 8 March 2006<sup>9</sup>. The Call for Information listed questions regarding four specific areas including whether the minimum technical criteria for registry operations should be set according to the current registry requirements of, for example, .NET registry; whether the minimum technical criteria should make some reference to the proposed size of a new registry; whether a separate registry operators' accreditation scheme be established and, if so, what should that scheme look like; and whether other business operations criteria continue to be included in a registry operator's application to ensure that any registry operator is adequately funded and professionally managed.
3. At the Washington DC meeting, responses to the selection criteria questions were mapped closely to a review of ICANN's Mission and Core Values. The selection criteria used in the 2000 and 2004 rounds for new top level domains were used as reference points<sup>10</sup>. Constituency representatives were asked to clarify the positions taken in the Constituency Statements but no

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<sup>8</sup> See Bruce Tonkin's 27 February 2006 email (04:00h) which provides a summary of comments made by Washington meeting attendees (<http://forum.icann.org/lists/gtld-council/msg00030.html>)

<sup>9</sup> Found at <http://gnso.icann.org/issues/new-gtlds/tech-criteria-15mar06.htm>

<sup>10</sup> See Bruce Tonkin's 26 February 2006 summary of lessons learnt at [gtldcouncil] Output of brainstorming session on lessons learnt from the previous introduction of new gTLDs since 1999.

attempt was made to reach consensus positions prior to the Wellington meeting.

4. The positions can be found at Appendix I as part of the earlier drafts of this *Report*. The main area of agreement was that selection criteria should reflect ICANN's limited technical mission. It was clear that any selection criteria should be as objective and straightforward as possible and that any selection process would be published prior to an application round beginning. It was clear from discussions that provision of a sound business plan which demonstrated an ability to comply with ICANN policy (where appropriate) and meet minimum technical standards was important. "Objectivity" was a consistent thread throughout the discussions and it was thought that following this principle would encourage participation in any new selection round. This would also enable competitive provision of registry services where an open market environment was most beneficial to end-users.
5. The continuing stability and security of the Internet was another recurring theme which included the treatment of internationalized domain names where compliance with ICANN's evolving IDN guidelines was seen as important. It was clear that compliance with best practice technical standards was necessary within any registry. This included the ongoing use of ICANN accredited registrars.
6. The Wellington meeting provided further opportunities to refine the outputs of the Washington meeting. The GNSO Committee

Chairman released a copy of the presentations made at the Wellington meeting and these are summarized below<sup>11</sup>.

7. The Committee members then developed more detailed positions at the Wellington meetings. After a further day of discussion it was clear that there was strong support for continuing to apply robust technical criteria through any application round. In addition, if applicants wished to offer internationalized domain names then compliance with ICANN's IDN guidelines was required. There was strong support for supplying a list of Requests for Comment (RFCs) and other technical standards relevant to registry operators.
8. There was strong support for the levying of an application fee to participate in any new TLD round. There was also strong support for applicants being required to demonstrate financial viability and a robust operational plan. These criteria fit into a basket of requirements around the application process itself including the production of an application time line, compliance with probity requirements, a pre-published base contract and a pre-published set of criteria against which applications would be evaluated.
9. There was strong support for applicants being able to demonstrate that their application aimed at a clearly differentiated domain name space and that the purpose of the new TLD was clearly understood.

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<sup>11</sup> See Bruce Tonkin's 28 March 2006 email to the Council list <http://gns0.icann.org/mailling-lists/archives/council/msg02274.html>

10. Committee members supported maintaining the requirement to use ICANN accredited registrars to register domain names. They also supported the ongoing compliance with ICANN consensus policies (more discussion of this element is found in section on contractual conditions).
11. There was also strong support for ensuring compliance with, in the case of chartered TLDs, the charter of the TLD and for addressing domain name registration violations. No agreement was reached about whether the current model of sponsored/unsponsored; restricted/unrestricted; chartered/unchartered would continue.
12. There was discussion of other selection criteria which did not get the full support of the group.
- 13. Recommendations on Term of Reference 2: The criteria with strong support can be divided into three clear areas.**

**Firstly, “process” criteria which will guide the establishment and conduct of any application round. These criteria include a mandatory application fee; application round probity rules and clear timelines for application completion.**

**Secondly, “technical” criteria which includes compliance with a minimum set of technical criteria which would included a base set of IETF RFCs, and other technical standards. If IDNs are offered, applicants must comply with relevant IETF standards and ICANN IDN guidelines.**

**Applicants must comply with ICANN consensus policies.**

**Applicants must offer a clearly differentiated domain name space with respect to defining purpose. Applicants must have mechanisms to ensure compliance with the charter of the TLD, and addressing violations.**

**Thirdly, “applicant” criteria which must demonstrate that applicants have the financial and operational resources to execute their plans.**

**The GNSO is interested in input on the pros and cons of other criteria which more closely match the intent of the 2004 gTLD round and which had support from several, but not a majority, of constituencies. The additional criteria may include “applicants for a new gTLD must represent a well defined community and registrants are limited to members of that community”; “a new gTLD applicant must establish a charter that addresses a defined purpose with eligibility criteria, and registrants must meet the eligibility criteria”; “accurate verification of registrant eligibility”; and, “applicants must explain how the new TLD maximized benefits for the global Internet community”.**

## Term of Reference 3: Recommendations

### Term of Reference 3. Allocation Methods for New Top Level Domains

- a) *Using the experience gained in previous rounds, develop allocation methods for selecting new top-level domain names.*
- b) *Examine the full range of allocation methods including auctions, ballots, first-come first-served and comparative evaluation to determine the methods of allocation that best enhance user choice while not compromising predictability and stability.*
- c) *Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.*

1. This Term of Reference was the subject of detailed discussion at the Wellington, New Zealand meetings. It was clear that allocation methods are an integral part of developing “process” criteria as applicants should know what kind of allocation method will be used prior to submitting an application for a new TLD. It was also clear that selection criteria form a large part of any allocation method. Clearly defined selection criteria provide a “natural selection” method for applicants and specific, extra allocation methods would only be required where there was a contest over the same application, for example, if there were two applications for .abc, or if there are more applications than could be managed at one time by ICANN staff resources.

2. The record of the full discussion about allocation methods can be found in the reference below<sup>12</sup>. In summary, it was clear that the criteria for choosing an allocation method should be timely, objective, predictable and facilitate the ongoing introduction on new TLDs. It was also clear that a first come first served system is the most efficient way to process new applications, where applicants comply with an application process which has been clearly defined.
3. It was also clear that only where duplicate or confusingly similar strings appeared, should special allocation methods be used and that these methods should be defined well in advance.
4. The GNSO Committee applied the same methodology that had been used for the previous two terms of reference for determining where consensus had emerged for policies on allocation methods. There was strong support for the first come, first served process with either an auction<sup>13</sup> or lottery to deal with competing applications that had already met the other baseline criteria of technical competence and the provision of sufficient evidence of operational and financial capacity.
5. There was strong support for ensuring that ICANN provided sufficient resources to support any application round, particularly where a large number of applications were received.

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<sup>12</sup> See Bruce Tonkin's 27 March 2006 <http://forum.icann.org/lists/gtld-council/msg00059.html>.

<sup>13</sup> Doubt was expressed by numerous Constituency Representatives about the fairness of either auctions or lotteries. On the one hand, it was thought that auctions would favour those with the most financial resource. On the other, lotteries would leave important decisions about registry operations to chance.

6. It was clear that comparative evaluations were still a necessary part of any new TLD application process particularly where there were limited resources to deal with any application round and where applicants had proposed similar strings with similar purposes for similar communities of interest.
7. Some participants in the GNSO Committee considered the creation of categories of gTLDs (for example, commercial, non-commercial, unsponsored, sponsored, open and unrestricted, restricted and chartered) and then select the appropriate selection criteria and allocation method for each category, should there be a competition for the same TLD. Further work is required to ensure a full understanding of the definition of any proposed category for new TLDs and the selection of the appropriate selection criteria and allocation method.
8. **Recommendation on Term of Reference 3: There was strong support for a first-come, first-served approved to processing applications. Where there was contention for either the same string or limited staff resources to process applications, there were two main alternatives proposed which each had roughly equal support. These were:**
  - **Objective (auction or lottery)**
  - **Subjective (comparative evaluations of the applications to identify the best applications)**
9. **The GNSO is seeking broader community input on the two main approaches, and whether the approach chosen should be based on some categorization of gTLDs.**

## Term of Reference 4: Recommendations

### Term of Reference 4. Policy to Guide Contractual Conditions for New Top Level Domains

a) *Using the experience of previous rounds of top level domain name application processes and the recent amendments to registry services agreements, develop policies to guide the contractual criteria which are publicly available prior to any application rounds.*

b) *Determine what policies are necessary to provide security and stability of registry services.*

c) *Determine appropriate policies to guide a contractual compliance programme for registry services.*

1. This Term of Reference was the subject of detailed discussion during a three day face-to-face meeting between 11 & 13 May 2006 in Brussels<sup>14</sup>. The first day of the meetings was a tutorial day conducted by ICANN's Deputy General Counsel designed to enable participants – both Committee members and observers -- to get a better understanding of the nature of ICANN's existing registry agreements. The subsequent two days followed the same format as the Washington DC and Wellington meetings with constituency representatives explaining their positions as they related to ICANN's Mission and Core Values.
2. The discussion about this Term of Reference is closely related to another policy development process on policies for contractual

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<sup>14</sup> See Bruce Tonkin's 18 May 2006 email note which sets out the results of the meeting. <http://forum.icann.org/lists/gtld-council/msg00131.html>

conditions for existing registries. The *Preliminary Taskforce Report* has been produced and the work of the Taskforce will proceed in parallel with the work found here<sup>15</sup>.

3. The GNSO Committee has referred to other expert analysis in the area of selection criteria, allocation methods and contractual conditions to ensure this process meets adjacent industry standards. It is worthwhile to quote, for example, some of the work done on behalf of the World Bank on mobile license renewals<sup>16</sup> that has many parallels to this work.
4. For example<sup>17</sup>, the World Bank Report recognizes that a “major challenge facing regulators in developed and developing countries alike is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions”.
5. It is clear that “promoting regulatory certainty and predictability through a fair, transparent and participatory renewal process” is critical. These conditions echo the priorities of the GNSO Committee. The World Bank Report refers in detail to public

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<sup>15</sup> The Taskforce Report can be found at <http://forum.icann.org/lists/pdp-pcceg-feb06/msg00085.html>.

<sup>16</sup> The full report can be found at [http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=469372&piPK=64165421&menuPK=64166093&entityID=000016406\\_20050923113019](http://econ.worldbank.org/external/default/main?pagePK=64165259&theSitePK=469372&piPK=64165421&menuPK=64166093&entityID=000016406_20050923113019)

<sup>17</sup> The World Bank is used here as an example only. Regulatory agencies such as Singapore's Infocomm Development Agency (<http://www.ida.gov.sg>), the Australian Competition and Consumer Commission (<http://www.accc.com.au>), and the UK's Office of Communications (<http://www.ofcom.co.uk/>) all suggest similar standards in various documents relating to licensing terms and conditions and the nexus between those standards and sound competition policy. The European Commission provides useful materials that can also guide this work ([http://ec.europa.eu/comm/competition/general\\_info/m\\_en.html](http://ec.europa.eu/comm/competition/general_info/m_en.html))

consultation procedures and systems for establishing and renewing “license” rights. It also spells out clear conditions under which any “application round” could be established and the way in which any process would be run. Those suggestions are consonant with what is proposed here.

6. A set of policies for contractual conditions got strong support from GNSO Committee members. Top line principles, articulated in particular by the Registries’ Constituency, were that policies to guide contractual criteria should not compromise private sector participation and that the application process (and resulting contractual conditions) should encourage long term investment with optimal opportunities for innovation and competition. The Committee supported the need for a gTLD registry to comply with new or changed ICANN consensus policies to one or more of the following areas during the term of the agreement with ICANN:
  - i. Issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet
  - ii. Functional and performance specifications for the provision of registry services (as defined below)
  - iii. Security and stability of the registry database for the TLD
  - iv. Registry policies reasonably necessary to implement consensus policies relating to registry operations or registrars

- v. Resolution of disputes regarding the registration of domain names (as opposed to the use of domain names)
7. It is clear that the predictability of a pre-published “base” or “framework” contract is important to GNSO Committee members. Those contracts need to be consistent in their treatment of different types of registry businesses and several Committee members indicated that the current .jobs agreement provides a good starting point. Several Committee representatives stressed the need for fair treatment amongst registries with equal obligations imposed on moperators (for example, with respect to technical standards and business viability). It was also clear that a “registry compliance program” with graded measures for enforcement would be useful.
8. It is also clear that a public comment process on contractual negotiations is desirable but it is recognized that there are limits to which commercial in confidence information should be made available.
9. The tutorial session and subsequent discussions identified some key areas that could benefit from further investigation. Comments along this line related particularly to the establishment of ICANN fees; the fees charged for a registry within any new agreement and the way in which fees are used by ICANN. The Committee supported ICANN providing a consistent approach with respect to registry fees, taking into account differences in regional, economic and business models. The GNSO Committee suggested that ICANN was not

necessarily the appropriate organization to determine price controls on the fees charged to registrars within contracts.

10. In summary, there should be a frame agreement to provide some level of consistency (for example, as in the case of the ICANN Registrars' agreement) with the ability for staff to have delegated authority to approve final contracts. The term of the agreements should be of commercially reasonable length (perhaps ten years but reviewed on a case by case basis).
11. There should be renewal expectancy. Operators could expect renewal of their agreements provided that they had not been in material breach of the contract or repeatedly failed to perform to the standard required in the contract. There should be mechanisms to terminate the contract if the operator has been found in repeated breach of the contract.
12. Any material alterations to the frame agreement should be subject to a public comment period before approval by the ICANN Board. Any new framework contract would take into account ICANN consensus policies current at the time. Any deviation from consensus policies should be explicitly stated and justified in the agreement.
13. Where a registry provides internationalized domain names, the contract should require the registry operator to adhere to IDN standards and ICANN's IDN Guidelines<sup>18</sup>.

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<sup>18</sup> The most recent version of the Guidelines can be found at <http://www.icann.org/topics/idn/implementation-guidelines.htm>.

14. The contracts should strike a balance between ensuring certainty for market participants and preserving flexibility for ICANN to accommodate a rapidly changing market.
15. With respect to the use of personal data, the Committee supported limited use (only for the purpose for which it was collected) of any personal data and supported requiring the gTLD registry to define the extent to which personal data would be made available to third parties. With respect to other forms of registry data, further information would be required before the Committee could reach any recommendations.
- 16. Recommendations on Term of Reference 4: Further work needs to be done on the establishment of a suitable compliance regime that would operate in tandem with the base registry agreements.**

## Next steps

1. This *Initial Report* is the result of comprehensive consultation and discussion in wide range of settings and has included a very diverse group of stakeholders. The appendices which follow set out in more detail how the conclusions found here have been established.
2. Following the GNSO's Policy Development Processes<sup>19</sup>, the work is now at Stage 8. (<http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA>)
3. The GNSO Council will meet at Marrakech to give presentations to the Governmental Advisory Committee and other Supporting Organisations. The Council will also provide a briefing to the ICANN Board on the progress it has made.
4. Between the Marrakech meeting and the December meeting in Brazil, the GNSO Council will complete its *Initial Report* and release it for a formal Public Comment Period.

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<sup>19</sup> Found at <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA>.

## Appendix A -- Background

- a. The call for public comments on the PDP's Terms of Reference was announced on 6 December 2005 on the ICANN website (<http://www.icann.org/announcements/announcement-06dec06.htm>.)
- b. At its 21 December 2005 GNSO Council conference call, it was decided to extend the deadline for Public Comments and Constituency Statements until 31 January 2006. In addition, a decision was taken to launch a Call for Papers to further inform the process. The Call for Papers was announced on 3 January 2006 on the ICANN website (<http://icann.org/announcements/announcement-03jan06.htm>). To give further impetus to the Call for Papers, it was also advertised in some major international newspapers and magazines in January 2006 including the *Financial Times*, the *Asian Wall Street Journal* and *The Economist*.
- c. The first version of this report (<http://icann.org/topics/gns0-initial-rpt-new-gtlds-19feb06.pdf>) reflected a wide range of input received from interested stakeholders including Constituency Statements, Public Comments and submissions in response to a Call for Papers about the possible introduction of new gTLDs. This updated report benefits from further inputs received at the GNSO Council's new gTLD PDP Committee Meeting held on Friday 24 and Saturday 25 February 2006 in Washington DC.

- d. All the face to face meetings have been attended by at least one representative from each of the Constituencies. At each of the meetings a number of observers attended and participation was open to the public. Teleconference facilities were provided at each of the meetings and for the Brussels meeting, the group used the Shinkuro ([www.shinkuro.com](http://www.shinkuro.com)) file sharing technology to facilitate document exchange, presentation sharing and on-line participation. meeting was attended by a range of GNSO Councilors, Constituency representatives and other members of the community<sup>20</sup>. The meeting was recorded and people were able to join the meeting via teleconference. The meeting benefited from the presentation of papers (<http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>) and a question and answer session with respondents to the Call for Papers.
- e. The most important element of the Committee meeting was to expose the PDP's Terms of Reference to further input, in the context of ICANN's Bylaws, Mission and Core Values that constrain the GNSO's policy development activities. Particular effort was made to ensure that lessons were learnt from the previous rounds of new top-level domain expansions in 2000 and 2004 and assignments of the .org and .net contracts.

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ICANN Staff included: Williams, Farrell, Pritz and de Saint Gery. Halloran attended the GNSO Council meeting by teleconference. Miriam Sapiro attended in person.

- 2) General consensus<sup>21</sup> has developed around the first term of reference – whether there should be new top-level domains. This “yes” answer is conditional for some constituencies on the appropriate development of robust selection criteria, allocation methods and contractual conditions<sup>22</sup>. In addition, there was little disagreement from the public comments or call for papers contributors about whether new TLDs should be introduced.
- 3) There is also some consensus around the treatment of allocation methods in the written submissions. However, this issue requires further examination in the discussion about allocation methods which will take place at the March 2006 Wellington meetings.
- 4) The consideration of appropriate policy for the development of new contractual conditions needs to be undertaken in the near future, after discussions of selection criteria and allocation methods are completed. This work needs to refer, in part, to the new policy development process which was initiated in February 2006. A public comment period on the issues raised by the new PDP’s Terms of Reference is now being conducted (<http://icann.org/announcements/announcement-06mar06.htm>).
- 5) The next step is to develop the findings on these issues through further work and consultations within the GNSO itself at the Wellington

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<sup>21</sup> See Bruce Tonkin’s 26 February 2006 (04:12h) email (<http://forum.icann.org/lists/gtld-council/msg00027.htm>) which says “...rough consensus...taking into account the lessons learnt from the limited introduction of new TLDs since 2000, the GNSO supports the continued introduction of new gTLDs...Note that there was no formal vote taken on the statement above, and the intent of identifying ‘rough consensus’ was to allow the committee to move forward to the topic of selection criteria”.

<sup>22</sup> See Bruce Tonkin’s 26 February 2006 (04:09h) email (<http://forum.icann.org/lists/gtld-council/msg00026.html>) that outlines each constituency’s views about supporting the continued introduction of new gTLDs.



meetings, in the first instance, and then through further rounds of consultation and public comment periods as defined by the PDP rules.

- 6) In addition, co-operation with other ICANN Supporting Organizations and Advisory Committees and consultation with the wider Internet community is a necessary part of the policy development process.
- 7) It is proposed to release the final version of this *Initial Report*, which will include input from the Wellington meetings, on 2 May 2006. At that time, a twenty-day public comment period can commence. It is expected that the final version of the *Initial Report* will be sent to other Supporting Organizations, the Governmental Advisory Committee and the ALAC for their formal input.

## ***Early Recommendations***

1. Given that this *Initial Report* is an evolving draft, this section is intended to enable open interaction as further drafting work progresses through the Wellington meetings. Current findings and unresolved issues are outlined. These will be further developed through work and consultations within the GNSO itself, in co-operation with other ICANN Supporting Organizations and Advisory Committees and in consultation with the wide Internet community through scheduled public comment periods.
2. It appears that there is support for the introduction of new gTLDs. No submission argued that there should be no additional gTLDs, even if views on the addition rate and conditions for adding new gTLDs vary widely. Most submissions recognize that new additions to the root are within the scope of ICANN's technical mandate, are necessary if ICANN is to meet its core mission and values (particularly with respect to competition and usability) and are part of ICANN's normal operations.
3. There is disagreement about how many new gTLDs should be introduced and at what pace. There is also disagreement about whether gTLDs should be sponsored or unsponsored and how new strings should be allocated. While the constituencies use these distinctions, it is equally important to address whether new gTLDs should be restricted or unrestricted
4. There is general agreement that standardized contractual conditions for registry operations should be published prior to any agreement being signed. There ought to be an improved compliance regime and there should be minimal interference with consensus policy positions.

5. Further analysis and discussions could be pursued along two slightly different scenarios. The first is a very limited introduction which is restricted to one kind of gTLDs. The other would feature a broader process which could accommodate a more diverse range of applications.
6. Secondly, further analysis is required about the operational impact on ICANN of introducing new gTLDs. This would enable a better understanding of the full costs of introducing new TLDs including, for example, legal counsel, operational and policy inputs and Board consideration time.
7. Thirdly, fact-based market analysis would be useful to inform decisions about the desirability of introducing new gTLDs from an end user perspective. Such analysis could provide better understanding of unmet demand patterns and potential effects on competition.
8. Fourthly, specific ideas and input that have not been addressed by others should probably be tested early on for potential consensus. The proposal from Rader & Noss to reclassify gTLDs into “chartered” and “unchartered” could be such an example.
9. A particular aspect introduced by the IPC is to bring a subset of the WIPO-2 recommendations, notably protection of IGO names and abbreviations, into modified UDRP provisions. This relates to contractual conditions and could be allocated to a dedicated work group to finalize as a separate track.
10. Further work still needs to be done on some elements of the Terms of Reference as not all questions were answered in the submissions. It would be helpful if the Council could identify areas where further work is necessary and advise about how it would like those areas addressed.

## Appendix B – Constituency Statements

This appendix sets out a summary of the Constituency Statements which were used as the basis for the face-to-face consultations in Washington DC, Wellington and Brussels.

1. Formal Constituency Statements were received from the Non-Commercial Users Constituency (NCUC), the gTLD Registry Constituency (RyC), the Intellectual Property Constituency (IPC), the Internet Service and Connectivity Providers Constituency (ISPCP) and from a subset of the Registrars' Constituency (RC) by 31 January 2006. A draft statement was received from the Business and Commercial Users' Constituency (BC). The Business Constituency submitted its final position on 8 March 2006. The RC submitted its final position on 2 March 2006.
2. The At Large Advisory Committee (ALAC), observer to the GNSO, also submitted a statement. In the next section, the findings in the Constituency Statements and the discussions at the Washington DC meetings are mapped to the issue areas identified in the Terms of Reference. For the full text of each of the Statements, see <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>.

### C.1 Whether to introduce new gTLDs

1. The Washington DC meeting confirmed that constituencies support the introductions of new gTLDs. Views diverge, however, on what kinds of gTLDs ought to be introduced; the pace of introduction and the selection criteria for gTLD name strings. Some constituencies make their support conditional upon the nature of the gTLDs envisaged, while claiming that

conditions relating to competition, differentiation, good faith, diversity and business certainty must be fulfilled to introduce a new gTLD.

2. The Washington meeting notes<sup>23</sup> indicate that there were a wide variety of reasons to be cautious including “ [the] selection and implementation process was time consuming, expensive and unpredictable; [the] limitation on the number added caused problems for other applicants that met selection criteria; some selection criteria were not objective, clearly defined, and measurable enough to allow independent evaluation to be effective...”.
3. Multiple reasons for supporting the introduction of new gTLDs were put forward in the Constituency Statements and Call for Papers responses. These included enhancement of competition at the registry level; increased choice for registrants or end-users, innovative new services for both existing and emerging markets and avoidance of the proliferation of alternative roots.
4. The Washington DC meeting (see reference above) showed that there were additional reasons for introducing new gTLDs including “small TLDs are OK if it meets the needs of the community that has put [the idea] forward and doesn’t exclude others that are within that community; the new gTLDs introduced so far do not yet cater for parts of the international community that use characters sets other than the limited set from the ASCII character range; a policy is required for the introduction of IDNs at the top level, and [we] need to consider the political and cultural environments as demand for these IDNs is increasing...”.

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<sup>23</sup> See the full text of notes at <http://forum.icann.org/lists/gtld-council/msg00030.html>.

5. There were some common elements articulated by meeting participants which indicated that the following selection criteria “baskets” were useful<sup>24</sup>:
  - a. Sound business, technical and operational plans
  - b. Operational stability, reliability, security and global interoperability
  - c. Simplicity and predictability of domain name registration rules
6. The consistent underpinning of the discussion was that, whatever action is taken, it is consistent with ICANN's limited technical co-ordination mission; that an enabling and competitive environment for the provision of domain name management be fostered and that domain name registration rules are clear.
7. The Registry Constituency (RyC) supports the introduction of new gTLDs as a way to facilitate competition at the registry level, to increase choice for Internet users, to grow the Internet usage, to test user demand for specific TLDs and to increase public benefit by better serving specific communities. The RyC also states that both the depth and range of its members and the experience from previous rounds prove that there is market demand for launching new gTLDs.
8. The Registrars are in favor of a predictable ongoing introduction of new gTLDs in order to promote market dynamism, innovation and competition, to enable services for additional communities and to pre-empt uncontrolled alternate roots. The Registrars propose a limit of new gTLDs “in the hundreds, possibly thousands but not tens of thousands.”
9. The IPC lends conditional support to the introduction of new gTLDs, focused on sponsored gTLDs and performed in a slow and controlled manner. Any introduction should be guided by principles of differentiation, certainty, good faith, competition and diversity. Public interest is served by

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<sup>24</sup> See the full notes at <http://forum.icann.org/lists/gtld-council/msg00028.html>.

adding value to the name space. To keep an introduction limited would also limit the risk of registry failure<sup>25</sup>.

10. The ISPCP conditionally supports a cautious introduction of new gTLDs provided they add value and competition while promoting the public interest (although this public interest is not clearly defined) in the name space. The ISPCP believes that only sponsored gTLDs can accomplish these objectives. The ISPCP states that guidelines should be adopted on how to establish the need for new gTLDs. The ISPCP further states the same five principles as the IPC.
11. The NCUC is in favor of introducing new gTLDs as quickly and broadly as possible in order to keep the market dynamic, foster competition and facilitate end-user choice, wherever Internet users may be located. A well-defined, fair and efficient process is called for and ICANN should accommodate applications for new gTLDs as long as there are no adverse technical consequences.
12. The BC statement recommends that the priority should be to introduce new IDN top-level domains, while no other gTLDs should be introduced at this point in time. Only sponsored gTLDs should be introduced according to the BC. The BC calls for safe harbor provisions in case of registry failure and re-bidding for existing gTLDs.
13. The ALAC is in favor of an open-ended introduction of new gTLDs governed primarily by the market as expressed by the gTLD applicants. The ALAC recommends that there be no explicit limits on the total number or frequency of gTLD additions other than the processing limits of ICANN. As to the types of new gTLDs preferred, views seem to differ somewhat among ALAC members, with a majority supporting unrestricted gTLDs.

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<sup>25</sup> There was no discussion of 'restricted' registry introduction as a form of differentiation by any constituency

## C.2 Selection Criteria

1. It was clear from the Constituency Statements that significant discussion about each element of the Terms of Reference had taken place. For example, the Registry Constituency identified that 11 out of 13 of its members had been involved in the drafting of their Statement. It was also clear that all of the Constituencies had had long discussion over several years about introduction of new gTLDs and had participated actively in the discussion of the 2000 and 2004 rounds.
2. The NCUC argues that "ICANN has no mandate its mission or core values to 'expand the use and usability of the Internet'". The promotion of competition is, however, one of ICANN's core values. The NCUC argues that the best way for ICANN to do that is to make "selection criteria as simple, predictable and content-neutral as possible". The RyC, the ISPCP and the IPC all argue that the selection criteria used in previous rounds are a good starting point for new gTLDs with a focus on compliance with technical standards and network stability. The ALAC stated "ICANN should accept all applications from qualified entities that either benefit the public interest or enhance competition in the registration of domain names".
3. There is very limited agreement across the Constituency Statements on which historical selection criteria ought to be included. However, there is some agreement about principles of differentiation (of name spaces), certainty (of business operations), good faith (registration of names), competition (between different registry providers) and diversity (of usability). The RyC includes a detailed set of questions which could be used to determine what selection criteria could be removed. This analysis

is based on whether particular selection criteria meet ICANN's technical objectives, provide objectivity, encourage different users and different uses of the Internet, allow market forces some element of influence and enable policy decisions to be made in the best interests of all stakeholders.

Comment [KP1]: not clear what you mean

4. The NCUC argues that the only relevant criteria are those that would determine whether an application meets minimum technical standards established to safeguard against harm to the domain name system.
5. There are divergent views on whether to introduce sponsored or unsponsored gTLDs. The concepts of “sponsored/unsponsored”, “chartered/unchartered”, “open/closed” TLDs needs further clarification as it was clear at the Washington meeting that different views are held.
6. The NCUC argues that there should be as much opportunity as possible for users to determine what new gTLDs should be introduced. The RyC also argues that there is little evidence to indicate that sponsored gTLDs are better than unsponsored in encouraging “new and innovative ways of addressing the needs of Internet users”. The IPC claimed that “...The introduction of unsponsored gTLDs such as .info and .biz added little if anything to competition at the registry level...”. The ISPCP states that “...any new gTLD proposal should be sponsored”. A part of the ALAC submission says that “restricted TLDs would cause unsolvable conflicts” but it is unclear whether there is an agreed position from the ALAC on this and other issues in its submission.
7. The ALAC suggests that gTLD strings should be proposed by applicants, not pre-selected. A public notice period should be launched for each application with a possibility to challenge the chosen string and a dispute resolution procedure should be established to resolve differences. Strings

should not indicate a scope wider than the remit of the applicant. The principle of non-discrimination should govern selection. Application fees should be affordable and staggered and should reflect a cost recovery model for ICANN's administrative processes.

8. There is consensus on security and stability as primary objectives although how that could be achieved through selection criteria should be determined through future discussion with other experts. The NCUC suggests a "simple and objective 'registry accreditation' process, similar to the registrar accreditation process". This element is discussed further in the Call for Information on technical criteria.
9. Clarification is required for other selection criteria including those that relate to "adding value to the name space" and selection criteria that would support IDN architecture compatible with IETF standards.
10. To summarize, there is a need to seek further convergence on views on selection criteria. To develop selection criteria that meet the objectives and needs of a diverse user community requires prioritization along the following lines:
  - a. technical parameters: now the subject of a call for additional information from constituencies with input due at the Wellington meeting
  - b. sponsored or restricted TLDs: whether to have sponsored gTLDs with strict registration requirements or open gTLDs with minimal requirements

### **C.3 Allocation Methods**

1. The Constituencies' views on allocation methods differ considerably and further discussion of allocation methods is needed at the Wellington meeting. The sections below also need further discussion in relation to

more detailed selection criteria and proposed policy for contractual conditions.

2. A starting point for some statements is that first-come first-served (FCFS) is a natural choice as an appropriate allocation method. This approach assumes that there is sufficient operational processing capacity and domain name space available for new gTLDs. It also assumes that other allocation methods are only necessary in situations where the number of applications is greater than the available slots or where there is more than one applicant for the same gTLD string (for example, as in the 2004 round where there were two applications for .tel). Logically, the viability of FCFS would primarily depend on the number of available slots for new gTLDs compared to the number of potential applicants. At the Washington DC meetings, it was indicated that ICANN operational capacity for processing applications and providing registry liaison support should not be limiting factors in selecting allocation methods.
  
3. The IPC doubts the viability of FCFS on the basis of experience with “land rush” in domain name registrations, while, for example, some Registrars see FCFS as viable and regard other allocation methods as only needed for situations where there are two or more applications for the same string.
  
4. The comparative evaluation method, of which ICANN does have considerable experience, is the preferred method of the IPC, supported in this view by the ISPCP and by the BC statement. The BC also argues that no new gTLDs should be introduced unless they are sponsored and IDN enabled.

5. The NCUC suggests that comparative evaluations have numerous disadvantages and are, by their nature, at odds with requirements for objectivity. The RyC emphasizes objectivity and predictability from the applicant's perspective as grounds to minimize the use of comparative evaluations. No statements elaborate on whether comparative evaluations (or elements thereof) should be undertaken by in-house staff or external parties. The 2000 round, the .net reassignment and the 2004 round serve as examples of different approaches in this respect.
  
6. The original statements from Constituencies and others reflect mixed attitudes to auction models as a methodology for allocating new gTLDs. Further discussion at the Washington DC meetings indicated that auction models were not the best way to make decisions about contested applications but this view needs clarification.
  
7. Lotteries also meet objectivity criteria and are one of NCUC's preferred solutions. There are, however, downsides to this method including dissatisfaction with leaving important choices to mere chance and the risk for a "secondary market" with undue profits for winners. It is also noted that lotteries are highly regulated and may not be a viable option from a legal point of view.
  
8. Ballots are mentioned to have superficial appeal as they are based on democratic principles, but doubts are raised as to how to establish an appropriate voting constituency.

9. Both the NCUC and the Registrars mention a tiered approach as a possible solution to the dilemma of choosing allocation methods. The NCUC proposes a combination of auctions for “commercial” applicants and random selections for “non-commercial”. The Registrars propose a mix of, for example, 4 auction slots, 4 random selection slots and 2 ballot slots per “round”.
  
10. Closely associated with the discussion of allocation methods is the issue of whether to proceed in “rounds” with defined time slots for application, selection and allocation or to perform allocation as an ongoing process. For example, the RyC preference for FCFS is accompanied by a preference for an ongoing procedure, while the IPC preference for a comparative evaluation by nature is more akin to a “round” approach.
  
11. The ALAC says that ICANN “should accept and evaluate applications on their merits, against objective criteria, as soon as practicable given the natural constraints of ICANN’s time, budget, and available personnel”. ICANN’s operational limits are seen as a factor in determining how many applications should be considered, how often and against which criteria. However, ICANN staff have indicated that operational capacity for processing applications and providing registry liaison support should not be limiting factors in selecting allocation methods.
  
12. The RyC highlights the need for timeliness, objectivity and predictability in the allocation process. FCFS is the preferred allocation method and comparative evaluations should only be used to choose between applicants with confusingly similar gTLD strings.

13. The IPC favors improved comparative evaluations to enable due consideration of the advantages and drawbacks of each proposal. FCFS is seen as unworkable in view of land rush experiences. The IPC doubts the usefulness of auctions, in view of risks for dominance, bias and overbidding, but a verdict would ultimately depend on the specific auction method. Lotteries are undesirable as a mere chance instrument and also for potential legal reasons. Ballots raise difficult questions on how to constitute an appropriate electorate. The IPC also states that "...the ICANN Board should not abdicate its ultimate responsibility for gTLD allocation".
  
14. The NCUC rejects the comparative evaluation model as slow, politicized and unpredictable, as shown by experience. Lotteries and auctions are preferred, for non-discrimination, neutrality and objectivity. Auctions would be appropriate for commercial entities and lotteries for non-commercial.
  
15. The BC calls for a structured allocation method with assessment by a neutral and professional team, thus implicitly a comparative evaluation, to be guided by experience from previous rounds. Auctions are not seen as a satisfactory allocation method.
  
16. The ALAC prefers FCFS and finds that auctions are in conflict with public interest goals and undesirable for allocation purposes in this context.

## **C.4 Contractual Conditions**

1. There is agreement on several principles regarding contractual conditions for new registry agreements. In essence, this includes that terms and conditions should be published before the application process and, according to the NCUC submission, “a simple, template registry contract that is uniformly applicable to all registries”. This view is in line with the RyC statement which says that “applicants should be provided the base contract in advance.” The IPC “recommends policies to guide contractual criteria which are publicly available and go beyond the technical aspects of the DNS”.
  
2. The IPC provides detailed commentary on policy compliance arguing that “self-regulation is not the complete answer” and that ICANN should “increase staffing and funding resources to its contractual compliance section in the event registries fail to meet their contractual obligations”. Commentary in the ALAC statement says that there should be closer attention to ICANN’s Bylaws in developing explicit contractual conditions “including but not limited to those provisions concerning openness, transparency, procedures designed to ensure fairness, and independent review”.
  
3. One particular aspect introduced by the IPC is to bring a subset of the WIPO-2 Recommendations, notably protection of IGO names and abbreviations, into modified UDRP provisions. This area relates to contractual conditions, but could possibly be allocated to a dedicated task force to finalize as a separate track.



4. The NCUC provides a summary of approaches to contractual conditions which says "...We believe that the GNSO should set general policy guiding the contracts . . .The addition of new TLDs should be predictable in timing and procedure, transparent and rule-driven".
  
5. The RyC argues that "the terms of the latest ICANN-Registry/Sponsor agreements that invoke the GNSO consensus policy recommendations of the process for the approval of registry services fill the void of previous ambiguities with regard to security and stability of registry services. There is minimal, if any, need to develop additional policies to guide the contractual criteria of registry services".
  
6. The BC calls for policy being developed regarding registry fees, for refinement of the public consultation for proposed contracts and for fair treatment of registries in proportion to their demands on ICANN resources.
  
7. The ALAC suggests introducing a binding reference to ICANN Bylaw provisions in all gTLD registry agreements with delegated policy-making.
  
8. In summary, there seems to be converging views calling for predictable and published standard contracts that conform to existing policy on the delivery of registry services.

## Appendix C – Public Comments

This appendix sets out a summary of the Public Comments which were used as the basis for developing consensus positions which reflected input from a wide variety of sources.

1. Public comments on the Terms of Reference for the PDP on introduction of new gTLDs were sought as required in the PDP procedures. The public comment period ended on 31 January 2006 and comments received are posted on the ICANN web site at <http://forum.icann.org/lists/new-gtlds-pdp-comments/>. An overview of public input received has also been posted on the GNSO web site at <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>. This overview includes discussions on the General Assembly (GA) list posted at <http://gnso.icann.org/mailing-lists/archives/ga/>. Entries on an ALAC wiki web page are posted at [http://www.icannwiki.org/ALAC\\_on\\_New\\_TLDs](http://www.icannwiki.org/ALAC_on_New_TLDs).
2. The following sections analyze the public comments. In addition, the Call for Papers presenters at the Washington DC meeting added texture and diversity to the views expressed, by email, to the public comment period. The presentations are available at <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>.
3. Additional public comment periods will be conducted throughout the PDP process and commentary will be included in further iterations of any reports.

## D.1 Whether to introduce new gTLDs

1. The public comments generally support the initiative to introduce new gTLDs. Of the seven public comments that appeared to directly or implicitly address the question of whether to introduce new gTLDs, five favored the introduction, while two said the need was not sufficiently strong. Comments by Matthias Jungbauer, Jeff Williams, Chris McElroy, Danny Younger, Elmar Knipp and Thomas Lowenhaupt expressed varying degrees of support for the introduction of new gTLDs.
2. George Kirikos, on the other hand, said the need for new gTLDs is not yet evident, and the current gTLDs could not be characterized as 'full'. He criticized the previous introduction of "hobbyist" gTLDs and proposed that actual use of the existing gTLDs (as opposed to 'parked' names) be measured to indicate how necessary new gTLDs really are. Kirikos also proposed a system of allocation he called the 'Ascension Allocation Method'.
3. Paul Tattersfield also opposed the immediate introduction of new gTLDs, arguing that introducing new gTLDs "could actually decrease competition by reinforcing .com's dominance".
4. Danny Younger, summarizing discussions on the GA list from 5 - 31 December 2005, pointed to interest in establishing new gTLDs amongst various communities, institutions and groups. He said the artificial limitation of new gTLDs has limited the opportunities of small business,

non-profits and individuals and entrenched the “dominant corporate players”. From this point of view, new gTLDs are necessary to increase opportunities for different types of player.

5. Thomas Lowenhaupt said it was important for cities that these geographic entities be recognized by the DNS. New gTLDs – presumably those using geographic terms such as city names – would, he said, strengthen local economies, create a sense of community, improve safety and give better access to local Internet resources.
6. Other commenters that favored the introduction of new gTLDs said new gTLDs would support database development, and that Internet users are capable of adapting to and determining the value of new gTLDs.
7. The public comments on the draft *Initial Report* added more implicit support for the introduction of new gTLDs, mostly by suggesting particular strings. Kirk Humphreys proposes to introduce domain names following the three-letter city codes for airports, like OKC for Oklahoma City. Fuad Firudinbayli proposes to use .inaz for various services including education establishments. Alex Ospiov advocates the introduction of the .web. Matthias Jungbaur raises the question of whether IDN strings are considered.
8. On a different note, Mike Norton recommends against having company names as gTLDs and suggests, to counter possible confusion, that introducing a directory function as a gTLD named .icann or .w3c would be useful.

## D.2 Selection Criteria

1. The public comments address, in different ways, the selection criteria which could be used in any new round of gTLD applications. GA list commentator Danny Younger indicates that the group had to prioritize its input and focused on “objectionable” criteria which should be removed from consideration. The GA List illustrated views that showed “...it’s probably safe to say that most list participants favored an approach that limits criteria only to the technical ability to run a TLD (as the overall broad sentiment with a few exceptions seemed to support the ‘let-the-market-decide principle’)”. This view mapped quite closely to arguments in some Constituency Statements.
2. The GA List also contains commentary that disagreed with the Constituencies that propose to introduce only sponsored gTLDs. The GA List touches on alternate root concerns and domain name collisions or the problems of confusingly similar domains.

## D.3 Allocation Methods

1. Amongst the commenters who explicitly considered allocation methods, most appeared to oppose the use of auctions as an allocation method.
2. Danny Younger submitted a summary of excerpts from the GA list discussion on allocation methods, following a week-long discussion of this section of the draft Terms of Reference. He found that “none of the allocation methods reviewed by the group garnered any real measure of support, although each had its own advocates”.

3. On the whole, participants in the GA list opposed the use of auctions. The arguments against auctions were that auctions – particularly auctions of strings - may tend to concentrate control, that organizations with greater financial resources could outbid organizations which have shown previous interest in a TLD (for example, .web), and that the highest bidder is not necessarily the best organization to run a TLD. The GA list commenters appeared to explicitly favor a free-market approach to allocation, but also felt that auctions would not deliver the most competitive results.
4. Elmar Knipp argued that comparative evaluations should be used in an auction situation where “startups with fresh ideas would have much lower chances [of success]”.
5. As mentioned in section D.1 above, George Kirikos proposed an elaborate allocation method called the Ascension Allocation Method which relies upon Coase Theorem. The rather complex series of string and trademark claims and renunciations required by the method appear likely to increase transaction costs overall. This method did not receive broad support from other commenters.

#### **D.4 Contractual Conditions**

1. Submissions from the public comment process also address contractual conditions in some detail. Jeff Williams’ submission agreed with that of the ALAC and NCUC in arguing that there should not be “...rounds for applying for new TLDs”.



2. Like the RyC and NCUC, public comments advocate the use of “thin” contracts and that there could be some improvements made to ICANN’s registry agreement compliance program.
  
3. Some public comments were diametrically opposed to the position set out by the IPC. They rejected intellectual property owners’ “priority rights with respect to generic words, and participants further expressed their ongoing dissatisfaction with ICANN’s failure to establish a compliance program”. In essence, public commentators wanted to facilitate freer market choice in the selection of new gTLDs; wanted limited selection criteria and simplified contractual arrangements.

## Appendix D - Submissions on Call for Papers

This appendix sets out a summary of the responses to the Call for Papers which were used as the basis for developing the recommendations found here. The Call for Papers respondents were invited to give oral presentations at the Washington DC meetings.

1. In total, 11 submissions were received in response to the Call for Papers. These submissions are summarized below in relation to the issue areas. The full texts of all submissions are available at <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>.
2. In addition, many of the respondents to the Call for Papers gave presentations at the Washington DC meeting, adding further explanations to the views expressed. The presentations are available at <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>.

### E.1 Whether to introduce new gTLDs

1. John Levine, Paul Hoffman (et al) advocate an annual release of 50 new gTLDs at once, stating that such timing wouldn't give any applicant an advantage over the others except in the inherent semantics of the chosen string. They also claim that technical qualifications could be handled separately, in line with other proposals calling for a separate registry operator accreditation scheme. Mr Levine made a presentation at the Washington DC meeting which amplified his views.
2. Dirk Krischenowski (.berlin) sees a multitude of reasons to introduce new gTLDs. These include views also found in other contributions, including

avoidance of alternate root scenarios; to diversify ICANN's funding base and to promote local development (which maps to some public comments received). In addition, new gTLDs would increase diversity and choice with decreasing speculative pressure as a possible consequence. Finally, Krischenowski states that there is explicit demand from the community, claims that there is no risk of a land rush for new gTLDs and does not see a need for a limit on the total number of gTLDs, unlike the IPC community who foresees exactly the opposite scenario. Mr Krischenowski reiterated his views in his presentation to the Washington DC meetings.

3. Angela Stanton supports introducing new gTLDs and proposes to redesign the gTLD structure in line with the original taxonomic purpose as a directory. This would call for introducing constraints in registrations for currently unrestricted gTLDs but would substantially reduce the need for defensive registrations. It may enable using the same domain name strings for different registrants in different gTLDs. Ms Stanton made a presentation to the Washington DC meeting to expand on her views.
  
4. Rahul Goel and Ashutosh Meta support a measured introduction of new gTLDs with increased user choice as their main rationale. To further increase choice for users in developing countries, they advocate that a company with an existing domain in one gTLD should not be allowed to register in any other gTLD, an approach somewhat similar to Stanton's above. Messrs Goel and Meta made a presentation to the Washington DC meeting and explained to the Committee the importance of domain name affordability.

5. Hedd Gwynfor (DotCym) supports the introduction of new gTLDs and advocates that priority be given to sponsored TLDs for cultural purposes. DotCym is an organization interested in establishing a gTLD for Welsh cultural and language interests. Gwynfor refers to the .cat gTLD as “a significant step toward the allocation of sponsored TLDs for single language communities...and is a precedent to which other minority or stateless language based groups can now aspire...”.
  
6. K Bhonsle argues for a limited introduction of new gTLDs with a particular focus on previously deprived users and applications catering to basic needs in a primarily agricultural environment.
  
7. Peter Gerrand is in favor of introducing new sponsored gTLDs and finds reasons to revert to the originally intended structuring of the domain name space with distinctive, defined purposes for each gTLD. Dr Tonkin gave an overview of Mr Gerrand’s paper at the Washington DC meeting.
  
8. Danny Younger, who also made a presentation to the Washington DC meeting, makes an analogy between the DNS and the “zoning” of city areas. The ICANN Board is seen as the equivalent to a zoning board of such a city. Younger claims that as the need for new zones inevitably appears, zoning is necessarily done in a measured manner after considerable consultation and experiences should be drawn from successful zoning management in the physical world. He also acknowledges that experimentation in zoning is a necessary aspect when applying this model to the DNS. ICANN’s primary responsibility to act in the public interest should be focused towards the public at-large rather

than towards separate communities or organizations. Inspiration for future zoning could well be drawn from ICANN's Strategic Planning Issues Paper. Younger also makes reference to a paper by Stewart & Gil-Egui on application of the Public Trust Doctrine to Internet resources, implying the obligation to preserve resources that are crucial for intergenerational equity.

9. CORE supports the introduction of new gTLDs for similar reasons to other submissions including counteracting the proliferation of alternate roots; ensuring that .com doesn't become the de-facto or "virtual" root and promoting innovation and creative new paradigms. The CORE submission also advises using lessons learned from earlier rounds of new gTLD introductions. Mr Staub, on behalf of CORE, made a presentation to the Washington DC meeting.
  
10. Ross Rader & Elliot Noss (TUCOWS) support the introduction of new gTLDs. They propose a new distinction between chartered and unchartered gTLDs to replace current distinctions. They foresee migration of existing gTLDs to new categories. They provide a detailed proposal for a process introducing a gTLD from application to renewal of a registry agreement. Mr Noss presented his views, with Mr Rader, to the Washington DC meeting.
  
11. Bret Fausett supports the introduction of new gTLDs as an ongoing process with a taxonomy determined by market forces. The rationale for his stance include the desirability to increase registry-level competition; to cater for the needs of prospective registrants; to enable the evolution of

the Internet and to better provide for underserved markets. An array of suggested principles is provided to guide various aspects of the introduction.

## **E2 Selection criteria**

1. Levine & Hoffman explicitly recommend avoiding string exclusivity and allowing parallel strings that are essentially synonymous, like .tooth and .teeth. They also state that a directory approach is bound to fail, especially as search engines are the preferred way of approaching the Internet for a chosen topic, rather than looking up by TLD. A few more unrestricted gTLDs would be welcome and also some certified gTLD for particular purposes, where certification matters (similar to .edu). Creativity in usefulness should be the objective. This approach can be seen as a mix between the IPC proposals and those of the NCUC.
2. Krischenowski supports the selection criteria used in previous rounds and suggests adding supporting criteria like positive recognition by government, potential to foster economic development, potential to promote technical development and socially desirable effects (for example, SME promotion, education and support of local culture). Support of local culture is also recommended by Gwynfor above.
3. Goel & Meta put an emphasis on selection criteria and other aspects that would support less developed countries; differentiated registration fees, country-wise assignment of IP addresses and geographic redistribution of the root servers. This view is in direct contrast with the RyC claim that there is little evidence to support preferential criteria for new gTLDs

without “research that supports their claim including the research methodology supplied”. The NCUC’s view is that “...the best way to do this [expand the use of domain names] is to make ICANN’s selection criteria as simple, predictable and content-neutral as possible. Such a politics-free environment would make it much easier for innovators, from whatever locations, social origins or economic status, to propose and implement new ideas”.

4. Gwynfor claims that the ISO 639-2 three letter codes for languages should be reserved for future gTLDs for the respective languages.
5. Gerrand recommends that more emphasis be put on the integrity with which the sponsored gTLDs enforce their eligibility condition and lists suitable selection criteria. This comment is equally valid for section E.4 contractual conditions. As to the gTLD strings, he suggests reviewing the policy on ISO 3166-A3 three letter country codes which are currently reserved. He also recommends enabling the use of ISO 639-3 three letter language codes for future gTLDs.
6. Younger sees a development where new gTLD applications are viewed on a case-by-case basis, only being deemed acceptable when the rationale for each proposed gTLD becomes self-evident.
7. CORE illustrates its reasoning with four hypothetical gTLDs for specific applications and with clearly defined gTLD communities. The applicant would need to be representative of this community as an obvious criterion. As the examples go, the presence of a sizeable community is a criterion

that demands case-by-case analysis, price per registration is irrelevant as a criterion while productive use of the DNS at the top-level is most relevant. Inherent security requirements in a particular gTLD application may modify the desired score for other plausible selection criteria. In short, the examples are sponsored gTLDs calling for case-by-case judgments.

8. Rader & Noss introduce a distinction between “Delegant”, coordinating the activities of a gTLD and “Registry Service Provider”, taking care of the technical operation of the gTLD. This idea would mean that the Delegant applies for the gTLD and, if approved, would have it operated by an accredited Registry Service Provider. This would formalize an established practice and would call for different selection criteria for the two separate businesses. In a similar way to the established accreditation of Registrars, the Registry Service Provider should be subject to ICANN accreditation, by applying the current technical selection criteria with a few amendments. This is consistent with other proposals about separate registry accreditation. The Delegant should be requested to abide by chosen aspects of RFC 1591, without restrictions or preferences imposed concerning business plans. These parties would both have agreements between themselves as well as with ICANN. In addition, gTLD string restrictions would apply with no digits allowed and with no confusing similarities to existing strings. Noss and Rader recommend special rules for trademarks as gTLDs which accord with the IPC’s ideas.
  
9. Fausett sees a well-defined market, be it large or small, as a criterion while adding that an application from an able and willing provider is a main

indication that such a market exists. Free market entry should be a guiding principle to the greatest extent possible, while recognizing that user confusion and defensive registration are undesirable.

### **E.3 Allocation methods**

1. Levine & Hoffman see both auctions and lotteries as viable allocation methods, while indicating that ICANN should not profit by windfall gains from allocating new gTLDs. They acknowledge that there will be secondary trading in allocated gTLDs. An auction with the [N] highest bids getting their [N] favorite domain strings is a possibility, with the proceeds going to a worthy cause. This may be combined with trademark limits so that only IBM can get .ibm while still needing a winning bid to do so. This can be combined in a tiered approach with a lottery for five or ten names with only non-profits eligible.
2. Krischenowski prefers revolving application windows, preferably 2-4 each year, and a predictable timeframe for the approval process, not surpassing 6 months. He sees no need to structure gTLDs in different classes and contends there should only be an "open" class of gTLDs. Allocation should rely on comparative evaluation and FCFS once the evaluation is positive. Auctions and lotteries are to be avoided and he includes a reference to the effects of the UMTS auctions.
3. Goel & Meta state that comparative evaluation is the most appropriate allocation method, with short-listing of all that satisfy the minimum criteria followed by prioritization based on stability and price.

4. CORE, basing its statement on four examples of sponsored gTLDs, is clearly in favor of comparative evaluations and sees little or no scope for other allocation methods. The allocation process should be recurring, with at least two application windows per year, linked to ICANN meetings. CORE suggests that a standing gTLD applications task force is established to avoid bottlenecks. It ways that preliminary applications should be received for publishing, without review, as a step to enable possible consolidation of similar applications.
  
5. Rader & Noss advocate an ongoing, self-financed allocation process. They suggest that applications would be received at any time. FCFS should be used as the main allocation method with sealed bid auctions to resolve string contention. Fee adjustments could be used to manage an applications flood and a development fund, built from fee surpluses, could provide financial assistance to deserving applicants.
  
6. Fausett does not address allocation methods explicitly but it is inherent in the submission that FCFS is foreseen in an ongoing allocation process, for the applications that meet the selection criteria.

#### **E.4. Contractual conditions**

1. Krischenowski supports the idea of a separate process for accreditation of registry operators. This is consistent with ideas suggested by others.
  
2. Both Bhonsle and Goel & Meta propose that sun-rise periods be compulsory for all new gTLDs in order to safeguard IP holders' interests.



3. CORE finds the current contractual framework for sponsored gTLDs is an appropriate model. It highlights the need for a stable system of checks and balances for the sponsored gTLD's delegated policy-making authority.
  
4. Rader & Noss propose omit price controls for new gTLDs and to relax, and eventually eliminate, price controls for existing gTLDs in reverse chronological order from their initial delegation. Presumptive renewal should be a standard provision, with remaining cancellation powers for ICANN in case of breach of the contractual terms. A sanctions program should be developed for handling contract violations regarding all agreements. Sunrise periods are discouraged. Presumptive renewal of agreements should be the rule.
  
5. Fausett suggests regular use of escrowing registration data. Back-up registries should be selected through market mechanisms and published migration plans are useful provisions that may lessen the impact of registry failure.



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**EXHIBIT JJN-34**

## Policy Development Draft - New gTLDs

Last Updated:28 August 2009

**Date:**

28 July 2006

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**GNSO Initial Report Introduction of New Generic Top-Level Domains**

28 July 2006

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**Executive Summary**

1. This document is the final draft of the *Initial Report* of the GNSO's Policy Development Process on the introduction of new top level domains (new TLDs). The *Report* sets out the key findings that have emerged from a multi-phase policy development process. The key elements of that process have been formal Constituency Statements submitted by each of the GNSO's constituencies, a Call for Expert Papers and a Public Comment Period. In addition, the GNSO Council's new top-level domains Committee (new TLDs Committee) has conducted three separate face-to-face consultations (in Washington DC, Wellington and Brussels) to discuss each Term of Reference. These meetings have been open to observers. In addressing the Terms of Reference, very close attention has been paid to understanding ICANN's Bylaws, Mission and Core Values. The GNSO Council met with the Governmental Advisory Committee (GAC) at ICANN's June 2006 Marrakech meeting to share with the GAC progress made so far and to hear about the development of a set of GAC principles on the introduction of new top level domains.

2. The following sections set out each Term of Reference, the findings that have emerged and, at the end of each section, offer some recommendations for the next steps which could take place. A full list of Constituency Statements, copies of the responses to Calls for Expert Papers and the Public Comment archives can be found in the GNSO's section of the ICANN website at <http://gnso.icann.org/issues/new-gtlds>.
3. There are two other GNSO policy development processes that have a direct bearing on the work here: the PDP Feb 06 on Policies for Contractual Conditions for Existing TLDs<sup>1</sup> and the work which has been undertaken on internationalized domain names (IDNs)<sup>2</sup>. The final *IDN Issues Report* was released on 13 July 2006 and can be found at <http://gnso.icann.org/mailing-lists/archives/council/msg02677.html>. The results of this PDP (since it is in a more advanced stage) will inform the two additional work streams and will need to be taken into account when making final recommendations about the two other PDPs. Some early finding that there are some key principles which are important including consistency of treatment, equitable treatment of registry operators. The PDP Feb 06 will inform and will be co-coordinated with the two additional work streams before the Dec 05 work final report. We do not expect delays.
4. Any policy development process calls for implementation planning to be established to ensure that appropriate resources are made available. Early work is underway by ICANN staff to facilitate a timely implementation of the policy outcomes.
5. The GNSO's Committee on new TLDs met to discuss this Report on Thursday 15 June 2006 to prepare a version of the Report for discussion at the June 2006 ICANN meeting in Marrakech. This document reflects discussions at the Marrakech meeting and will be used to facilitate discussion with the full range of ICANN Supporting Organisations, the Governmental Advisory Committee and the broader community.
6. A formal Public Comment Period will commence in late July 2006. The ICANN Advisory Committees and Supporting Organisations will be invited to respond to the *Initial Report*. A further face-to-face meeting is scheduled for late August 2006 in Amsterdam for the GNSO Committee to consider responses to the public comment period and inputs from other ICANN stakeholders in addition to any further GNSO constituency views.
7. It is planned that the *Final Report* will be completed during October 2006, prior to ICANN's December 2006 meeting in Sao Paulo, Brazil. It is expected that the *Final Report* will contain guidance on a reference *Request for Proposal* for new top level domain applications and a base contract to which applicants can refer prior to completing the application process.

### **Term of Reference 1: Recommendations**

#### Term of Reference 1. Should new generic top level domain names be introduced?

Given the information provided here and any other relevant information available to the GNSO, the GNSO should assess whether there is sufficient support within the Internet community to enable the introduction of new top level domains. If this is the case the following additional terms of reference are applicable.

1. This Term of Reference was the subject of detailed discussion at the 24 & 25 February 2006 face-to-face consultations held in Washington DC. It was clear from the results of that meeting, and the subsequent discussion which has taken place about the three other Terms of Reference, that there is support to introduce new top-level domains. Additionally, at the 31 March 2006 ICANN Board meeting in Wellington, the Board made clear its intention to proceed with the introduction of new top level domains<sup>3</sup>.

2. The GNSO Committee's Washington DC meeting notes<sup>4</sup> indicate that there were a wide variety of reasons to be cautious about the introduction of new TLDs including "[the] selection and implementation process was time consuming, expensive and unpredictable; [the] limitation on the number added caused problems for other applicants that met selection criteria; some selection criteria were not objective, clearly defined, and measurable enough to allow independent evaluation to be effective..." These concerns have been discussed in subsequent consultations about selection criteria, allocation methods and policies for contractual conditions.
3. Multiple reasons for supporting the introduction of new gTLDs were put forward in the Constituency Statements and Call for Papers responses. These included enhancement of competition at the registry level; increased choice for registrants or end-users, innovative new services for both existing and emerging markets and avoidance of the proliferation of alternative roots.
4. The Washington DC meetings showed that there were additional justifications for introducing new gTLDs including "[a] small TLDs [is] OK if it meets the needs of the community that has put [the idea] forward and doesn't exclude others that are within that community; the new gTLDs introduced so far do not yet cater for parts of the international community that use characters sets other than the limited set from the ASCII character range; a policy is required for the introduction of IDNs at the top level, and [we] need to consider the political and cultural environments as demand for these IDNs is increasing...". Part of this work is being addressed through the *IDN Issues Report* referred to earlier.
5. There were some common elements articulated by meeting participants which indicated that the following selection criteria "baskets" were useful<sup>5</sup>: sound business, technical and operational plans; operational stability, reliability, security and global interoperability; and simplicity and predictability of domain name registration rules.
6. The underpinning of the discussion was that, whatever consensus policy is developed, it must be consistent with ICANN's limited technical co-ordination mission; that an enabling and competitive environment for the provision of domain name management be fostered and that domain name registration rules are clear. GNSO new TLDs Committee Chairman, Bruce Tonkin, released the following GNSO statement after the Washington DC meeting which enabled the Committee to move forward with consideration of the remaining Terms of Reference, "...taking into account the lessons learnt from the limited introduction of new TLDs since 2000, the GNSO supports the continued introduction of new gTLDs. Prior to introducing new TLDs, the GNSO recognizes that the lessons learnt, the submissions made in response to PDP-Dec05 [this PDP] and further input, should be taken into account to identify and develop [C]onsensus on the selection criteria, allocation methods, and implementation processes. Note that there was no formal vote taken on the statement above, and the intent of identifying a "rough consensus" was to allow the committee to move forward to the topic of selection criteria." <sup>6</sup>
7. The Committee used several other expert reports to inform its decision making including the work of the OECD on domain names and the introduction of new TLDS, the Summit Strategies Report on application and evaluation processes and the World Bank Report on issues about licensing and application procedures. In particular, the Committee used expert work about selection criteria and requests for proposals from the Asian Development Bank, the OECD and the World Bank. The bibliography found at the end of the document contains a full list of references.
8. **Recommendation on Term of Reference 1: That new generic top-level domains should be introduced and work should proceed to enable the introduction of new top level domains,**

**taking into account the recommendations found in the following sections.**

## **Term of Reference 2: Recommendations**

### Term of Reference 2. Selection Criteria for New Top Level Domains

a) Taking into account the existing selection criteria from previous top level domain application processes and relevant criteria in registry services re-allocations, develop modified or new criteria which specifically address ICANN's goals of expanding the use and usability of the Internet. In particular, examine ways in which the allocation of new top level domains can meet demands for broader use of the Internet in developing countries.

b) Examine whether preferential selection criteria (e.g. sponsored) could be developed which would encourage new and innovative ways of addressing the needs of Internet users.

c) Examine whether additional criteria need to be developed which address ICANN's goals of ensuring the security and stability of the Internet.

1. This Term of Reference was the subject of detailed discussion during two day face-to-face meetings on 24 & 25 February 2006 in Washington DC and on 25 & 26 March 2006 in Wellington, New Zealand, as part of ICANN's regular round of meetings. There was consensus around both the principles for developing selection criteria that map directly to ICANN's Bylaws, Mission and Core Values and the impact of providing appropriate policy guidance to the Board about criteria that could be used in further rounds of new top-level domain applications<sup>7</sup>.

There was agreement that further work needed to be done with respect to technical criteria and a supplementary Call for Information from Constituencies was made on 8 March 2006<sup>8</sup>. It is important to comprehensively evaluate technical competence for any registry services operator. In addition, it is also important to evaluate that competence in the context of broader commercial capacity to, for example, adequately fund and operate a registry services business. The latter two criteria below fit into both technical and operational evaluation areas.

2. The Call for Information listed questions regarding four specific areas including:

- whether the minimum technical criteria for registry operations should be set according to the current registry requirements of, for example, .NET registry;
- whether the minimum technical criteria should make some reference to the proposed size of a new registry;
- whether a separate registry operators' accreditation scheme be established and, if so, what should that scheme look like; and
- whether other business operations criteria continue to be included in a registry operator's application to ensure that any registry operator is adequately funded and professionally managed.

3. At the Washington DC meeting, responses to the selection criteria questions were mapped closely to a review of ICANN's Mission and Core Values. The selection criteria used in the 2000 and 2004 rounds for new top level domains were used as reference points<sup>9</sup>. Constituency representatives were asked to clarify the positions taken in the Constituency Statements but no attempt was made to reach consensus positions prior to the Wellington meeting.

4. The main area of agreement was that selection criteria should reflect ICANN's limited technical mission. It was clear that any selection criteria should be objective and that any selection process would be published prior to an application round beginning. Some Constituency representatives

said that provision of a sound operational plan which demonstrated an ability to comply with ICANN policy (where appropriate) and meet minimum technical standards was important. "Objectivity" was a consistent thread throughout the discussions and it was thought that following this principle would encourage participation in any new selection round. This would also enable competitive provision of registry services where an open market environment was most beneficial to end-users.

5. The continuing stability and security of the Internet was another recurring theme which included the treatment of internationalized domain names where compliance with ICANN's evolving IDN guidelines was seen as important. The final *IDN Issues Report* has identified a series of questions about technical compliance which are important and are related to the work here<sup>10</sup>. It was clear that compliance with best practice technical standards was necessary within any registry.
6. Discussion of stability issues also showed that the ongoing use of ICANN accredited registrars as sole retailers of gTLD domains was desirable. Registrar compliance with contractual provisions that promote interoperability contributes to DNS stability.
7. The Wellington meeting provided further opportunities to refine the outputs of the Washington meeting. The GNSO Committee Chairman released a copy of the presentations made at the Wellington meeting and these are summarized below<sup>11</sup>.
8. The Committee members then developed more detailed positions at the Wellington meetings. After a further day of discussion it was clear that there was strong support for continuing to apply robust technical criteria through any application round. In addition, if applicants wished to offer internationalized domain names at the second level, then compliance with ICANN's IDN guidelines was required. There was strong support for supplying a list of Requests for Comment (RFCs) and other technical standards relevant to registry operators. These views are reflected in the *IDN Issues Report* found at <http://gns0.icann.org/issues/idn-tlds/issues-report-17jul06.htm>
9. There was strong support for the levying of an application fee to participate in any new TLD round. In addition, there was discussion on the 15 June 2006 Committee conference call about whether differentiated application fee structures would serve a useful purpose in encouraging more applications for new top level domains. This last idea must be balanced with the presumption that the application process would remain cost neutral to ICANN.
10. There was also strong support for applicants being required to demonstrate financial viability and a robust operational plan. These criteria fit into a basket of requirements around the application process itself including the production of an application time line, compliance with probity requirements, a pre-published base contract<sup>12</sup> and a pre-published set of objective and measurable criteria against which applications would be evaluated. There is not yet a consensus position which balances the desire for robust business plans versus allowing ideas to be tried (and perhaps fail) in an open market. ICANN's role in ensuring the ongoing operation of registry services providers requires further discussion particularly with respect to managing any negative impact on end user registrants. Data escrow arrangements and other technical approaches to the transfer of registrant data are only part of the equation and more discussion about the nexus between selection criteria, allocation methods and ongoing registry services operation needs to be facilitated.
11. There was strong support for applicants being able to demonstrate that their application aimed at a clearly differentiated domain name space and that the purpose of the new TLD was clearly understood. Further discussion is needed on the definition of clearly differentiated domain name space and whether this means the continued distinction between open, sponsored, chartered and

any other kinds of registry. This discussion should balance the goal of enhancing competition with the reality that limiting innovation also limited competition between registry services offerings

12. Committee members supported maintaining the use of ICANN accredited registrars to register domain names. They also supported the ongoing compliance with ICANN consensus policies (more discussion of this element is found in section on contractual conditions).
13. There was also strong support for ensuring compliance with, in the case of sponsored TLDs, the charter of the TLD and for addressing domain name registration violations. No agreement was reached about whether the current model of sponsored/unsponsored; restricted/unrestricted; chartered/unchartered would continue.
14. There was discussion of other selection criteria which did not get the full support of the group.
15. **Recommendations on Term of Reference 2: The criteria with strong support can be divided into several areas.**

**Firstly, "process" criteria which would guide the establishment and conduct of any application round. These criteria include a mandatory application fee; application round probity rules and clear timelines for application completion.**

**Secondly, a "technical" criterion which includes compliance with a minimum set of technical criteria which would include a base set of IETF RFCs, and other technical standards. If IDNs are offered, applicants must comply with relevant IETF standards and ICANN IDN guidelines. Further discussion is necessary about the consistent treatment of any new TLD application whether the applicant proposes an ASCII based string or one that uses any other script.**

**Applicants must comply with ICANN consensus policies.**

**Applicants must offer a clearly differentiated domain name space with respect to defining the purpose of the application. The effect of requiring differentiation on IDN top-level domains has not been fully discussed and further input is required.**

**Applicants must have mechanisms in place to ensure compliance with the purpose of a chartered or sponsored TLD, and to address domain name registrations violations.**

**Finally, criteria which must be met by applicants to show that that they have the financial and operational resources to execute their plans but the degree to which ICANN plays a**

**role in ensuring a business model that will "guarantee" ongoing operations is not settled.**

**The GNSO is interested in input on the pros and cons of sponsorship criteria which more closely match the intent of the 2004 gTLD round and which had support from several, but not a majority of, constituencies. The sponsorship criteria may include "applicants for a new gTLD must represent a well defined community and registrants are limited to members of that community"; "a new gTLD applicant must establish a charter that addresses a defined purpose with eligibility criteria, and registrants must meet the eligibility criteria"; "accurate verification of registrant eligibility"; and, "applicants must explain how the new TLD maximized benefits for the global Internet community".**

### **Term of Reference 3: Recommendations**

#### Term of Reference 3. Allocation Methods for New Top Level Domains

- a) Using the experience gained in previous rounds, develop allocation methods for selecting new top-level domain names.
- b) Examine the full range of allocation methods including auctions, ballots, first-come first-served and comparative evaluation to determine the methods of allocation that best enhance user choice while not compromising predictability and stability.
- c) Examine how allocation methods could be used to achieve ICANN's goals of fostering competition in domain name registration services and encouraging a diverse range of registry services providers.

1. This Term of Reference was the subject of detailed discussion at the Wellington, New Zealand meetings. It was clear that allocation methods are an integral part of developing "process" criteria as applicants should know what kind of allocation method will be used prior to submitting an application for a new TLD. It was also clear that selection criteria form a large part of any allocation method. Clearly defined selection criteria provide a "natural selection" method for applicants and specific, extra allocation methods would only be required where there was a contest over the same application, for example, if there were two applications for .abc, or if consideration of applications had to be prioritized.
2. The record of the full discussion about allocation methods can be found in the reference below<sup>13</sup>. In summary, it was clear that the criteria for choosing an allocation method should be timely, objective, predictable and facilitates the ongoing introduction on new TLDs. It was clear in the GNSO Committee's discussion that there is a preference for a first come first served system which seems to be the most efficient way to process new applications. This approach assumes that applicants comply with an application process which has been clearly defined and that there is not a serious backlog of applications which need to be processed. A FCFS system assumes a continual round of assessment and implementation. This means that there is a minimal amount of subjective analysis of applications which requires detailed "intervention".
3. Alternatively, it has been suggested that a "batch processing" system would be useful, as long as the duration of the process allowed enough time for sound applications to be prepared and that the length of the batch process did not excessively delay the evaluation and launch of new top level domains. It may be that a two-step approach is required and that a transition from a batch processing system to an ongoing FCFS process is necessary if new TLD applications were to be accepted on a continuous basis. Further understanding is required about the different impacts

that FCFS and batch processing may have on any application round and the implementation of new top-level domains.

4. It was also clear through the GNSO Committee's consultations that only where duplicate or confusingly similar strings appeared, should special allocation methods be used and that these methods should be defined well in advance. Further discussion is required about what key stakeholders perceive as ICANN's role in determining the success, or otherwise, of registry services beyond a robust application and evaluation system.
5. The GNSO Committee applied the same methodology that had been used for the previous two terms of reference for determining where consensus had emerged for policies on allocation methods. There was strong support for the first come, first served process with some support for either an auction<sup>14</sup> or lottery to deal with competing applications that had already met the other baseline criteria of technical competence and the provision of sufficient evidence of operational and financial capacity.
6. There was strong support for ensuring that ICANN provided sufficient resources to support any application round, particularly where a large number of applications were received.
7. It was evident to some Committee members that comparative evaluations were still a necessary part of any new TLD application process particularly where there were limited resources to deal with any application round and where applicants had proposed similar strings with similar purposes for similar communities of interest.
8. Some participants in the GNSO Committee considered the creation of categories of gTLDs (for example, commercial, non-commercial, unsponsored, sponsored, open and unrestricted, restricted and chartered) and then select the appropriate selection criteria and allocation method for each category, should there be a competition for the same TLD. Further work is required to ensure a full understanding of the definition of any proposed category for new TLDs or if the differentiation of TLD should be abolished and the selection of the appropriate selection criteria and allocation method.
9. **Recommendation on Term of Reference 3: There was strong support for a first-come, first-served approved to processing applications. Where there was contention for either the same string or limited staff resources to process applications, there were two main alternatives proposed which each had roughly equal support. These were:**
  - **Objective (auction or lottery)**
  - **Subjective (comparative evaluations of the applications to identify the best applications)**
10. **The GNSO is seeking broader community input on the two main approaches, and whether the approach chosen should be based on some categorization of gTLDs.**

#### **Term of Reference 4: Recommendations**

##### Term of Reference 4. Policy to Guide Contractual Conditions for New Top Level Domains

- a) Using the experience of previous rounds of top level domain name application processes and the recent amendments to registry services agreements, develop policies to guide the contractual criteria which are publicly available prior to any application rounds.
- b) Determine what policies are necessary to provide security and stability of registry services.

- c) Determine appropriate policies to guide a contractual compliance programme for registry services.
1. This Term of Reference was the subject of detailed discussion during a three day face-to-face meeting between 11 & 13 May 2006 in Brussels<sup>15</sup>. The first day of the meetings was a tutorial day conducted by ICANN's Deputy General Counsel designed to enable participants — both Committee members and observers -- to gain an understanding of the content of and reasoning behind ICANN's existing registry agreements. The subsequent two days followed the same format as the Washington DC and Wellington meetings with constituency representatives explaining their positions as they related to ICANN's Mission and Core Values.
  2. The discussion about this Term of Reference is closely related to another policy development process on policies for contractual conditions for existing registries. The *Preliminary Taskforce Report* has been produced and the work of the Taskforce will proceed in parallel with the work found here<sup>16</sup>. The issues to be addressed in that Taskforce are being addressed in this PDP and there is a very close connection between the two work streams. In addition, the *IDN Issues Report* refers to policies for contractual conditions for IDN related services<sup>17</sup>.
  3. The GNSO Committee has referred to other expert analysis in the area of selection criteria, allocation methods and contractual conditions to ensure this process meets adjacent industry standards. It is worthwhile to quote, for example, some of the work done on behalf of the World Bank on mobile license renewals<sup>18</sup> that has many parallels to this work. For example<sup>19</sup>, the World Bank Report recognizes that a "major challenge facing regulators in developed and developing countries alike is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions".
  4. It is clear that "promoting regulatory certainty and predictability through a fair, transparent and participatory renewal process" is critical. These conditions echo the priorities of the GNSO Committee. The World Bank Report refers in detail to public consultation procedures and systems for establishing and renewing "license" rights. It also spells out clear conditions under which any "application round" could be established and the way in which any process would be run. Those suggestions are consonant with what is proposed here.
  5. A set of policies for contractual conditions got strong support from GNSO Committee members. Top line principles, articulated in particular by the Registries' Constituency, were that policies to guide contractual criteria should not compromise private sector participation and that the application process (and resulting contractual conditions) should encourage long term investment with optimal opportunities for innovation and competition.
  6. The Committee supported the need for a gTLD registry to comply with new or changed ICANN consensus policies to one or more of the following areas during the term of the agreement with ICANN:
    1.
      - i. Issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet
      - ii. Functional and performance specifications for the provision of registry services (as defined below)
      - iii. Security and stability of the registry database for the TLD
      - iv. Registry policies reasonably necessary to implement consensus policies relating to registry operations or registrars

- v. Resolution of disputes regarding the registration of domain names (as opposed to the use of domain names)
2. It is clear that the predictability of a pre-published "base" or "framework" contract is important to GNSO Committee members. Those contracts need to be consistent in their treatment of different types of registry businesses and several Committee members indicated that the current .jobs agreement provides a good starting point. Several Committee representatives stressed the need for fair treatment amongst registries with equal obligations imposed on operators (for example, with respect to technical standards and business viability). It was also clear that a "registry compliance program" with graded measures for enforcement would be useful.
  3. It is also clear that a public comment process on contractual negotiations is desirable but it is recognized that there are limits to which commercial in confidence information should be made available.
  4. The tutorial session and subsequent discussions identified some key areas that could benefit from further investigation. Comments along this line related particularly to the establishment of ICANN fees; the fees charged for a registry within any new agreement and the way in which fees are used by ICANN. The Committee supported ICANN providing a consistent approach with respect to registry fees, taking into account differences in regional, economic and business models. The GNSO Committee suggested that ICANN was not necessarily the appropriate organization to impose price controls on the fees charged to registrars within contracts.
  5. In summary, there should be a frame agreement to provide some level of consistency with the ability for staff to have delegated authority to approve final contracts. The term of the agreements should be of commercially reasonable length (perhaps ten years but reviewed on a case by case basis).
  6. There should be renewal expectancy. Operators could expect renewal of their agreements provided that they had not been in material breach of the contract or repeatedly failed to perform to the standard required in the contract. There should be mechanisms to terminate the contract if the operator has been found in repeated breach of the contract.
  7. Any material alterations to the frame agreement should be subject to a public comment period before approval by the ICANN Board. Any new framework contract would take into account ICANN consensus policies current at the time. Any deviation from consensus policies should be explicitly stated and justified in the agreement.
  8. Where a registry provides second-level internationalized domain names, the contract should require the registry operator to adhere to IDN standards and ICANN's IDN Guidelines<sup>20</sup>.
  9. The contracts should strike a balance between ensuring certainty for market participants and preserving flexibility for registries to accommodate a rapidly changing market.
  10. With respect to the use of personal data, the Committee supported limited use (only for the purpose for which it was collected) of any personal data and supported requiring the gTLD registry to define the extent to which personal data would be made available to third parties. With respect to other forms of registry data, further information would be required before the Committee could reach any recommendations.
  11. **Recommendations on Term of Reference 4: Further work needs to be done on the establishment of a suitable compliance regime that would operate in tandem with the base registry agreements.**

## Next steps

1. This *Initial Report* is the result of comprehensive consultation and discussion in wide range of settings and has included a very diverse group of stakeholders such as the GAC and other ICANN Supporting Organisations.
2. This document will now be subject to a formal Public Comment Period after which the ICANN Staff Manager will prepare the *Final Report*, (PDP Step 9.c) and the GNSO Council will deliberate on the *Final Report* (PDP Step 10), and the Staff Manager will prepare the *Board Report* (PDP Step 11) so as to allow sufficient time for the Board to take action not later than January 2007.
3. This approach is consistent with the ICANN Board resolution passed at the Marrakech meeting (found at <http://www.icann.org/minutes/resolutions-30june06.htm>).

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Guermazi, Boutheina and Isabel Neto, *Mobile License Renewal: What are the issues? What is at stake?*, available [here](#).

Matsui, Masayuki, *Comparing Domain Name Administration in OECD Countries*, available at <http://www.oecd.org/dataoecd/46/38/2505946.pdf>

Paltridge, Sam and Masayuki Matsui, *Generic Top Level Domain Names: Market Development and Allocation Issues*, available at

<http://www.oecd.org/dataoecd/56/34/32996948.pdf>

Perset, Karin and Dimitri Ypsilanti, *The Secondary Market for Domain Names*, available at <http://www.oecd.org/dataoecd/14/45/36471569.pdf>

1 The *Preliminary Taskforce Report* can be found at <http://forum.icann.org/lists/pdp-pcceg-feb06/msg00085.html>. The Internationalised Domain Names *Issues Report* can be found at <http://gnso.icann.org/issues/idn-tlds/issues-report-28may06.htm>

2 The Internationalised Domain Names *Preliminary Issues Report* can be found at <http://gnso.icann.org/issues/idn-tlds/issues-report-28may06.htm>

3 See Board resolution at <http://www.icann.org/minutes/resolutions-31mar06.html>.

4 See the full text of notes at <http://forum.icann.org/lists/gtld-council/msg00030.html>.

5 See the full notes at <http://forum.icann.org/lists/gtld-council/msg00028.html>.

6 See Bruce Tonkin's 26 February 2006 [gtld-council] Discussion on whether to continue with the introduction of new gTLDs.

7 See Bruce Tonkin's 27 February 2006 email (04:00h) which provides a summary of comments made by Washington meeting attendees (<http://forum.icann.org/lists/gtld-council/msg00030.html>)

8 Found at <http://gnso.icann.org/issues/new-gtlds/tech-criteria-15mar06.htm>

9 See Bruce Tonkin's 26 February 2006 summary of lessons learnt at [gtldcouncil] Output of brainstorming session on lessons learnt from the previous introduction of new gTLDs since 1999.

10 See, for example, pp 6-7 which sets out a series of policy questions which being addressed in the context of the introduction of IDN.IDN top level domains.

11 See Bruce Tonkin's 28 March 2006 email to the Council list <http://gnso.icann.org/mailing-lists/archives/council/msg02274.html>

12 All of ICANN's registry contracts can be found at <http://www.icann.org/registries/listing.htm> which includes a listing of all the current registry operators.

13 See Bruce Tonkin's 27 March 2006 <http://forum.icann.org/lists/gtld-council/msg00059.html>.

14 Doubt was expressed by numerous Constituency Representatives about the fairness of either auctions or lotteries. On the one hand, it was thought that auctions would favour those with the most financial resource. On the other, lotteries would leave important decisions about registry operations to chance.

15 See Bruce Tonkin's 18 May 2006 email note which sets out the results of the meeting. <http://forum.icann.org/lists/gtld-council/msg00131.html>

16 The Taskforce Report can be found at <http://forum.icann.org/lists/pdp-pcecg-feb06/msg00085.html>.

17 Note, in particular, *IDN Issues Report*, page 8 which asks whether additional contractual conditions ought to apply to IDN.IDN top level domain registries.

18 The full report can be found [here](#).

19 The World Bank is used here as an example only. Regulatory agencies such as Singapore's Infocomm Development Agency (<http://www.ida.gov.sg>), the Australian Competition and Consumer Commission (<http://www.accc.com.au>), and the UK's Office of Communications (<http://www.ofcom.co.uk/>) all suggest similar standards in various documents relating to licensing terms and conditions and the nexus between those standards and sound competition policy. The European Commission provides useful materials that can also guide this work ([http://ec.europa.eu/comm/competition/general\\_info/m\\_en.html](http://ec.europa.eu/comm/competition/general_info/m_en.html))

20 The most recent version of the Guidelines can be found at <http://www.icann.org/topics/idn/implementation-guidelines.htm>.

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Author: ICANN — Liz Williams

GNSO PDP-Dec05

Introduction of new TLDs — Initial Report

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**EXHIBIT JJN-35**

## DRAFT GNSO Recommendation Summary

Last Updated:31 August 2009

**Date:**

14 September 2006

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## PRINCIPLES

## RECOMMENDATIONS

## 1 WHETHER TO INTRODUCE NEW TOP LEVEL DOMAINS

## 2 SELECTION CRITERIA

## 3 ALLOCATION METHODS

## 4 CONTRACTUAL CONDITIONS

**Principles**

The following Recommendations have been derived from the work of the GNSO Committee on the introduction of new top level domains in accordance with the Terms of Reference set by the GNSO, with reference to ICANN's Mission and Core Values.

- a) That new generic top level domains (gTLDs) will be introduced in an orderly and predictable way.
- b) That some new generic top level domains will be internationalised domain names (IDNs). IDNs use characters drawn from a large repertoire (Unicode). There is a mechanism called Internationalizing Domain Names in Applications (IDNA) that allows the non-ASCII characters to be representing using only the ASCII characters already allowed in so-called host names today (see RFC3490).
- c) That the principal objective of the introduction of new top level domains is to permit market mechanisms to support competition and consumer choice in the technical management of the DNS. This competition will lower costs, promote innovation, and enhance user choice and satisfaction.
- d) That a set of "technical criteria" for a new gTLD registry applicant minimises the risk of harming the operational stability, reliability, security, and global interoperability of the Internet.
- f) That a set of "business capability criteria" for a new gTLD registry applicant provides an assurance that an applicant has the capability to meet its business ambitions.

**Recommendations**

## 1 Whether to introduce new top level domains

1.1 Additional new generic top-level domains should be introduced and work should proceed to enable the introduction of new generic top level domains, taking into account the recommendations found in the following sections.

### 2 Selection Criteria

2.1 The process for introducing new top level domains will follow a prepublished application system including the levying of an application fee to recover the costs of the application process. The application process will also include probity rules and clear timelines.

2.2 Application fees will be set at the start of the process and application materials will be available prior to any application round. Some applications may cost different amounts to evaluate. Therefore, different fees may be levied depending on what stage in the process the application reaches. If applicants find the application fee a barrier to entry, ICANN could have a system of grants to assist applicants. This grant would only allow the applicant to apply, without any presumption that the application would be successful. Grant applications would go through an evaluation process. ICANN should evaluate options for

funding the grants.

2.3 Technical criteria will include compliance with a minimum set of technical standards that would include IETF Requests for Comment related to the operation of the DNS and other technical standards. Standards may include RFC3730-3735, RFC2246, RFC1035, RFC2181, RFC2182, and the ICANN Guidelines for the Implementation of Internationalized Domain Names.

2.4 Applicants must comply with all ICANN consensus policies as and when they are developed.

2.5 Applicants must choose a string of characters for the new generic top level domain name that complies with the process for string checks below.

2.5.1 ICANN will use the following process for TLD string checks.

2.5.1.1 ICANN will make a preliminary determination on whether the application complies with the string requirements and may seek expert advice in order to make its preliminary determination.

2.5.1.2 ICANN will establish public comment processes (which may include input from governments or the Governmental Advisory Committee) that are specific to the criteria for the new string.

2.5.1.3 In the event that ICANN reasonably believes that the application for a particular string may not be compliant with the string requirements, ICANN will refer the issue to a panel of experts with appropriate backgrounds.

2.5.2 String Criteria

2.5.2.1 The gTLD string should not be confusingly similar to an existing TLD string. Confusingly similar means there is a likelihood of confusion on the part of the relevant public.

2.5.2.2 The string must not infringe the legal rights of any third party (consistent with the current requirements of Registered Name Holders – see Clause 3.7.7.9 of the gTLD Registrar Accreditation Agreement).

2.5.2.3 The string should not cause any technical issues, for example, .localhost and .exe would be unacceptable name strings.

2.5.2.4 The string should not be in conflict with national or international laws or cause conflicts with public policy [for example, controversial, political, cultural religious terms]. (Develop text related to public policy issues with GAC assistance).

2.5.2.5 The string should not be a reserved word (for example, RFC2606).

### 2.5.3 Dispute resolution with respect to ICANN accepting a new string.

2.5.3.1 ICANN must establish a dispute resolution process, using independent arbitrators, where existing registry operators could challenge a decision made by ICANN regarding whether a new gTLD string is confusingly similar to an existing gTLD string. If a string application is successfully challenged as being confusingly similar, then no other operator may subsequently apply for it.

2.5.3.2 ICANN may establish a new dispute resolution process, using independent arbitrators, where existing trademark holders could challenge an ICANN decision regarding a string. This new dispute resolution process would be modeled on use existing Uniform Domain-Name Dispute Resolution Processes (UDRP).

2.6 An applicant for a new gTLD must use ICANN accredited registrars to provide registration services to Registered Name Holders (registrants). The registry shall not act as a registrar with respect to the TLD (consistent with the current registry-registrar structural separation requirements, for example, see clause 7.1 (b) and (c) of the .jobs registry agreement). An organization wishing to become a registrar for a new gTLD would need to become accredited using ICANN's existing accreditation process.

2.7 An applicant must demonstrate that they have the capability to operate a new gTLD that meets the minimum technical criteria to preserve the operational stability, reliability, security, and global interoperability of the Internet.

2.8 The applicant must provide a financial and business plan that provides an assurance that the applicant has the capability to meet its business ambitions.

## 3 Allocation Methods

3.1 To ensure an orderly introduction of new TLDs, the applications should be accessed in rounds to allow issues of contention between applicants for the same string to be resolved. First come first served (FCFS) is the preferred method of assessing applications within an initial round. Subsequently, processes may be developed that would enable an "apply as you go" system.

3.1.1 The start date for the round should be at least four months after the ICANN Board has issued the Request for Applications. ICANN must promote the opening time and details of the

new round of applications to the broader worldwide Internet community.

3.1.2 Applications will be date stamped as they are received and will form a queue with the ability to work on multiple applications in parallel.

3.1.3 The closing date for the first round of new applications should be at least thirty days after the start date.

3.1.4 Applications for strings are not published until after the closing date.

3.2 The following process should be used to resolve contention between multiple applicants for the same new gTLD.

3.2.1 Ensure each application for the same gTLD (or a set of gTLDs that may be considered to be confusingly similar) is compliant with the selection criteria (with some flexibility to correct minor application form errors).

3.2.2 Establish a timeframe for a mediation process amongst the applicants to identify a solution amongst competing applications. A possible solution is for the applicants to choose different TLD strings to avoid the conflict, or for the applicants to combine their resources.

3.2.3 If there is no agreement between the applicants, ICANN will evaluate the additional criteria of the level of support of the community of potential registrants within that TLD to resolve contention. Both applicants would have a timeframe (e.g 90 days) to supply this additional material for evaluation. ICANN will determine what evidence is acceptable, and the evidence must be measurable and verifiable. An applicant that is not successful will need to wait until the next application round to submit a new application.

3.2.4 If ICANN staff are unable to distinguish between the level of support for each applicant for the gTLD, then the Board will make a choice based on the ICANN Mission and Core Values which include introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest; and supporting the functional, geographic and cultural diversity of the Internet. An applicant that is not successful will need to wait until the next application round to submit a new application.

3.3 An applicant who is granted a gTLD string has an obligation to begin using it within an appropriate time-frame.

#### **4 Contractual Conditions**

4.1 There should be a frame agreement to provide some level of consistency (for example, as for the registrars accreditation agreement) amongst gTLD agreements, with the ability for staff to have delegated authority to approve. Any material alterations to the frame agreement, will be subject to public comments before approval by the ICANN Board.

4.2 The contract should strike the right balance between ensuring certainty for market players and preserving flexibility of ICANN to accommodate the rapidly changing market, technological and policy conditions.

4.3 The initial term of the new gTLD agreement should be of commercially reasonable length (for example, default 10 years, although may be changed on a case-by-case basis).

4.4 There should be renewal expectancy. A contract would be renewed provided that the license holder is not in material breach of the contract, or has not been found in repeated non-performance of the contract, and provided the license holder agrees to the any new framework contract conditions that are reasonably acceptable. Any new framework contract would take into account the consensus policies in place at that time.

4.5 There should be a clear sanctions process outlined within the frame agreement to terminate a contract if the new gTLD operator has been found in repeated non-performance of the contract.

4.6 During the term of the agreement, the registry must comply with new or changed consensus policies to one or more of the following areas: ICANN Policy Development

- (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS;
- (2) functional and performance specifications for the provision of Registry Services (as defined in Section 3.1(d)(iii) below);
- (3) security and stability of the registry database for the TLD;
- (4) registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
- or (5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names).

4.7 Any deviation from consensus policies should be explicitly stated and justified in the agreement.

4.8 Where a registry provides IDNs, the contract should require that the registry adhere to IDN standards, and ICANN guidelines for IDNs.

4.9 Initially rely on the appropriate external competition/anti-trust Government authorities to ensure compliance with laws relating to market power or pricing power. This can be reviewed after an initial term.

4.10 ICANN should take a consistent approach with respect to registry fees ♦V taking into account differences in regional, economic and business models

4.11 Use of Personal Data: limit it to the purpose for which it is collected, and the registry operator must define the extent to which it is made available to third parties.

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**EXHIBIT JJN-36**

# GNSO new TLDs Committee

## Draft Final Report

### Introduction of New Generic Top-Level Domains

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# INTRODUCTION

1. This is the draft *Final Report* of the Generic Names Supporting Organisation's Policy Development Process (GNSO PDP) on the introduction of new top-level domains (new TLDs). The *Report* sets out the key findings that have emerged from a multi-phase, multi-stakeholder policy development process that has taken place during 2006.
2. In each of the sections below the Committee's Recommendations are discussed in more detail with an explanation of the rationale for the decisions and the method by which those decisions have been reached. The Recommendations have been the subject of numerous public comment periods and intensive discussion across a range of stakeholders including ICANN's GNSO Constituencies, ICANN Supporting Organisations and Advisory Committees and members of the broader Internet-using public that is interested in ICANN's work.
3. The key elements of the PDP have been formal Constituency Statements submitted by each of the GNSO's constituencies, a *Call for Expert Papers* and a Public Comment Period about the *Initial Report*. In addition, all the comments made to the various public forums, discussion lists and directly to ICANN have been taken into account. Those views and ideas have been balanced with positions and discussions that have taken place over a year-long process. The range of opinions reflects the diversity of the stakeholders within the ICANN community. The decisions reached show that, through detailed discussion and analysis, it is possible to arrive at recommendations that balance the interests of all stakeholders.
4. The GNSO Committee conducted four separate face-to-face consultations, in Washington DC, Wellington, Brussels and Amsterdam, to discuss each of the

Terms of Reference. Many of the Recommendations that have emerged from those discussions received majority Committee support. It is expected that those Recommendations with limited support will be included in the GNSO Committee's *Board Report* as minority recommendations.

5. In addressing the Terms of Reference, very close attention has been paid to mapping the discussion and the resulting recommendations to ICANN's Bylaws, Mission and Core Values. A full list of all the Constituency Statements, copies of the responses to Calls for Expert Papers and the Public Comment archives can be found in the GNSO's section of the ICANN website at <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>.
6. This *Report* will be discussed with other Supporting Organisations and Advisory Committees at ICANN's December 2006 Sao Paulo, Brazil meeting. The results of these discussions and further public comments, along with additional input from ICANN's operational staff, will be taken into account as the Committee works towards achieving supermajority support for its Recommendations. That support will be reflected in the GNSO Council's *Board Report*. In particular, the Committee expects to consider public policy principles from the Governmental Advisory Committee. As part of the PDP process, the Committee may choose to consult expert advisors to comment on the Recommendations to enhance the content of the Board Report.
7. This *Report* reflects another stage in the ICANN's progress towards introducing new top-level domains. The series of changes and approach to the introduction of new TLDs, most notably during 2000 and then again in 2003-2004, is found on ICANN's background information section on the top-level domains (<http://www.icann.org/topics/gtld-strategy-areaa.html>).

8. The following sections set out the Committee's draft Recommendations and the discussion that the Committee undertook to reach the findings contained in the *Report*.

## PRINCIPLES & RECOMMENDATIONS

### Principles

The following Recommendations have been derived from the work of the GNSO Committee on the introduction of new top-level domains in accordance with the Terms of Reference set by the GNSO, with reference to ICANN's Mission and Core Values.

- a) That new generic top-level domains (gTLDs) should be introduced in an orderly, timely and predictable way.
- b) That some new generic top-level domains will be internationalised domain names (IDNs).
- c) That the principal objectives of the introduction of new top-level domains are to permit market mechanisms to support useful online identities that permeate international markets as well as to support competition, innovation and consumer choice.
- d) That a set of technical criteria for a new gTLD registry applicant be used to minimise the risk of harming the operational stability, security and global interoperability of the Internet.
- e) That a set of business capability criteria for a new gTLD registry applicant be used to provide an assurance that an applicant has the capability to meet its business ambitions.

## TERM OF REFERENCE ONE: DISCUSSION

### Whether to introduce new top-level domains

Additional new generic top-level domains should be introduced and work should proceed to enable the introduction of new generic top-level domains, taking into account the recommendations found in the following sections.

1. This section sets out the way in which the Committee arrived at their Recommendation to proceed with the introduction new top-level domains.
2. ICANN's policy development process is a multi-stage process that includes the production of an *Issues Report* (found at <http://gnso.icann.org/issues/new-gtlds/gnso-issues-rpt-gtlds-05dec05.pdf>). The *Report* included comprehensive information about the main documents and decisions on new top-level domains since the 2000 round of new top-levels domains which included, for example, .biz, .info, and the 2004 round of sponsored top-level domains which included, for example, .cat and .asia. In addition, the process for the re-bids of the .net and .org agreements was used to inform the *Report*.
3. A full compilation of all the materials the Committee used is found in the Reference Materials section at the end of the document. In particular, the Committee used the *New TLD Evaluation Process Planning Task Force*. The Report (<http://www.icann.org/committees/ntepptf/final-report-31jul02.htm>) described four aspects to evaluate including technical, business, legal and process that have, subsequently, informed the development of all the Recommendations within the *Report*.

4. In its request to the ICANN staff to produce an *Issues Report*, the Committee also made a request to produce a background report on internationalised domain names (IDNs). This work is now reflected in the current draft of the proposed Terms of Reference to discuss internationalised domain names in the context of the introduction of new top-level domains ([http://gnso.icann.org/issues/idn-tlds/idn\\_tor\\_draft-12oct06.htm](http://gnso.icann.org/issues/idn-tlds/idn_tor_draft-12oct06.htm)). The broad body of work on internationalised domain names taking place within, for example, the President's Committee on IDNs (<http://www.icann.org/committees/idnpac/>), the IETF (<http://www.ietf.org/>) and other technical organisations has been taken into account when developing the *Recommendations* contained here.
5. For the purposes of this *Report*, the discussion at and outcomes of the February 2006 Washington DC are the key determinants of the recommendation to proceed with establishing a permanent policy for and method of accepting applications for new TLDs.
6. There were some strong themes to support a decision to enable the introduction of new TLDs. These included the facilitation of a competitive environment for registry services; a "public choice" benefit for end users and the potential for expansion of innovative Internet use in a wide variety of markets that have may have been underserved in the past. A summary of the discussion on whether to introduce new top-level domains can be found at <http://forum.icann.org/lists/gtld-council/msg00026.html>. In addition, the respondents to the *Call for Papers* set out a variety of arguments to support the introduction of new TLDs. These ideas were consistent with those found in, for example, the Summit Strategies sponsored top level domain name round and earlier work that resulted from the 2000 round of new gTLDs.

7. After a day of detailed discussions and presentations from eight external stakeholders and in considering Constituency Statements and Public Comments, there was rough consensus that the Committee should proceed with consideration of the other three Terms of Reference. The online summary can be found at <http://forum.icann.org/lists/gtld-council/msg00027.html>.
8. At the 31 March 2006 ICANN Board meeting in Wellington, the Board made clear its intention to proceed with the introduction of new top-level domains<sup>1</sup>. The Board reaffirmed its commitment to introducing new top-level domain registries at its 30 June 2006 meeting in Marrakech<sup>2</sup>.
9. The general principle underpinning the wide ranging discussions was that, whatever consensus policy was developed, it must be consistent with ICANN's limited technical co-ordination mission and be in line with ICANN's Mission and Core Values  
(<http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#l>)

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<sup>1</sup> See Board resolution at <http://www.icann.org/minutes/resolutions-31mar06.html>.

<sup>2</sup> See Board resolution at found at <http://www.icann.org/minutes/resolutions-30jun06.htm>.

## TERM OF REFERENCE TWO: DISCUSSION

### Selection Criteria

- 2.1 The process for introducing new top-level domains will follow a pre-published application system including the levying of an application fee to recover the costs of the application process. The application process will also include probity rules and clear timelines for applicants that will be published prior to the beginning of any application cycle.
- 2.2 Application fees will be set at the start of the process and application materials will be available prior to any application cycle. The cost to evaluate individual applications may differ. Therefore, different fees may be levied depending on what stage in the process the application reaches. It should also be noted that the possible extra costs that might result from the differences in the applicant's working language as well as legal systems should not be held against the applicant.

In order to reduce the effect of the application fee becoming a barrier to entry, ICANN could have a system of grants to assist applicants. This grant would only allow the applicant to apply, without any presumption that the application would be successful. Grant applications would go through an evaluation process. ICANN should evaluate options for funding the grants.

In addition to considering grant options, other options for ICANN to address should be organizing periodic awareness and training workshops for interested stakeholders on new top-level domains; reducing avoidable indirect costs for the applicant (including shortening and improving the approval process with fixed timelines, standardized contracts and public pre-evaluation hearings).

- 2.3 Technical criteria will include compliance with a minimum set of technical standards such as IETF *Request for Comments* related to the operation of the DNS and other technical standards. Standards may include RFC3730-3735, RFC2246, RFC1035, RFC2181, RFC2182, and the ICANN *Guidelines for the Implementation of Internationalized Domain Names*.

- 2.4 Applicants must comply with all current ICANN Consensus Policies and new Consensus Policies that are approved by the ICANN Board. [move this to contractual conditions section]
- 2.5 The character strings of new top-level domains must comply with the string requirements listed below.
- 2.5.1 ICANN will use the following process for TLD string checks.
- 2.5.1.1 ICANN Staff may make a preliminary determination on whether the application complies with the string requirements and may engage appropriate expert advice in order to make a preliminary determination.
- 2.5.1.2 ICANN will establish public comment processes (which may include input from governments or the Governmental Advisory Committee) that are specific to the criteria for the proposed string.
- 2.5.1.3 In the event that ICANN reasonably believes that the application for a particular string is not compliant with the string requirements, ICANN will notify the applicant immediately and the application will be eliminated from consideration pending any reconsideration process that might apply. If ICANN is unable to make a definitive determination whether or not a string is compliant with the string requirements, then ICANN will refer the issue to a panel of experts with appropriate backgrounds.
- 2.5.2 String Criteria
- 2.5.2.1 The gTLD string should not be visually or [phonetically] confusingly similar to an existing TLD string.
- 2.5.2.2 The applicant must warrant that the proposed string does not infringe the legal rights of any third party (consistent with the current requirements of Registered Name Holders – see Clause 3.7.7.9 of the gTLD Registrar Accreditation Agreement).
- 2.5.2.3 The string should not cause any technical issues that have an impact on the stability and security of the Internet.
- 2.5.2.4 The string should not be contrary to public policy or accepted principles of morality or be of such a nature as to deceive the public. [The Committee expects to receive advice from the GAC on this draft recommendation and the policy recommendation should be consistent with GAC principles.]

2.5.2.5 The string should not be a reserved word (for example, as set out in RFC2606).

2.5.3 Dispute resolution with respect to ICANN accepting a new string.

2.5.3.1 ICANN must establish a dispute resolution process, using independent arbitrators, where existing registry operators could challenge a decision made by ICANN regarding whether a new gTLD string is confusingly similar to an existing gTLD string. If a string application is successfully challenged as being confusingly similar, then no other operator may subsequently apply for it except in cases where affected parties mutually agree to terms allowing such registration.

2.5.3.2 ICANN may establish a new dispute resolution process, using independent arbitrators, where existing trademark holders could challenge an ICANN decision regarding a string. This new dispute resolution process could be modelled on the existing Uniform Domain Name Dispute Resolution Processes (UDRP).

2.6 An applicant for a new gTLD must use ICANN accredited registrars to provide registration services to Registered Name Holders (registrants).  
[move to contractual conditions section]

2.7 An applicant must demonstrate that they have the capability to operate a new gTLD that meets the minimum technical criteria to preserve the operational stability, reliability, security, and global interoperability of the Internet.

2.8 The applicant must provide a financial and business plan demonstrating that the applicant has the capability to meet its business ambitions.

1. The development of selection criteria for new top-level domains has been the subject of intense discussion throughout the Committee's work. That work is an iterative process and, in the coming months, will benefit from consultation with ICANN's other Supporting Organisations and Advisory Committees. The Committee relied heavily on ICANN's Mission and Core Values to guide its

work and, in tandem, referred frequently to the Consensus Policy guidelines (found at <http://www.icann.org/general/consensus-policies.htm>) with which ICANN registries are required to comply. The Committee used, for example, at the Amsterdam meetings a mixture of Constituency Statements and responses to a request for further comments on the *Initial Report*. A full set of public comments were provided to Committee members by ICANN Staff to assist them in balancing the views of the group with those interested stakeholders. The full comment archive can be found at <http://forum.icann.org/lists/newgtlds-comments/>.

2. The first part of the discussion took place at the Washington DC meetings; the second review of the proposed selection criteria took place at the March 2006 Wellington meetings; the findings were reviewed and refined again in Brussels and, finally, at the Amsterdam meeting. These meetings were augmented by intensive teleconference discussions, email exchanges and inputs from a wide variety of external stakeholders including potential new TLD applicants and the Governmental Advisory Committee.
3. During the preparation of the selection criteria the Committee focused particularly on ensuring consistency with previous new TLD application rounds and with developing selection criteria that reflected industry best practice for services procurement.
4. Committee members are urged to read the ICANN Feedback section at the beginning of the document. That section sets out the questions ICANN has posed in relation to the draft Recommendations. Each section has been marked \*\* where further discussion would be beneficial.
5. *\*\*Recommendation 2.1, 2.2 and 2.3*. These three Recommendations deal with the application process. The intention of the Recommendations is to

make explicit expectations about how any future TLD application process would be conducted. These Recommendations are consistent with ICANN's openness and transparency requirements (and most particularly with ICANN's initiatives to improve its operations

<http://www.icann.org/announcements/announcement-16oct06.htm> consistent with the new *Affirmation of Responsibilities*). In addition, Recommendation 2.3 recognises the fundamental requirement to ensure the stable and secure operation of the domain name system.

6. *\*\*Recommendation 2.4:* It was clear from the discussions throughout the policy development process that compliance with ICANN's Consensus Policies was important to Committee members. This is consistent with discussions that are taking place in the context of another policy development process on *Policies for Contractual Conditions for Existing Registries* (PDP Feb06).
7. *\*\*Recommendation 2.5:* All the Recommendations in contained in 2.5 refer to the ways in which applications for new TLDS may be checked. *Recommendations 2.5.1, 2.5.1.1, 2.5.1.2 and 2.5.1.3* have been subjected to detailed analysis to ensure consistency with previous applications rounds; understanding the potential for applications for new TLDs and recognizing that ICANN will set up an appropriate process for dealing with the policy recommendations the Committee has developed. Several Constituencies<sup>3</sup>

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<sup>3</sup> For example, the IPC submitted comments on 20 October 2006, in response to the 18 October Draft Recommendations Summary document. Those comments (on selection criteria, new dispute resolution processes, pre-registration mechanisms and contractual conditions in relation to WHOIS) need to be discussed in more detail with the full Committee to determine whether the IPC's views have the support of other Constituencies.

BC Rapporteur Philip Shepherd submitted comments on 23 October 2006 to the full Committee on the notion of "pre-evaluation hearings" in response to comments from Committee observers

submitted comments directly to ICANN Staff for consideration in the preparation of the recommendations. In addition, the ALAC representative<sup>4</sup> suggested, in his posting to the gtld-council listing, that “we ought to be able to create a ...turnkey “registry-in-a-box” that would speed the evaluation and reduce the cost to applicants. ...I wonder whether we can make the new gTLD evaluation process faster and less costly by providing some pre-approved choices for applicants. For example, we might say that if you pledge to implement a certain pre-approved technical model...[and] an applicant chooses the pre-approved model, the only questions for evaluation become whether the string is appropriate and the applicant competent...”.

8. The Committee has focused strongly on engaging with other Supporting Organisations, especially with the GAC, which will contribute input on the public policy aspects of new top-level domains. The Committee Chair submitted formal correspondence to the GAC Chair and to the Chair of the GAC GNSO Working Group, explicitly requesting the GAC share its draft Public Policy Principles as quickly as possible, and inviting the GAC to actively participate in any public comment processes about new TLD applications. This approach is consistent with the GAC’s June 2006 Marrakech communiqué which said “...The GAC endorses the Communications Timeline document (attached), which should improve the GAC’s participation in ICANN’s policy development processes by earlier

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Ray Fassett and Werner Staub. Further discussion about the impact of pre-evaluation hearings continued and Committee Chair Dr Bruce Tonkin suggested the removal of that text.

Observer Chuck Gomes contributed many comments to the Committee’s list which can be found in part at <http://forum.icann.org/lists/gtld-council/msg00219.html> and in full through using the thread index for comments.

<sup>4</sup> <http://forum.icann.org/lists/gtld-council/p7mnLhxBpKcGl.p7m>

engagement with the relevant ICANN constituencies, as well as secure timely and precise routine communication.”<sup>5</sup>

9. The use of appropriately qualified expert panels to resolve differences throughout the application process is consistent with ICANN's practice in previous rounds. The Committee suggested that using expert panels would ensure that resolving disputes throughout the application process would be as objective, predictable and timely as possible.
10. *\*\*Recommendations 2.5.2, 2.5.2.1, 2.5.2.2, 2.5.2.3, 2.5.2.4 and 2.5.2.5:* All these draft Recommendations are designed to be objective, contribute to the stability and security of the Internet and be consistent with existing international law. These draft Recommendations would benefit from further detailed discussion between ICANN's legal and operational staff to ensure that the Committee's intentions are implementable and do not impose undue risks on the organisation.
11. The reasoning behind *Recommendation 2.5.2.1* stems from the recognition that, in the first instance, a judgment should be made by the ICANN staff department responsible for processing applications. Where the department has a doubt they will refer the application to an expert standing three-person tribunal established by the GNSO Chair for this purpose. The tribunal should be established prior to the application cycle commencing, with clear guidelines and criteria that constrain its activities and remit. An applicant refused by the staff department may insist on referral to the panel upon payment of the appropriate cost-recovery fee.

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<sup>5</sup> All of the GAC's Communiqués are found at <http://gac.icann.org/web/communiqués/index.shtml>.

12. The concept of “confusingly similar” is used to mean that there is a likelihood of confusion on the part of the relevant public. The prospect of IDN new TLD applications makes this criterion vital. There is broad agreement in international and national law the concept of “confusingly similar”. In international trade mark law, confusion may be visual, phonetic or conceptual. A small Committee working group developed the following explanations for the approach to resolve confusingly similar string conflicts. The Committee needs to consider further how to manage this area of Recommendations, especially where there is a wide variety of potential interpretations, many of which are subjective and open to legal challenge.
13. In broader international law, the concept of creating confusion is contained in the 1883 Paris Convention and says “to create confusion by any means whatever” {Article 10bis (3) (1)} and, further, being “liable to mislead the public” {Article 10bis (3) (3)}. The treatment of confusingly similar is also contained in European Union law and is structured as follows -- “because of its identity with or similarity to...there exists a likelihood of confusion on the part of the public...; the likelihood of confusion includes the likelihood of association..” {Article 4 (1) (b) of the 1988 EU Trade Mark directive 89/104/EEC}. Article 8 (1) (b) of the 1993 European Union Trade Mark regulation 40/94 is also relevant.
14. In the United States, existing trade mark law states that “...to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive...” which is contained in Section 1051 (3) (d) of the US Trademark Act 2005 (found at <http://www.bitlaw.com/source/15usc/1051.html>.)

15. In Australia, the Australian Trade Marks Act 1995 Section 119 says that  
“...For the purposes of this Act, a trade mark is taken to be deceptively similar to another trade mark if it so nearly resembles that other trade mark that it is likely to deceive or cause confusion” (found at [http://www.ipaustralia.gov.au/resources/legislation\\_index.shtml](http://www.ipaustralia.gov.au/resources/legislation_index.shtml))
16. The European Union Trade Mark Office provides guidance on how to interpret confusion. *“...confusion may be visual, phonetic or conceptual. A mere aural similarity may create a likelihood of confusion. A mere visual similarity may create a likelihood of confusion. Confusion is based on the fact that the relevant public does not tend to analyse a word in detail but pays more attention to the distinctive and dominant components. Similarities are more significant than dissimilarities. The visual comparison is based on an analysis of the number and sequence of the letters, the number of words and the structure of the signs. Further particularities may be of relevance, such as the existence of special letters or accents that may be perceived as an indication of a specific language. For words, the visual comparison coincides with the phonetic comparison unless in the relevant language the word is not pronounced as it is written. It should be assumed that the relevant public is either unfamiliar with that foreign language, or even if it understands the meaning in that foreign language, will still tend to pronounce it in accordance with the phonetic rules of their native language. The length of a name may influence the effect of differences. The shorter a name, the more easily the public is able to perceive all its single elements. Thus, small differences may frequently lead in short words to a different overall impression. In contrast, the public is less aware of differences between long names. The overall phonetic impression is particularly influenced by the number and sequence of syllables.”* (found at <http://oami.europa.eu/en/mark/marque/direc.htm>).

17. An extract from the United Kingdom's Trade Mark Office's Examiner's Guidance Manual is useful in explaining further the Committee's approach to developing its Recommendation. *"For likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average consumer. Likelihood of association is not an alternative to likelihood of confusion, "but serves to define its scope". Mere association, in the sense that the later mark brings the earlier mark to mind is insufficient to find a likelihood of confusion, unless the average consumer, in bringing the earlier mark to mind, is led to expect the goods or services of both marks to be under the control of one single trade source. "The risk that the public might believe that the goods/services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion..."*. (found at <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)
18. **\*\*Recommendation 2.5.1.2:** The Committee recommended that, in the first instance, a judgment should be made by the ICANN staff responsible for assessing applications. Where there is doubt, the assessors may refer the application to a standing three-person tribunal established for that purpose by the GAC Chairman. The tribunal should be established before the application cycle begins and maintained by rotation. An applicant refused on these grounds by the staff department may insist on referral to the panel upon payment of the appropriate cost-recovery fee. This particular section needs further consideration, as set out in the ICANN Feedback document.
19. The Committee spent considerable time considering the public policy aspects of new top-level domains. In particular, concerns about "public policy and morality" were raised. The small working group mentioned above conducted more detailed research on the phrase "contrary to public policy or accepted

principles of morality”. This phrasing is consistent with international laws including Article 3 (1) (f) of the 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regulation 40/94. In addition, the phrasing “contrary to morality or public order and in particular of such a nature as to deceive the public” comes from Article 6quinques (B)(3) of the 1883 Paris Convention. The reference to the Paris Convention remains relevant to domain names even though, when it was drafted, domain names were completely unheard of.

20. The concept of “morality” is captured in Article 19 United Nations Convention on Human Rights (<http://www.unhchr.ch/udhr/lang/eng.htm>) says “...Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 29 continues by saying that “...In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.
21. The EU Trade Mark Office’s Examiner’s guidelines provides assistance on how to interpret morality and deceit. “...Contrary to morality or public order. Words or images which are offensive, such as swear words or racially derogatory images, or which are blasphemous are not acceptable. There is a dividing line between this and words which might be considered in poor taste. The latter do not offend against this provision.” The further element is deception of the public which is treated in the following way. “...Deceive the public. To deceive the public, is for instance as to the nature, quality or

geographical origin. For example, a word may give rise to a real expectation of a particular locality which is untrue.” For more information, see Sections 8.7 and 8.8 at <http://oami.europa.eu/en/mark/marque/direc.htm>

22. The UK Trade Mark office provides similar guidance in its Examiner’s Guidance Manual. “Marks which offend fall broadly into three types: those with criminal connotations, those with religious connotations and explicit/taboo signs. Marks offending public policy are likely to offend accepted principles of morality, e.g. illegal drug terminology, although the question of public policy may not arise against marks offending accepted principles of morality, e.g. taboo swear words. If a mark is merely distasteful, an objection is unlikely to be justified, whereas if it would cause outrage or would be likely significantly to undermine religious, family or social values, then an objection will be appropriate. Offence may be caused on matters of race, sex, religious belief or general matters of taste and decency. Care should be taken when words have a religious significance and which may provoke greater offence than mere distaste, or even outrage, if used to parody a religion or its values. Where a sign has a very sacred status to members of a religion, mere use may be enough to cause outrage.” For more information, see <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)

23. *Recommendation 2.5.2.3*: This Recommendation is consistent with existing provisions regarding reserved names that may cause technical problems within the domain name system. The reserved name list is found in existing registry agreements at, for example, <http://www.icann.org/tlds/agreements/mobi/mobi-appendix6-23nov05.htm>. Applicants for new TLDs would be advised immediately if their application featured one of these names.

24. *Recommendation 2.5.2.5:* Similar to Recommendation 2.5.2.3, this Recommendation is consistent with technical standards as set out by the Internet Engineering Task Force (IETF) and with other technical standards such as ICANN's IDN Guidelines (found at <http://www.icann.org/topics/idn/implementation-guidelines.htm>).
25. *Recommendation 2.5.3:* Dispute resolution processes modelled on the existing Uniform Dispute Resolution Process (UDRP) were used by the Committee to analyse whether new dispute resolution processes should be developed for the new TLDs application process for two separate purposes. The first was to resolve contention between competing applications vying for the same string; the second was to resolve contention between existing registry operators or trademark owners with applicants proposing a string similar to either an existing registry or to an existing trademark.
26. *Recommendation 2.6:* The Recommendation to continue to mandate the use of ICANN accredited registrars is not only consistent with current policy but also addresses the stability and security questions which the Committee considered. The Committee Chair clarified further this draft Recommendation in his posting to the gtld-council list<sup>6</sup> which said in part "...The outcome of the discussion on this topic was to treat the requirement to provide an operational plan as part of the application demonstrating that they have the resources required to meet the other selection requirements. The process for accrediting registrars is an example of such a process, where ICANN staff require a plan to determine whether a registrar is capable of

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<sup>6</sup> <http://forum.icann.org/lists/gtld-council/msg00191.html>

meeting the requirements of a registrar. See for example:  
<http://www.icann.org/registrars/accreditation-application.htm...><sup>7</sup>

*27. Recommendation 2.7 and 2.8:* The Committee discussed the necessity for applicants to provide technical and operational plans that would be used during the application process to assess the capacity of an applicant to successfully provide registry services. There was consistent disagreement whether this information was either relevant or necessary and how that information would be assessed, using objective measures. On balance, the Committee decided that, as has been the case in previous rounds to introduce new TLDs, it would remain a requirement that an applicant's business ambitions be substantiated by the provision of technical and operational plans that could be verified by ICANN or by a panel of appropriately qualified experts.

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<sup>7</sup> GA list participant and Committee observer Danny Younger expressed reservation about the legality of insisting on the use of ICANN-only accredited registrars and the Registry Constituency suggested, in comments submitted for use at the Amsterdam meeting, that "the requirement to use only ICANN-accredited registrars may be used should be modified to allow some flexibility in cases where registrar support does not meet some mutually agreed-to service level criteria for a given gTLD. The underlying premise of this position is that gTLD registries or sponsors should not be held hostage by registrars who are not willing to or are unqualified to service the applicable registrant community".

## TERM OF REFERENCE THREE: DISCUSSION

### Allocation Methods

- 3.1 To ensure an orderly introduction of new TLDs, the applications should be assessed in rounds to allow issues of contention to be resolved between applicants for the same string. First come first served (FCFS) is the preferred method of assessing applications within an initial round. Subsequently, processes may be developed that would enable an “apply as you go” system. This could be decided after an evaluation period.
  - 3.1.1 The start date for the round should be at least four months after the ICANN Board has issued the *Request for Proposal*. ICANN must promote the opening time and details of the new round of applications to the broader worldwide Internet community.
  - 3.1.2 Applications will be date stamped as they are received and will form a queue, giving ICANN the ability to work on multiple applications in parallel.
  - 3.1.3 The closing date for the first cycle of new applications should be at least thirty days after the start date.
  - 3.1.4 Applications for strings are not published until after the application cycle closing date.
- 3.2 The following process should be used to resolve contention between multiple applicants for the same new gTLD string.
  - 3.2.1. Establish a timeframe for a mediation process amongst the applicants to identify a solution amongst competing applications. Possible solutions are for the applicants to choose different TLD strings to avoid the conflict, or for the applicants to combine their resources.
  - 3.2.2 If there is no agreement between the applicants, ICANN will evaluate the additional criteria of the level of support of the community of potential registrants within that TLD to resolve contention. Both applicants would have a timeframe (for example, ninety days) to supply this additional material for evaluation. ICANN will determine what evidence is acceptable, and the evidence must be measurable and verifiable. An applicant that is not successful will need to wait until the next application cycle to submit a new application.

3.2.3 If ICANN staff are unable to distinguish between the level of support for each applicant for the gTLD, then the Board will make a choice based on the ICANN Mission and Core Values which include introducing and promoting competition in the registration of domain names where practical and beneficial in the public interest; and supporting the functional, geographic and cultural diversity of the Internet. An applicant that is not successful will need to wait until the next application cycle to submit a new application.

3.3 An applicant who is granted a gTLD string has an obligation to begin using it within an appropriate time-frame. [needs further clarification about what constitutes 'use' and 'appropriate time frames']

1. The development of recommendations for allocation methods was conducted in the same way as that for selection criteria. The comprehensive discussion about allocation methods has taken place through analysis of the formal Constituency Statements; public comments and email discussions which were used to modify and clarify the language of the Recommendations.
2. Early results of the discussion show that the Committee decided that a first come first served principle was fair and practical (discussion found at <http://forum.icann.org/lists/gtld-council/msg00058.html>). However, it is necessary to ensure a complete understanding of the FCFS principle as it would be implemented in the application cycle. Further discussion with the Committee and ICANN Staff on the practical implementation of this Recommendation would be useful.
3. Comparative evaluations have been a consistent theme throughout the policy development process with some discussants suggesting that auctions were a more suitable method of resolving conflict between applicants with similar string ideas or similar purposes for their business ideas. These diverging ideas need further discussion, especially in the context of balancing the Committee's expectations for a predictable, objective and timely process and

the impact comparative evaluations have had on the organisation in the recent past.

4. The draft Recommendations recognize past experiences with comparative evaluations in the ICANN environment, particularly those relating to sponsored top-level domains where measures of “community” support need to be determined. The evaluations, for example in the case of the .net and .org rebids and the introduction of new sTLDs like .jobs and .travel, show that the Internet-using community takes a keen interest in ICANN’s decision making process. In addition, ICANN’s Supporting Organisations and Advisory Committees outside the GNSO play a key role in determining the success of potential applications.
5. Further consideration is necessary of the involvement of the ICANN Board in the formal ratification of any new top-level domain. Past experience shows that the Board takes a keen interest in all the decisions of the organisation. This involvement has a direct bearing on any evaluation process.
6. It is clear that the draft Recommendations on allocation methods have a direct relationship to the establishment of robust selection criteria. The Recommendations on allocation methods focus, in the main, on establishing a pre-published application process and on implementing practical solutions for resolving contention between applicants with similar ideas about new TLDs.
7. The Committee was clear in its intention to ensure that any new TLD application opportunity was widely advertised prior to the application cycle commencing. This was intended to encourage applications from geographic areas or communities who had previously not had the opportunity to participate in ICANN’s TLD opportunities.

8. Discussion about more widespread notification of new top-level domain applications to resolve string contention may also be useful. More detailed ideas about this proposal are contained in the ICANN Staff Memorandum released with this document.

## TERM OF REFERENCE FOUR: DISCUSSION

### Policies for Contractual Conditions

- 4.1 There should be a base contract to provide some level of consistency (for example, as for the Registrars' Accreditation Agreement) amongst gTLD agreements, with the ability for staff to have delegated authority to approve. Any material alterations to the base contract, will be subject to public comments before approval by the ICANN Board.
- 4.2 The contract should strike the right balance between ensuring certainty for market players and preserving flexibility of ICANN to accommodate the rapidly changing market, technological and policy conditions.
- 4.3 The initial term of the new gTLD agreement should be of commercially reasonable length (for example, default ten years, although that may be changed on a case-by-case basis).
- 4.4 There should be renewal expectancy. A contract would be renewed provided that the contracted party is not in material breach of the contract or has not been found in repeated non-performance of the contract, and provided the registry or sponsor agrees to any new base contract conditions that are reasonably acceptable. Any new base contract would take into account the Consensus Policies in place at that time.
- 4.5 There should be a clear sanctions process outlined within the base contract to terminate a contract if the new gTLD operator has been found in repeated non-performance of the contract.
- 4.6 During the term of the agreement, the registry must comply with [existing] new or changed consensus policies to one or more of the following areas:
  - (1) issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS;
  - (2) functional and performance specifications for the provision of Registry Services
  - (3) security and stability of the registry database for the TLD;
  - (4) registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars, or

(5) resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names)

- 4.7 Any deviation from consensus policies should be explicitly stated in the agreement.
- 4.8 Where a registry provides IDNs, the contract should require that the registry adhere to IDN standards, and ICANN guidelines for IDNs.
- 4.9 ICANN may rely on the appropriate external competition and anti-trust authorities to ensure compliance with applicable competition law in particular, laws relating to market power or pricing power.
- 4.10 ICANN should take a consistent approach with respect to registry fees, taking into account differences in regional, economic and business models.
- 4.11 Use of personal data is limited to the purpose for which it is collected, and the registry operator must define the extent to which it is made available to third parties.

1. This section sets out discussion of the policies for contractual conditions for new top-level domains. This discussion has taken place in the context of the negotiation of the new .com agreement and the related Verisign settlement (<http://www.icann.org/announcements/announcement-28feb06.htm>; the renewal of the arrangements between ICANN and the US Department of Commerce (<http://www.icann.org/announcements/announcement-29sep06.htm>) and the conduct of an associated ICANN PDP (PDP Feb 06) on Policies for Contractual Conditions for Existing Registries (<http://gns0.icann.org/issues/gtld-policies/>).
2. The Recommendations found in this section were developed through the Brussels face-to-face consultations and the meetings held in Amsterdam to confirm the draft Recommendations.

3. The Committee in its work on policies for contractual conditions has focused on the key principles of consistency, openness and transparency. It has also determined that a scalable and predictable process is consistent with industry best practice standards for services procurement. The Committee referred, in particular, to standards within the broadcasting, telecommunications and Internet services industries to examine how regulatory agencies in those environments conducted, for example, spectrum allocations, broadcasting licenses and media ownership frameworks<sup>8</sup>.
4. The GNSO Constituencies provided input to the discussions through the formal Constituency Statements and again at the Brussels meeting, a summary of which can be found at <http://forum.icann.org/lists/gtld-council/msg00131.html>.
5. The Business Constituency has focused on process transparency and public comment processes throughout contractual negotiations. In addition, it has advocated consistency amongst new TLD contracts with equitable treatment of registries, proportional to the obligations imposed by ICANN with respect to the payment of fees to the organization. The Business Constituency did not support a presumption of contract renewal.
6. The Registry Constituency suggested that policies for contractual conditions should recognize that predictable terms and conditions for new top-level registries would enable greater investor certainty and provide an optimal opportunity for innovation and creativity. Any applicable consensus policy should be constrained to the five relevant elements of

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<sup>8</sup> See also principles articulated in the World Bank report on licensing guidelines in the References section.

- the GNSO's policy development processes. The Registry Constituency argued that a base contract should be provided before the start of the application process that could be customized to suit the specific commercial conditions of each new registry.
7. At the Brussels meeting, the ISP Constituency were undecided about the presumption of renewal discussion and were concerned about the requirement for registries to use only ICANN-accredited registrars.
  8. Like the Registry Constituency, the Non-Commercial Users Constituency argued that renewal expectancy provided longer term investment views, stable business environments and predictability of registry operation. The NCUC supported three other key elements of this area of discussion including the facilitation of competition at the registrar level; compliance with ICANN Consensus Policies and the reliance by ICANN on the appropriate competition authorities for advice on, for example, market pricing and market power issues. The NCUC consistently opposed access by third parties to personally identifiable information.
  9. The Intellectual Property Constituency supported compliance with Consensus Policies and the development of a registry compliance program that enabled the implementation of graduated sanctions for non-performing registries.
  10. The Committee found a number of expert reports<sup>9</sup> beneficial. In particular, the World Bank report on mobile licensing conditions provides some guidance on best practice principles for considering broader market investment conditions. "...A major challenge facing regulators in

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<sup>9</sup> The full list of reports are found in the Reference section at the end of the document.

developed and developing countries alike is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions. As much as possible, policy makers and regulators should strive to promote investors' confidence and give incentives for long-term investment. They can do this by favoring the principle of 'renewal expectancy', but also by promoting regulatory certainty and predictability through a fair, transparent and participatory renewal process. For example, by providing details for license renewal or reissue, clearly establishing what is the discretion offered to the licensing body, or ensuring sufficient lead-times and transitional arrangements in the event of non-renewal or changes in licensing conditions. Public consultation procedures and guaranteeing the right to appeal regulatory decisions maximizes the prospects for a successful renewal process. As technological changes and convergence and technologically neutral approaches gain importance, regulators and policy makers need to be ready to adapt and evolve licensing procedures and practices to the new environment."

11. The Recommendations which the Committee have developed with respect to the introduction of new TLDs are consistent with the World Bank principles outlined above.
12. The outcome of the Brussels meeting discussion on contractual conditions can be found at <http://forum.icann.org/lists/gtld-council/msg00133.html>.

## CONSULTATION & PARTICIPATION

1. This section provides an overview of the progress of the policy development process and the documentation produced throughout the series of teleconferences and face-to-face consultations that have taken place during 2006. All of the meetings were open to observers and many different stakeholders attended the meetings taking an active part in the discussion. In addition, all meetings were open to remote participation by teleconference and through the use of the Shinkuro ([www.shinkuro.com](http://www.shinkuro.com)) file-sharing technology. A full table found at Annex One illustrates participation by GNSO Constituencies and other observers.
2. The *Issues Report* was released on 5 December 2005. The *Report* sets out an early collation of issues that the GNSO wished to take into account in developing the Terms of Reference for future rounds. For example, the selection criteria used in previous application rounds for new top-level domains were used to guide the development of Term of Reference Two in this PDP. An evaluation of the selection criteria and methods used in the re-bidding of the .org and .net registry contracts was also conducted. The *Issues Report* contained Staff Recommendations about potential terms of reference and, in the majority, those Recommendations were adopted by the GNSO Council. The *Report* is found at <http://gns0.icann.org/issues/new-gtlds/gns0-issues-rpt-gtlds-05dec05.pdf>.
3. A Public Comment Period was launched on 6 December 2005 to solicit input from the ICANN community about the proposed Terms of Reference (found at <http://www.icann.org/announcements/announcement-06dec05.htm>). The

Public Comment Period ran until 31 January 2006. For this PDP public comment periods have been used in different ways than in the past. In general, public comment calls have been far more targeted and highly structured to get responses on particular areas of concern to the Committee. This was a successful initiative enabling information to be collected in a consistent way that improved the quality of subsequent *Reports*. The archive of comments can be found at <http://forum.icann.org/lists/new-gtlds-pdp-comments/>).

4. In addition to a Public Comment Period, a *Call for Expert Papers* was announced on 3 January 2006 (found at <http://icann.org/announcements/announcement-03jan06.htm>). The request for input was advertised widely in the international press and yielded eleven responses from a diverse range of stakeholders. The authors of the papers were invited to present their papers and participate in a question and answer session at the 23 - 25 February 2006 Washington meeting. A full listing of all the inputs, including the *Expert Papers*, can be found at <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>.
5. The ICANN Board has been regularly updated on the progress of and taken a keen interest in the work of the new TLDs Committee. For example, the Board meeting of 10 January 2006 shows discussion within the Board about its involvement in new TLDs policy development process (found at <http://www.icann.org/minutes/minutes-10jan06.htm>)
6. A draft *Initial Report* was released on 19 February 2006 (found at <http://icann.org/topics/gns0-initial-rpt-new-gtlds-19feb06.pdf>) and a request for

public comments was announced at the same time that was open between 20 February 2006 and 13 March 2006. The archives for those comments are found at <http://forum.icann.org/lists/new-gtlds-pdp-initial-report/>. The draft *Initial Report* was used to facilitate discussion at subsequent Committee meetings and to give some guide to the broader community about the Committee's progress in its early stages.

7. The GNSO's new TLDs Committee held a three day meeting in Washington DC between 23 and 25 February 2006. The meeting notes can be found on the GNSO's Committee archive at (<http://forum.icann.org/lists/gtld-council/msg00030.html>). A central element of the discussion focused on re-visiting ICANN's Mission and Core Values to ensure that the deliberations on the Terms of Reference were tightly constrained. The substantive discussion over the three-day meeting also included discussion on whether to introduce new top-level domains (<http://forum.icann.org/lists/gtld-council/msg00027.html>) and potential selection criteria which could be used in a new round of top-level domain applications (<http://forum.icann.org/lists/gtld-council/msg00026.html>).
8. Analysis of the lessons learned from previous TLD rounds was included in the broader discussions held in Washington DC (<http://forum.icann.org/lists/gtld-council/msg00030.html>). In addition to discussing general selection criteria, detailed discussion of technical requirements also took place (<http://forum.icann.org/lists/gtld-council/msg00028.html>). Following the Washington meetings, it was clear that further information about technical criteria was necessary to inform the Committee's work. On 15 March 2006 a formal call was made for additional information on technical criteria (found at

<http://gnso.icann.org/issues/new-gtlds/tech-criteria-15mar06.htm>). No responses were received to that specific call but, in the resulting recommendations, particular attention has been paid to addressing relevant technical standards across the full range of registry operations, including those that relate to Internationalised Domain Names.

9. In response to the Committee's work and to discussions at the March 2006 Wellington meeting, the Board indicated its intention to facilitate the implementation of new top-level domains (found at <http://www.icann.org/minutes/minutes-31mar06.htm>.)
10. The new TLDs Committee met in Brussels between 11 and 13 May 2006 to discuss, in further detail, the work that had been undertaken on refining the selection criteria and allocation methods. In addition, a full day was spent on discussing policies for contractual conditions with a special presentation from ICANN's Deputy General Counsel. The Committee has archived, on 18 May 2006, records of the Brussels discussion and output from the meeting can be found at <http://forum.icann.org/lists/gtld-council/msg00133.html>
11. At the Brussels meeting, a revised work plan was devised (found at <http://forum.icann.org/lists/gtld-council/msg00130.html>) which include a high level commitment to producing an *Initial Report* in time for discussion at ICANN's June 2006 Marrakech meeting.
12. A draft *Initial Report* was released on 15 June 2006 (found at <http://gnso.icann.org/issues/new-gtlds/issues-report-15jun06.pdf>) and further

discussion took place on the Committee's mailing list prior to the Marrakech meeting.

13. The ICANN Board meeting of 30 June 2006 showed, again, the Board's interest in facilitating the policy development process on new top-level domains, particularly in encouraging ongoing discussions with the GAC. (found at <http://www.icann.org/minutes/resolutions-30jun06.htm>). After inputs from the Marrakech meeting a final version of the *Initial Report* was released on 28 July 2006 (found at <http://gns0.icann.org/drafts/newgtlds-issues-report-01-28jul06.htm>).

14. The Committee conducted another set of face-to-face consultations in Amsterdam between 29 and 31 August 2006 to further refine the Committee's findings and to develop a set of draft *Recommendations*. Prior to the Amsterdam meeting, a comprehensive public comment period was conducted. These public comments (found at <http://forum.icann.org/lists/gtld-council/msg00189.html>) were used as working materials for the Committee to consider, in addition to Constituency Statements, the previous set of Expert Papers and comprehensive commentary for a wide variety of observers to the meetings.

15. The Committee met with the GAC on two occasions during the course of the consultations – in Wellington and again in Marrakech – where progress on the Committee's work was shared with GAC members.

16. The most important aspects of the discussion were further clarification about:

- a. string differentiation (<http://forum.icann.org/lists/gtld-council/msg00190.html>);
- b. proposed requirements to provide an operational plan (<http://forum.icann.org/lists/gtld-council/msg00191.html>)
- c. treatment of application fees (<http://forum.icann.org/lists/gtld-council/msg00194.html>)
- d. allocation methods (<http://forum.icann.org/lists/gtld-council/msg00202.html>); and
- e. string checking (<http://forum.icann.org/lists/gtld-council/msg00203.html>)

17. Considering all the materials derived from the face-to-face meetings, discussions on email lists, expert materials and expert papers, on 14 September 2006 a set of draft *Recommendations* was released by the Committee for broader consideration (found at <http://gnso.icann.org/issues/new-gtlds/recom-summary-14sep06.htm>).

18. Between 14 September and 5 October 2006 email discussion took place that improved and clarified the language of the *Recommendations* and ensured that Constituencies had sufficient time to rework their recommendations where necessary.

19. On 5 October 2006, the Committee conducted a two hour teleconference to discuss the draft *Recommendations* (the MP3 recording can be found at <http://forum.icann.org/lists/gtld-council/msg00224.html>). The purpose of the meeting was to confirm that the *Recommendations* reflected the intentions of the Committee and to conduct further work on refining elements of the

*Recommendations*, particularly with respect to the selection criteria and allocation methods to resolve contention between string applications.

20. On 11 October 2006, the GNSO Committee Chairman and GNSO Chair, Dr Bruce Tonkin, sent formal correspondence to the Chair of the Governmental Advisory Committee and the Chair of GAC Working Group I, requesting the GAC's assistance with the public policy impacts of the introduction of new TLDs (found at <http://gns0.icann.org/mailling-lists/archives/council/msg02891.html>).
21. Based on the substantive nature of the Committee's email traffic on the draft *Recommendations*, a further update was released to the Committee on 18 October 2006 (found at <http://forum.icann.org/lists/gtld-council/msg00234.html>) for consideration whilst the drafting of the *Final Report* takes place.



## ANNEX ONE – PARTICIPATION TABLE

Legend:

a = absent

aa = absent apologies

na = not available – one constituency member funded or other conflict

rp = remote participation

NEW TLDs COMMITTEE MEETINGS										
NAME	24 & 25 Feb 06	25 Mar 06	26 Mar 06	Brussels			TC	Amsterdam		
	Washington DC	Wellington, NZ	Wellington, NZ	11 May 06	12 May 06	13 May 06	15 Jun 06	29 Aug 06	30 Aug 06	31 Aug 06
<b>CBUC</b>										
Marilyn Cade	x	x	x	x	x	x	aa	x	x	x
Philip Shepherd	a	x	x	x	x	x		x	x	x
Alistair Dixon	rp	x		rp	rp		x	na	rp	na
Grant Forsyth	rp	x								
<b>ISPC</b>										
Tony Holmes	rp	x	x	na	na	na	aa	x	x	x
Tony Harris	a	x	x	x	x	x	x	na	na	na
Greg Ruth	rp	x		na	na	na	x	rp	rp	
Mark McFadden	x									

Author: ICANN – Liz Williams

GNSO PDP-Dec05

Introduction of new TLDs – Draft Final Report

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Maggie Mansourkia	x										
<b>IPC</b>											
Lucy Nichols	x	a		x	x	x	aa	na	na	na	na
Ute Decker	a	a		x	x	x	aa	x	x	x	x
Kiyoshi Tsuru	x	x	x	na	na	na	a	na	na	na	na
Steve Metalitz	x										
<b>NCUC</b>											
Robin Gross	na	x	x	na	na	na	x	na	na	na	na
Mawaki Chango	x	a		x	x	x	a	x	x	x	x
Norbert Klein	na	x	x	na	na	na	a	na	na	na	na
<b>Registrars</b>											
Bruce Tonkin	x	x	x	x	x	x	x	x	x	x	x
Ross Rader	x	x	x	na	na	na	a	na	na	na	na
Tom Keller	na	a		na	na	na	a	x	x	x	
<b>Registry</b>											
Cary Karp	na	x	x	na	na	na	x	na	na	na	x
Ken Stubbs	x	x	x	x	x	x	x	x	x	x	x
June Seo		x	x	na	na	na	a				rp
<b>Nominating Committee</b>											
Avri Doria	rp	x	x	x	x	x	x	x	x	x	x
Sophia Bekele	x	x	x	a	a	a		a	a	a	a
Maureen Cubberley	rp	x	x	na	na	na		rp	rp	rp	rp
<b>ALAC</b>											

Bret Fausett	rp	x		rp	rp	rp		x	x	x
<b>GAC</b>										
Suzanne Sene	x									
<b>Observers</b>										
Marcus Faure								x	x	x
Chuck Gomes	x	x	x	x	x	x	x	x	x	x
Werner Staub		x	x	x	x	x	x	x	x	x
Ray Fassett	x	x	x	x	x	x		x	x	x
Elmar Knipp								x	x	x
David Maher	x	x	x							
Kristina Rosette	x									
Matthew Embrescia		x	x							
Danny Younger	x									
Dirk Kirschenowski	rp	x	x	x	x	x				
Alexander Schubert		x	x	x	x	x				
Jon Nevett		x	x	x	x	x				
Philip Grabensee				x	x	x				
M. M-Schönherr				x	x	x				
Becky Burr		x	x							
Keith Drazak	x	x	x							
Sebastien Bachelot		x	x							
<b>Staff</b>										
Liz Williams	x	x	x	x	x	x	x	x	x	x
Glen de Saint Gery	x	x	x	x	x	x	x	x	x	x
Dan Halloran		x	x					x	x	x
Kurt Pritz	x			x	x	x		x	x	x

Author: ICANN – Liz Williams

GNSO PDP-Dec05

Introduction of new TLDs – Draft Final Report

This is a working document and has no official status.



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Paltridge, Sam and Masayuki Matsui, *Generic Top-level Domain Names: Market Development and Allocation Issues*, Working Party on Telecommunications and Information Services Policies. Paris: 2004.

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VeriSign, *The Domain Name Industry Brief*, Volume 2, Issue 2, May 2005. On line version at <http://www.verisign.com/stellent/groups/public/documents/newsletter/030725.pdf>

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#### ICANN Links

For a full listing of all inputs including Constituency Statements, Public Comment archives and Expert Papers, <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>.

GNSO gTLDs Committee Final Report on New gTLDs, May- June 2003  
9 May, v4:  
<http://www.dnso.org/dnso/notes/20030509.gTLDs-committee-conclusions-v4.html>

21 May, v5:  
<http://www.dnso.org/dnso/notes/20030521.gTLDs-committee-conclusions-v5.html>

02 Jun, v6:  
<http://www.dnso.org/dnso/notes/20030602.gTLDs-committee-conclusions-v6.html>

12 Jun, v7:  
<http://www.dnso.org/dnso/notes/20030612.gTLDs-committee-conclusions-v7-1.html>

#### IANA Listing of all TLDs

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<http://data.iana.org/TLD/tlds-alpha-by-domain.txt>.

List of Registry Agreements <http://www.icann.ORG/registries/agreements.htm>

**EXHIBIT JJN-37**

Draft Final Report - Introduction of New Generic Top-Level Domains

Last Updated:04 September 2009

Date:

13 February 2007

name="\_Toc118169792">name="\_Toc118102443">name="\_Toc118093959">name="\_Toc118087504">GNSO  
new TLDs  
Committee

Draft Final Report

Introduction of New Generic Top-Level Domains

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## name="\_Toc25123613">EXECUTIVE SUMMARY

The Executive Summary sets out, in a high-level form, the principles, policies and implementation guidelines that the GNSO Council's Committee on the introduction of new top level domains has developed through the policy development process.

### Principles:

- a) That new generic top-level domains (gTLDs) should be introduced in an orderly, timely and predictable way.
- b) That some new generic top-level domains will be internationalised domain names (IDNs).
- c) That the principal objectives of the introduction of new top-level domains are to permit market mechanisms to support useful online identities that permeate international markets as well as to support competition, innovation and consumer choice.
- d) That a set of technical criteria for a new gTLD registry applicant be used to minimise the risk of harming the operational stability, security and global interoperability of the Internet.  
style='mso-special-character:line-break'>
- e) That a set of business capability criteria for a new gTLD registry applicant be used to provide an assurance that an applicant has the capability to meet its business ambitions.

Term of Reference One: Policy Recommendation:

Term of Reference 1: Whether to introduce new top level domains

Additional new generic top-level domains should be introduced and work should proceed to enable the introduction of new generic top-level domains, taking into account the recommendations found in the following sections

Term of Reference Two: Selection

Criteria - String Criteria

- i)
  - Strings
  - should not be confusingly similar to an existing top level domain
- ii)
  - Strings
  - should not infringe the legal rights of others
- iii)
  - Strings
  - should not cause any technical instability
- iv)
  - Strings
  - should not be a Reserved Wordstyle='mso-footnote-id:ftn1' href="#\_ftn1" name="\_ftnref1" title="">[1]
- v)
  - Strings
  - should not be contrary to public policy (as set out in advice from the Governmental Advisory Committee)

TOR 2: Selection Criteria -

Applicant Criteria

- vi)
  - Applicants
  - should be able to demonstrate their technical capability
- vii)
  - Applicants
  - should be able to demonstrate their financial and operational capability

TOR 2: Selection Criteria - Process Conditions

- viii) There will be a clear and pre-published process using objective and measurable criteria
- ix)
  - There
  - will be a base contract provided to applicants at the beginning of the process
- x)
  - Staff

will be used to make preliminary determinations about applications as part of a process which includes the use of expert panels to make decisions

xi)

Dispute

resolution and challenge processes will be established prior to the start of the process

#### Term of Reference Three: Allocation Methods

i)

Applications

will be assessed in rounds

ii)

Applications

for strings will be published after the closing date

iii)

If

there is contention for strings

(1)

Applicants

may resolve contention between themselves within a pre-established timeframe

(2)

If

there is no mutual agreement, a process will be put in place to enable efficient resolution of contention

(3)

The

ICANN Board may be used to make a final decision, using advice from staff and expert panels

#### Term of Reference Four: Policies for Contractual Conditions

i.

A

base contract will be provided as part of the Request For Proposal

ii.

The

initial term should be a commercially reasonable length

iii.

There

should be renewal expectancy

iv.

A

clear compliance and sanctions process should be set out in the base contract which could lead to contract termination

v.

Registries

will be required to apply existing Consensus Policies<sup>[2]</sup> and commit to adopting new Consensus Policies as they are developed

vi.

If

an applicant offers an IDN service, then ICANN's IDN guidelines must be followed

vii.

Registries

will be required to use ICANN accredited registrars

Implementation guidelines:

i)

There

will be a cost-recovery based application fee and application fees may differ for applicants

ii)

First

come first served within the round for processing order only between rounds and for an ongoing process if applicable

iii)

Applications

will be time and date stamped

iv)

The

application submission date will be at least four months after the issue of the Request for Proposal

v)

ICANN

will promote the opening of the application round

vi)

The

application round will close at least thirty days after the start date

vii)

An applicant granted a TLD string must use it within an appropriate timeframe.

viii) The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place

ix)

ICANN

should take a consistent approach to the establishment of registry fees

x)

The

use of personal data is limited to the purpose for which it is collected

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**name="\_Toc33183275">INTRODUCTION**

- 1) This is an updated draft style='mso-bidi-font-style:normal'>Final Report from the GNSO Council's Committee on the introduction of new top level domains. This version incorporates commentary from the GNSO's public forum on new top level domains held at the ICANN Sao Paulo meeting[3]. The meeting included a further phase in the ongoing consultations with ICANN's Governmental Advisory Committee on public policy principles for new top level domains style='mso-footnote-id:ftn4' href="#\_ftn4" name="\_ftnref4" title="">[4].
- 2) The 14 November 2006 draft style='mso-bidi-font-style:normal'>Final Report was released in conjunction with the *ICANN Staff Discussion Points* style='mso-footnote-id:ftn5' href="#\_ftn5" name="\_ftnref5" title="">[5] document that set out a wide range of further questions and commentary on the Committee's draft recommendations. The consultations and negotiations around the impact of the issues raised by ICANN staff have been incorporated into an intensive and ongoing implementation process and are manifest here in an updated set of recommendations which take account of the Committee's response to the staff input.
- 3) Additional comments were received on the 14 November 2006 draft Constituencies and observers which are referenced below and which have been incorporated, where possible, into this draft. style='mso-footnote-id:ftn6' href="#\_ftn6" name="\_ftnref6" title="">[6]
- 4) The major changes captured in this version of the *Report* are to re-emphasise the Committee's key principles that reflect ICANN's Mission and Core Values; clarification of the Committee's draft policy recommendations and the further explanation of the Committee's implementation guidelines which are designed to assist ICANN staff to implement the policy recommendations in a transparent and cohesive manner.

- 5) The *Report* sets out the key findings from a multi-phase, multi-stakeholder policy development process that has taken place during 2006 and which will continue through 2007. The Committee have been guided by the GNSO's policy development process requirements which are part of ICANN's ByLaws<sup>[7]</sup>.  

The Committee have been guided by the GNSO's policy development process requirements which are part of ICANN's ByLaws<sup>[7]</sup>.
- 6) In each of the sections below the Committee's recommendations are discussed in more detail with an explanation of the rationale for the decisions. The recommendations have been the subject of numerous public comment periods and intensive discussion across a range of stakeholders including ICANN's GNSO Constituencies, ICANN Supporting Organisations and Advisory Committees and members of the broader Internet-using public that is interested in ICANN's work<sup>[8]</sup>. In particular, detailed work has been conducted through the Internationalised Domain Names Working Group (IDN-WG)<sup>[9]</sup> and the Reserved Names Working Group (RN-WG)<sup>[10]</sup> to comprehensively examine important elements of new TLDs. A working group to examine the protection of the rights of others (PRO-WG) is being formed with a draft statement of work yet to be implemented<sup>[11]</sup>. Each of these additional groups are due to complete their work prior to ICANN's March 2007 meeting in Portugal.
- 7) The GNSO Committee has conducted four separate face-to-face consultations, in Washington DC, Wellington, Brussels and Amsterdam, to discuss each of the Terms of Reference. The final face-to-face meeting of the Committee is due to take place on 22 and 23 February 2007 in Los Angeles. This meeting will confirm the draft policy recommendations, articulate proposed implementation plans from ICANN operational and legal staff and finalise the next steps of the policy development process through June 2007.
- 8) In addressing the Terms of Reference, very close attention has been paid to mapping the discussion and the resulting recommendations to ICANN's Bylaws, Mission and Core Values. A full list of all the Constituency Statements, copies of the responses to Calls for Expert Papers and the Public Comment archives can be found in the GNSO's section of the ICANN website at <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>.
- 9) This *Report* reflects another stage in the ICANN's progress towards introducing new top-level domains. The history of the introduction of new TLDs, most notably during 2000 and then again in 2003-2004, is found on ICANN's background information section on the top-level domains (<http://www.icann.org/topics/gtld-strategy-areaa.html>).

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## PRINCIPLES

The following principles have guided the work of the GNSO Committee on the introduction of new top-level domains in accordance with the Terms of Reference set by the GNSO, with reference to ICANN's Mission and Core Values.

- a) That new generic top-level domains (gTLDs) should be introduced in an orderly, timely and predictable way.
  - b) That some new generic top-level domains will be internationalised domain names (IDNs).
  - c) That the principal objectives of the introduction of new top-level domains are to permit market mechanisms to support useful online identities that permeate international markets as well as to support competition, innovation and consumer choice.
  - d) That a set of technical criteria for a new gTLD registry applicant be used to minimise the risk of harming the operational stability, security and global interoperability of the Internet.
- style='mso-special-character:line-break'>
- e) That a set of business capability criteria for a new gTLD registry applicant be used to provide an assurance that an applicant has the capability to meet its business ambitions.

name="\_Toc25123614">**TERM OF REFERENCE ONE: DISCUSSION**

name="\_Toc25129554">name="\_Toc25122984">name="\_Toc22794192">Whether to introduce new top-level domains

name="\_Toc25123538">**Additional new generic top-level domains should be introduced and work should proceed to enable the introduction of new generic top-level domains, taking into account the recommendations found in the following sections.**

1. This section sets out the way in which the Committee arrived at their Recommendation to proceed with the introduction new top-level domains.

2. ICANN's policy development process is a multi-stage process that includes the production of an *Issues Report* (found at <http://gnso.icann.org/issues/new-gtlds/gnso-issues-rpt-gtlds-05dec05.pdf>). The *Issues Report* included comprehensive information about the main documents and decisions on new top-level domains since the 2000 round of new top-level domains which included, for example, .biz, .info, and the 2004 round of sponsored top-level domains which included, for example, .cat and .asia. In addition, the process for the re-bids of the .net and .org agreements was used to inform the *Report*.
3. A full compilation of all the materials the Committee used is found in the Reference Materials section at the end of the document. In particular, the Committee used the *New TLD Evaluation Process Planning Task Force*. The Report (<http://www.icann.org/committees/ntepptf/final-report-31jul02.htm>) described four aspects to evaluate including technical, business, legal and process that have, subsequently, informed the development of all the Recommendations within the *Report*.
4. In its request to the ICANN staff to produce an *Issues Report*, the Committee also made a request to produce a background report on internationalised domain names (IDNs). This work is now reflected in the progress of the IDN-WG in its discussions on internationalised domain names in the context of the introduction of new top-level domains ([http://gnso.icann.org/issues/idn-tlds/idn\\_tor\\_draft-12oct06.htm](http://gnso.icann.org/issues/idn-tlds/idn_tor_draft-12oct06.htm)). The broad body of work on internationalised domain names taking place within, for example, the President's Committee on IDNs (<http://www.icann.org/committees/idnpac/>), the IETF (<http://www.ietf.org/>) and other technical organisations has been taken into account when developing the *Recommendations* contained here. A joint ccNSO and GAC IDN Working Group<sup>[12]</sup> has been formed and a GAC IDN Working Group is also examining IDN issues as they relate to governments<sup>[13]</sup>. The ICANN Board, at the Sao Paulo meeting, urged the various working groups to continue their efforts and to collaborate as closely as possible<sup>[14]</sup>.
5. The outcomes of the February 2006 meeting in Washington DC were the key determinants of the recommendation to proceed with establishing a permanent policy for and method of accepting applications for new TLDs.
6. There were some strong themes to support a decision to enable the introduction of new TLDs. These included the facilitation of a

competitive environment for registry services; a "public choice" benefit for end users and the potential for expansion of innovative Internet use in a wide variety of markets that have may have been underserved in the past. A summary of the discussion on whether to introduce new top-level domains can be found at <http://forum.icann.org/lists/gtld-council/msg00026.html>. In addition, the respondents to the *Call for Papers* set out a variety of arguments to support the introduction of new TLDs.

7. After a day of detailed discussions and presentations from eight external stakeholders and in considering Constituency Statements and Public Comments, there was rough consensus that the Committee should proceed with consideration of the other three Terms of Reference[\[15\]](#).
8. At the 31 March 2006 ICANN Board meeting in Wellington, the Board made clear its intention to proceed with the introduction of new top-level domains[\[16\]](#). The Board reaffirmed its commitment to introducing new top-level domain registries at its 30 June 2006 meeting in Marrakech[\[17\]](#).
9. The general principle underpinning the wide ranging discussions was that, whatever consensus policy was developed, it must be consistent with ICANN's limited technical co-ordination mission and align with ICANN's Mission and Core Values[\[18\]](#).

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**name="\_Toc25123617">TERM  
OF REFERENCE TWO: DISCUSSION  
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1. This section sets the results of the discussion about the draft policy recommendations for selection criteria for new top level domains[\[19\]](#). There are three main elements of the selection criteria including "string" criteria, "applicant" criteria and "process" criteria. The following sections simplify the policy recommendations and shift some previous recommendations to more appropriate sections such as contractual conditions or implementation guidelines. The recommendations have been re-numbered to reflect substantial changes to the ordering and positioning of the previous set of draft recommendations.
2. Selection Criteria - "Strings":

i.  
Strings  
should not be confusingly similar to an existing top level domain

ii.  
Strings  
should not infringe the legal rights of others

iii.  
Strings  
should not cause technical instability

iv.  
Strings  
should not be a reserved word

v.  
Strings  
should not be contrary to public policy principles (as set out in the  
Governmental Advisory Committee's draft set of principles)

3. Selection Criteria - "Applicants"

i.  
Applicants  
should be able to demonstrate their technical capability

ii.  
Applicants  
should be able to demonstrate their financial and operational capability

4. Selection Criteria - "Process"

i.  
There  
will be a clear and pre-published process using objective and measurable  
criteria

ii.  
There  
will be a base contract provided to applicants at the beginning of the process

iii.  
Staff

will be used to make preliminary determinations about applications as part of a process which includes the use of expert panels

iv.

Dispute

resolution and challenge processes will be established prior to the start of the process

5. The Committee decided that the "process"

criteria for introducing new top-level domains would follow a pre-published application system including the levying of an application fee to recover the costs of the application process. This is consistent with ICANN's approach to the introduction of new TLDs in the previous 2000 and 2004 round for new top level domains.

6.

The

Committee decided that application fees should be set at the start of the process and application materials would be made available prior to any application cycle. The Committee agreed that the cost to evaluate individual applications may differ depending on the stages of the application evaluation process that the applicant reached. Therefore, different fees may be levied depending on what stage in the process the application reaches. This approach is explained in more detail in the implementation guidelines and in the ICANN staff-developed draft implementation plan which addressed the Committee's proposed recommendations. This plan is under ongoing development by an internal team including operational, legal, policy and technical staff. It is proposed to present a high level implementation plan to the Committee at the Los Angeles meetings to enable Committee members to see, in a practical form, how the *ICANN Staff Discussion Points* document, the input from the Sao Paulo meeting and the ongoing internal implementation planning have addressed the Committee's policy recommendations and broader guidance.

7.

The Committee agreed that the technical requirements for applicants would include compliance with a minimum set of technical standards and that this requirement would be part of the new registry operator's contractual conditions included in the proposed base contract. The more detailed discussion about technical requirements has been moved to the contractual conditions section.

8.

The Committee engaged in detailed discussion of the string requirements which have now been simplified, after reference to the *Staff Discussion Points* and to external experts who have provided their input into the process. ICANN would, to implement the

policy, develop

an implementation plan that included staff being able to make preliminary determinations on whether the application complies with the string requirements and that ICANN may engage appropriate expert advice in order to make a determinations about string contention.

9.

It was

clear from Committee discussions and from staff input that ICANN would continue to conduct public comment processes including input from the full range of ICANN Advisory Committees.

10. The following sections deal specifically with

"string" criteria and include the results of intensive discussion about what kinds of string criteria were appropriate, practical to implement and which reasonably balanced divergent Constituency interests. For example, the NCUC argued in its December

2006 comments on the 14 November 2006 draft that the "proposal is [also] fundamentally flawed in that it falsely assumes there is a [sic] agreed-upon global standard of morality, religion, or expression that can be imposed on the entire world through ICANN policy. The draft recommendations would be practically impossible to enforce due to this fundamental...premise in the proposed policy."

After detailed discussion about the intent of the recommendation, study of the draft GAC public policy principles and the commitment to using already existing bodies of well-established international law, ICANN staff have proposed an implementation process which addresses and balances the views of a wide range of participants.

11. The Committee agreed that strings should not be

visually confusingly similar to an existing TLD string and that the string did not infringe the legal rights of others, as set out in recognised international law. This proposal is consistent with the current requirements of Registered Name Holders in the existing gTLD Registrar Accreditation Agreement (see Clause 3.7.7.9).

12. The concept of "confusingly similar"

is used to mean that there is a likelihood of confusion on the part of the relevant public. The prospect of IDN new TLD applications makes this criterion vital.

There is broad agreement in international and national law the concept of "confusingly similar". In international trade mark law, confusion may be visual, phonetic or conceptual but the recommendation here is limited to visual confusion.

13. In broader international law, the

concept of creating confusion is contained in the 1883 Paris Convention and says "to create confusion by any means whatever" {Article 10bis (3) (1)} and, further, being "liable to mislead the public" {Article 10bis (3) (3)}. The treatment of confusingly similar is also contained in European Union law and is structured as follows -- "because of its identity with or

similarity

to...there exists a likelihood of confusion on the part of the public...; the likelihood of confusion includes the likelihood of association..." {Article 4 (1) (b) of the 1988 EU Trade Mark directive 89/104/EEC}. Article 8 (1) (b) of the 1993 European Union Trade Mark regulation 40/94 is also relevant.

14. In the United States, existing trade

mark law states that "...to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive..." which is contained in Section 1051 (3) (d) of the US Trademark Act 2005 (found at <http://www.bitlaw.com/source/15usc/1051.html>)

15. In Australia, the Australian Trade

Marks Act 1995 Section 119 says that "...For the purposes of this Act, a trade mark is taken to be deceptively similar to another trade mark if it so nearly resembles that other trade mark that it is likely to deceive or cause confusion" (found at [http://www.ipaustralia.gov.au/resources/legislation\\_index.shtml](http://www.ipaustralia.gov.au/resources/legislation_index.shtml))

16. The European Union Trade Mark Office

provides guidance on how to interpret confusion. "...*confusion may be visual, phonetic or conceptual. A mere aural similarity may create a likelihood of confusion. A mere visual similarity may create a likelihood of confusion. Confusion is based on the fact that the relevant public does not tend to analyse a word in detail but pays more attention to the distinctive and dominant components. Similarities are more significant than dissimilarities. The visual comparison is based on an analysis of the number and sequence of the letters, the number of words and the structure of the signs. Further particularities may be of relevance, such as the existence of special letters or accents that may be perceived as an indication of a specific language. For words, the visual comparison coincides with the phonetic comparison unless in the relevant language the word is not pronounced as it is written. It should be assumed that the relevant public is either unfamiliar with that foreign language, or even if it understands the meaning in that foreign language, will still tend to pronounce it in accordance with the phonetic rules of their native language. The length of a name may influence the effect of differences. The shorter a name, the more easily the public is able to perceive all its single elements. Thus, small differences may frequently lead in short words to a different overall impression. In contrast, the public is less aware of differences between long names. The overall phonetic impression is particularly influenced by the number and sequence of syllables.*" (found at <http://oami.europa.eu/en/mark/marque/direc.htm>)

17. An extract from the United Kingdom's Trade

Mark Office's Examiner's Guidance Manual is useful in explaining further the Committee's approach to developing its Recommendation. *"For likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average consumer. Likelihood of association is not an alternative to likelihood of confusion, "but serves to define its scope". Mere association, in the sense that the later mark brings the earlier mark to mind is insufficient to find a likelihood of confusion, unless the average consumer, in bringing the earlier mark to mind, is led to expect the goods or services of both marks to be under the control of one single trade source. "The risk that the public might believe that the goods/services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion..."*. (found at <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)

18. The IPC, in its 20 December 2006 additional

comments, "believes there must be some mechanism to challenge to eligibility for consideration of strings that are confusingly similar to trademarks". The proposed implementation plan deals with a comprehensive range of potentially controversial (for whatever reason) string applications which balances the need for reasonable protection of existing legal rights and the capacity to innovate with new uses for top level domains that may be attractive to a wide range of users.

19. It was agreed by the Committee that the string should not cause any technical issues that threatened the stability and security of the Internet. As the policy development process proceeds, further detailed technical assistance will be sought from both ICANN expert committees and advisors.

20. There was detailed discussion about a general category of potential strings which may have public policy impacts of interest to national governments. In response to correspondence from the GNSO Council Chair, the Governmental Advisory Committee<sup>[20]</sup> have responded to a request to provide guidance on public policy issues. The 17 October 2006 draft is found in full at Annex Three. It is expected that these principles will be finalised at the ICANN meeting in March 2007. After those guidelines are formalised, the ICANN staff proposed implementation plan may be modified to take into account ways to address the public policy concerns of governments in relation to the introduction of new top level domains.

21. The

Committee discussed proposed text to address the concerns of governments that was based on existing international law with respect to strings that may be contrary to public policy or accepted principles of morality or be of such a nature to deceive the public.

22. The Committee spent considerable time considering the public policy aspects of new top-level domains<sup>[21]</sup>. In particular, concerns about "public policy and morality" were raised. This phrasing is consistent with international laws including Article 3 (1) (f) of the 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regulation 40/94. In addition, the phrasing "contrary to morality or public order and in particular of such a nature as to deceive the public" comes from Article 6quinques (B)(3) of the 1883 Paris Convention. The reference to the Paris Convention remains relevant to domain names even though, when it was drafted, domain names were completely unheard of.
23. The concept of "morality" is captured in Article 19 United Nations Convention on Human Rights (<http://www.unhchr.ch/udhr/lang/eng.htm>) says "... Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 29 continues by saying that "...In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".
24. The EU Trade Mark Office's Examiner's guidelines provides assistance on how to interpret morality and deceit. "...Contrary to morality or public order. Words or images which are offensive, such as swear words or racially derogatory images, or which are blasphemous are not acceptable. There is a dividing line between this and words which might be considered in poor taste. The latter do not offend against this provision." The further element is deception of the public which is treated in the following way. "...Deceive the public. To deceive the public, is for instance as to the nature, quality or geographical origin. For example, a word may give rise to a real expectation of a particular locality which is untrue." For more information, see Sections 8.7 and 8.8 at <http://oami.europa.eu/en/mark/marque/direc.htm>
25. The UK Trade Mark office provides similar guidance in its Examiner's Guidance Manual. "Marks which offend fall broadly into three types: those with criminal connotations, those with religious connotations and explicit/taboo signs. Marks offending public policy are likely to offend accepted principles of morality, e.g. illegal drug terminology, although the question of public policy may not arise against marks offending accepted principles of morality, for example, taboo swear words. If a mark is merely distasteful, an objection is unlikely to be justified, whereas if it would cause outrage or would be likely significantly to undermine religious, family

or social values, then an objection will be appropriate. Offence may be caused on matters of race, sex, religious belief or general matters of taste and decency. Care should be taken when words have a religious significance and which may provoke greater offence than mere distaste, or even outrage, if used to parody a religion or its values. Where a sign has a very sacred status to members of a religion, mere use may be enough to cause outrage." For more information, see <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)

26. Detailed discussion was conducted about application process dispute resolution process as part of the original string criteria discussion. This text has been moved to the implementation guidelines section found below.

27. In summary, the development of selection criteria for new top-level domains has been the subject of intense discussion throughout the Committee's work. This work has now been clarified and simplified and further guidance will be sought at the Los Angeles meetings on any outstanding questions from either the Committee or ICANN staff.

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**name="\_Toc25123630">TERM OF REFERENCE THREE: DISCUSSION**  
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#### 1. Allocation

methods for new top level domains have been the subject of detailed discussion within the Committee and with ICANN operational staff. The draft recommendations have been distilled into the following key areas, some of which require further clarification from the Committee:

i.  
Applications  
will be assessed in rounds, in the first instance

ii.  
Applications  
for strings will be published after the closing date

iii.  
If  
there is contention for strings

1. Applicants may resolve contention  
between themselves within a pre-established timeframe

2. If there is no mutual agreement, a process will be put in place to enable efficient resolution of contention
  3. The ICANN Board may be required make a final decision, using advice from staff and expert panels
2. The development of recommendations for allocation methods was conducted in the same way as that for selection criteria. The comprehensive discussion about allocation methods has taken place through analysis of the formal Constituency Statements; public comments and email discussions which were used to modify and clarify the language of the Recommendations.
  3. Comparative evaluations have been a consistent theme throughout the policy development process with some discussants suggesting that auctions were a more suitable method of resolving conflict between applicants with similar string ideas. On balance, a comparative evaluation system will be used to analyse all applications and, where there is string contention between applicants for the same string, a different process may be necessary.
  4. ICANN staff have received some detailed advice about the utility and practicality of using auctions to resolve string contention at particular points in the application process. The key features of auctions<sup>[22]</sup> are, properly designed, they are objective and stand up well to challenge; they are administratively efficient; they assign resources to the highest valued use and they generate revenue.
  5. The draft Recommendations recognize past experiences with comparative evaluations in the ICANN environment, particularly those relating to sponsored top-level domains where measures of "community" support needed to be determined. The evaluations, for example in the case of the .net and .org rebids and the introduction of new sTLDs like .jobs and .travel, show that the Internet-using community takes a keen interest in ICANN's decision making process. In addition, ICANN's Supporting Organisations and Advisory Committees outside the GNSO play a key role in determining the success of potential applications.
  6. Further discussion within the Committee is necessary to confirm its draft Recommendations and to ensure that the implementation plan includes clear instructions to applicants about how strong contention between them (if they are applying for the same string) can be resolved.

**name="\_Toc25123641">TERM OF REFERENCE FOUR: DISCUSSION**  
 style='mso-special-character:line-break'>

1. Policies for Contractual  
Conditions - Summary

i.

A

base contract will be provided as part of the Request For Proposal

ii.

The

initial term should be a commercially reasonable length

iii.

There

should be renewal expectancy

iv.

A

clear compliance and sanctions process should be set out in the base contract

v.

Registries

will be required to apply existing Consensus Policies<sup>[23]</sup> and commit to adopting new Consensus Policies as they are developed

vi.

If

an applicant offers an IDN service, then ICANN's IDN guidelines must be followed

vii.

Registries

will be required to use ICANN accredited Registrars

This section sets out the discussion

of the policies for contractual conditions for new top level domain registry operators.

The recommendations were developed

through the Brussels and Amsterdam face-to-face consultations. The Committee has focused on the key principles of consistency, openness and transparency. It was also determined that a scalable and predictable process is consistent with industry best practice standards for services procurement. The Committee

referred in particular to standards within the broadcasting, telecommunications and Internet services industries to examine how regulatory agencies in those environments conducted, for example, spectrum auctions, broadcasting licence distribution and media ownership frameworks.

The Committee found a number of

expert reports<sup>[24]</sup>

beneficial. In particular, the World

Bank report on mobile licensing conditions provides some guidance on best practice principles for considering broader market investment conditions. "...A major challenge facing regulators in

developed and developing countries alike is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions.

As much as possible, policy makers and regulators should strive to promote investors' confidence and give incentives for long-term investment. They can do this by favoring

the principle of 'renewal expectancy', but also by promoting regulatory certainty and predictability through a fair, transparent and participatory renewal process. For example, by

providing details for license renewal or reissue, clearly establishing what is the discretion offered to the licensing body, or ensuring sufficient lead-times and transitional arrangements in the event of non-renewal or changes in licensing conditions. Public

consultation procedures and guaranteeing the right to appeal regulatory decisions maximizes the prospects for a successful renewal process. As technological changes and convergence and

technologically neutral approaches gain importance, regulators and policy makers need to be ready to adapt and evolve licensing procedures and practices to the new environment."

The Recommendations which the

Committee have developed with respect to the introduction of new TLDs are consistent with the World Bank principles.

## IMPLEMENTATION GUIDELINES

1) At the Sao Paulo meeting, it became clear that some of the Committee's recommendations could more properly be termed "implementation guidelines" designed to assist ICANN staff with implementation of the formal policy recommendations.

2) These guidelines are consistent with ICANN's openness and transparency requirements<sup>[25]</sup>.

There  
will be a cost-recovery based application fee and application fees may differ  
for applicants

ii.  
First  
come first served within the round for processing order only between rounds and  
for an ongoing process if applicable

iii.  
Applications  
will be time and date stamped

iv.  
The  
application submission date will be at least four months after the issue of the  
Request for Proposal

v.  
ICANN  
will promote the opening of the application round

vi.  
The  
application round will close at least thirty days after the start date

vii.  
An  
applicant granted a TLD string must use it within an appropriate timeframe.

viii.  
The  
base contract should balance market certainty and flexibility for ICANN to  
accommodate a rapidly changing market place

ix.  
ICANN  
should take a consistent approach to the establishment of registry fees

x.  
The  
use of personal data is limited to the purpose for which it is collected

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name="\_Toc33183283">ANNEX ONE - CONSULTATION

1.

This section provides an overview of the progress of the policy development process and the documentation produced throughout the series of teleconferences and face-to-face consultations that have taken place during 2006. All of the meetings were open to observers and many different stakeholders attended the meetings taking an active part in the discussion. In addition, all meetings were open to remote participation by teleconference and through the use of the Shinkuro ([www.shinkuro.com](http://www.shinkuro.com)) file-sharing technology. A full table found at Annex One illustrates participation by GNSO Constituencies and other observers.

2.

The style='mso-bidi-font-style:normal'>Issues Report was released on 5 December 2005. The *Report* sets out an early collation of issues that the GNSO wished to take into account in developing the Terms of Reference for future rounds. For example, the selection criteria used in previous application rounds for new top-level domains were used to guide the development of Term of Reference Two in this PDP. An evaluation of the selection criteria and methods used in the re-bidding of the .org and .net registry contracts was also conducted. The *Issues Report* contained Staff Recommendations about potential terms of reference and, in the majority, those Recommendations were adopted by the GNSO Council. The *Report* is found at <http://gnso.icann.org/issues/new-gtlds/gnso-issues-rpt-gtlds-05dec05.pdf>.

3.

A Public Comment Period was launched on 6 December 2005 to solicit input from the ICANN community about the proposed Terms of Reference (found at <http://www.icann.org/announcements/announcement-06dec05.htm>). The Public Comment Period ran until 31 January 2006. For this PDP public comment periods have been used in different ways than in the past. In general, public comment calls have been far more targeted and highly structured to get responses on particular areas of concern to the Committee. This was a successful initiative enabling information to be collected in a consistent way that improved the quality of subsequent *Reports*. The archive of comments can be found at <http://forum.icann.org/lists/new-gtlds-pdp-comments/>.

4.

In addition to a Public Comment Period, a *Call for Expert Papers* was announced on 3 January 2006 (found at <http://icann.org/announcements/announcement->

03jan06.htm"><http://icann.org/announcements/announcement-03jan06.htm>). The request for input was advertised widely in the international press and yielded eleven responses from a diverse range of stakeholders.

The authors of the papers were invited to present their papers and participate in a question and answer session at the 23 - 25 February 2006 Washington meeting. A full listing of all the inputs, including the *Expert Papers*, can be found at [href="http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm">http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm](http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm).

5.

The ICANN Board has been regularly updated on the progress of and taken a keen interest in the work of the new TLDs Committee. For example, the Board meeting of 10 January 2006 shows discussion within the Board about its involvement in new TLDs policy development process (found at [href="http://www.icann.org/minutes/minutes-10jan06.htm">http://www.icann.org/minutes/minutes-10jan06.htm](http://www.icann.org/minutes/minutes-10jan06.htm))

6.

A draft Initial Report was released on 19 February 2006 (found at [href="http://icann.org/topics/gnso-initial-rpt-new-gtlds-19feb06.pdf">http://icann.org/topics/gnso-initial-rpt-new-gtlds-19feb06.pdf](http://icann.org/topics/gnso-initial-rpt-new-gtlds-19feb06.pdf)) and a request for public comments was announced at the same time that was open between 20 February 2006 and 13 March 2006. The archives for those comments are found at [href="http://forum.icann.org/lists/new-gtlds-pdp-initial-report/">http://forum.icann.org/lists/new-gtlds-pdp-initial-report/](http://forum.icann.org/lists/new-gtlds-pdp-initial-report/). The draft Initial Report was used to facilitate discussion at subsequent Committee meetings and to give some guide to the broader community about the Committee's progress in its early stages.

7.

The GNSO's new TLDs Committee held a three day meeting in Washington DC between 23 and 25 February 2006. The meeting notes can be found on the GNSO's Committee archive at (<http://forum.icann.org/lists/gtld-council/msg00030.html>). A central element of the discussion focused on re-visiting ICANN's Mission and Core Values to ensure that the deliberations on the Terms of Reference were tightly constrained. The substantive discussion over the three-day meeting also included discussion on whether to introduce new top-level domains ([href="http://forum.icann.org/lists/gtld-council/msg00027.html">http://forum.icann.org/lists/gtld-council/msg00027.html](http://forum.icann.org/lists/gtld-council/msg00027.html)) and potential selection criteria which could be used in a new round of top-level domain applications ([href="http://forum.icann.org/lists/gtld-council/msg00026.html">http://forum.icann.org/lists/gtld-council/msg00026.html](http://forum.icann.org/lists/gtld-council/msg00026.html)).

8.

Analysis of the lessons learned from previous TLD rounds was included in the broader discussions held in Washington DC ([href="http://forum.icann.org/lists/gtld-council/msg00030.html">http://forum.icann.org/lists/gtld-council/msg00030.html](http://forum.icann.org/lists/gtld-council/msg00030.html)). In addition to discussing general selection criteria, detailed discussion of technical

requirements also took place (<http://forum.icann.org/lists/gtld-council/msg00028.html>). Following the Washington meetings, it was clear that further information about technical criteria was necessary to inform the Committee's work. On 15 March 2006 a formal call was made for additional information on technical criteria (found at <http://gnso.icann.org/issues/new-gtlds/tech-criteria-15mar06.htm>). No responses were received to that specific call but, in the resulting recommendations, particular attention has been paid to addressing relevant technical standards across the full range of registry operations, including those that relate to Internationalised Domain Names.

9.

In response to the Committee's work and to discussions at the March 2006 Wellington meeting, the Board indicated its intention to facilitate the implementation of new top-level domains (found at <http://www.icann.org/minutes/minutes-31mar06.htm>.)

10.

The new TLDs

Committee met in Brussels between 11 and 13 May 2006 to discuss, in further detail, the work that had been undertaken on refining the selection criteria and allocation methods. In addition, a full day was spent on discussing policies for contractual conditions with a special presentation from ICANN's Deputy General Counsel. The Committee has archived, on 18 May 2006, records of the Brussels discussion and output from the meeting can be found at <http://forum.icann.org/lists/gtld-council/msg00133.html>

11.

At the Brussels

meeting, a revised work plan was devised (found at <http://forum.icann.org/lists/gtld-council/msg00130.html>) which include a high level commitment to producing an *Initial Report* in time for discussion at ICANN's June 2006 Marrakech meeting.

12.

A draft *Initial Report* was released on 15 June 2006 (found at <http://gnso.icann.org/issues/new-gtlds/issues-report-15jun06.pdf>) and further discussion took place on the Committee's mailing list prior to the Marrakech meeting.

13.

The ICANN Board

meeting of 30 June 2006 showed, again, the Board's interest in facilitating the policy development process on new top-level domains, particularly in encouraging ongoing discussions with the GAC. (found at <http://www.icann.org/minutes/resolutions-30jun06.htm>). After inputs

from the Marrakech meeting a final version of the *Initial Report* was released on 28 July 2006 (found at <http://gnso.icann.org/drafts/newgtlds-issues-report-01-28jul06.htm>).

14.

The Committee conducted another set of face-to-face consultations in Amsterdam between 29 and 31 August 2006 to further refine the Committee's findings and to develop a set of draft *Recommendations*. Prior to the Amsterdam meeting, a comprehensive public comment period was conducted. These public comments (found at <http://forum.icann.org/lists/gtld-council/msg00189.html>) were used as working materials for the Committee to consider, in addition to Constituency Statements, the previous set of Expert Papers and comprehensive commentary for a wide variety of observers to the meetings.

15.

The Committee met with the GAC on two occasions during the course of the consultations - in Wellington and again in Marrakech - where progress on the Committee's work was shared with GAC members.

16.

The most important aspects of the discussion were further clarification about:

differentiation (<http://forum.icann.org/lists/gtld-council/msg00190.html>);

requirements to provide an operational plan (<http://forum.icann.org/lists/gtld-council/msg00191.html>)

of application fees (<http://forum.icann.org/lists/gtld-council/msg00194.html>)

methods (<http://forum.icann.org/lists/gtld-council/msg00202.html>); and

checking

(<http://forum.icann.org/lists/gtld-council/msg00203.html>)

17.

Considering all the materials derived from the face-to-face meetings, discussions on email lists, expert materials and expert papers, on 14 September 2006 a set of draft *Recommendations* was released by the Committee for broader consideration (found at <http://gnso.icann.org/issues/new-gtlds/recom-summary-14sep06.htm>).

18.

Between 14

September and 5 October 2006 email discussion took place that improved and clarified the language of the *Recommendations* and ensured that Constituencies had sufficient time to rework their recommendations where necessary.

19.

On 5 October

2006, the Committee conducted a two hour teleconference to discuss the draft [Recommendations](http://forum.icann.org/lists/gtld-council/msg00224.html) (the MP3 recording can be found at <http://forum.icann.org/lists/gtld-council/msg00224.html>). The purpose of the meeting was to confirm that the *Recommendations* reflected the intentions of the Committee and to conduct further work on refining elements of the *Recommendations*, particularly with respect to the selection criteria and allocation methods to resolve contention between string applications.

20.

On 11 October

2006, the GNSO Committee Chairman and GNSO Chair, Dr Bruce Tonkin, sent formal correspondence to the Chair of the Governmental Advisory Committee and the Chair of GAC Working Group I, requesting the GAC's assistance with the public policy impacts of the introduction of new TLDs (found at <http://gnso.icann.org/mailing-lists/archives/council/msg02891.html>).

21.

Based on the

substantive nature of the Committee's email traffic on the draft [Recommendations](http://forum.icann.org/lists/gtld-council/msg00234.html), a further update was released to the Committee on 18 October 2006 (found at <http://forum.icann.org/lists/gtld-council/msg00234.html>) for consideration whilst the drafting of the Final Report takes place.

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**style='page-break-before:always;mso-break-type:section-break'>**

**name="\_Toc25129599">ANNEX TWO - PARTICIPATION TABLE**

UPDATE TO BE INSERTED

Legend:

a = absent

aa = absent apologies

na = not available - one constituency member funded or other conflict

rp = remote participation

style='width:100.0%;border-collapse:collapse;border:none;mso-border-alt:solid windowtext .5pt;mso-padding-alt:0pt 5.4pt 0pt 5.4pt'>

**NEW TLDs COMMITTEE MEETINGS**

**Brussels**

**TC**

**Amsterdam**

**TC**

**NAME**

24 & 25 Feb 06

Washington DC

25 Mar 06

Wellington, NZ

26 Mar 06

Wellington, NZ

11 May 06

12 May 06

13 May 06

15 Jun 06

29 Aug

06

30 Aug 06

31 Aug 06

5 Oct 06

**CBUC**

Marilyn Cade

x

x

x

x

x

x

aa

x

x

x

x

Philip Shepherd

a

x

x

x

x

x

x

x

x

x

Alistair Dixon

rp

x

rp

rp

x

na

rp

na

aa

Grant Forsyth

rp

x

**ISPC**

Tony Holmes

rp

x

x

na

na

na

aa

x

x

x

aa

Tony Harris

a

x

x

x

x

x

x

na

na

na

x

Greg Ruth

rp

x

na

na

na

x

rp

rp

aa

Mark McFadden

x

Maggie Mansourkia

x

**IPC**

Lucy Nichols

x

a

x

x

x

aa

na

na

na

aa

Ute Decker

a

a

x

x

x

aa

x

x

x

x

Kiyoshi Tsuru

x

x

x

na

na

na

a

na

na

na

Steve Metalitz

x

**NCUC**

Robin Gross

na

x

x

na

na

na

x

na

na

na

Mawaki Chango

x

a

x

x

x

a

x

x

x

a

Norbert Klein

na

x

x

na

na

na

a

na

na

na

aa

**Registrars**

Bruce Tonkin

x

x

x

x

x

x

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x

x

Ross Rader

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x

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na

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Tom Keller

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**Registry**

Cary Karp

na

x

x

na

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Ken Stubbs

x

x

x

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June Seo

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na

a

rp

**Nominating Committee**

Avri Doria

rp

x

x

x

x

x

x

x

x

x

x

Sophia Bekele

x

x

x

a

a

a

a

a

a

a

Maureen Cubberley

rp

x

x

na

na

na

rp

rp

rp

aa

**ALAC**

Bret Fausett

rp

x

rp

rp

rp

x

x

x

x

**GAC**

Suzanne Sene

x

**Observers**

Marcus Faure

x

x

x

Chuck Gomes

x

x

x

x

x

x

x

x

x

x

x

Werner Staub

x

x

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Ray Fassett

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x

Elmar Knipp

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x

x

David Maher

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x

Kristina Rosette

x

Matthew Embrescia

x

x

Danny Younger

x

Dirk Kirschenowski

rp

x

x

x

x

x

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Alexander Schubert

x

x

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x

x

X

Jon Nevett

x

x

x

x

x

Philip Grabensee

x

x

x

M. M-Schönherr

x

x

x

Becky Burr

x

x

Keith Drazak

x

x

x

Sebastien Bachelot

x

x

**Staff**

Liz Williams

x

x

x

x

x

x

x

x

x

x

x

Glen de Saint Gery

x

x

x

x

x

x

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Dan Halloran

x

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Kurt Pritz

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Donna Austin

x

Craig Schwartz

x

x

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x

Maria Farrell

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x

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x

Tina Dam

x

x

x

x

Denise Michel

x

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style='page-break-before:always'>

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href="http://www-

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---

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Reserved Word has a specific meaning in the ICANN context and includes, for example, the reserved word provisions in ICANN's existing registry contracts. See <http://www.icann.org/registries/agreements.htm>.

name="\_ftn2" title="">[2]

Consensus Policies has a particular meaning within the ICANN environment. Refer to <http://www.icann.org/general/consensus-policies.htm> for the full list of ICANN's Consensus Policies.

title="">[3]

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title="">[4]

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title="">[7] <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA>.

title="">[8] A

full list of the working materials of the new TLDs Committee can be found at [href="http://gnso.icann.org/issues/new-gtlds/"](http://gnso.icann.org/issues/new-gtlds/)><http://gnso.icann.org/issues/new-gtlds/>.

title="">[9]

The mailing list archive for the IDN-WG is found at [href="http://forum.icann.org/lists/gnso-idn-wg/"](http://forum.icann.org/lists/gnso-idn-wg/)><http://forum.icann.org/lists/gnso-idn-wg/>. A full set of resources which the WG is using is found at <http://gnso.icann.org/issues/idn-tlds/>.

name="\_ftn10" title="">[10]

The mailing list archive for the RN-WG is found at <http://forum.icann.org/lists/gnso-rn-wg/>

name="\_ftn11" title="">[11] <http://gnso.icann.org/mailling-lists/archives/council/msg03197.html>

name="\_ftn12" title="">[12] A

presentation by ccNSO representative Hiro Hotta was made at the Sao Paulo meeting (<http://gnso.icann.org/correspondence/hotta-idn-sp-07dec06.pdf>)

name="\_ftn13" title="">[13]

The GAC December 2006 Sao Paulo communiqué refers to the GAC's interest in IDNs (<http://gac.icann.org/web/communiques/gac26com.pdf>).

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ICANN Board resolution December 2006 ([http://www.icann.org/minutes/resolutions-08dec06.htm#\\_Toc27198296](http://www.icann.org/minutes/resolutions-08dec06.htm#_Toc27198296)).

name="\_ftn15" title="">[15] The online summary can be found at [href="http://forum.icann.org/lists/gtld-council/msg00027.html"](http://forum.icann.org/lists/gtld-council/msg00027.html)><http://forum.icann.org/lists/gtld-council/msg00027.html>.

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name="\_ftn17" title="">[17]

See Board resolution at found at [href="http://www.icann.org/minutes/resolutions-30jun06.htm"](http://www.icann.org/minutes/resolutions-30jun06.htm)><http://www.icann.org/minutes/resolutions-30jun06.htm>.

name="\_ftn18" title="">[18] (<http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#l>)

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name="\_ftn20" title="">[20]

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The GAC has provided a draft version of its proposed public policy principles relating to new top level domains.

style='mso-footnote-id:ftn22' href="#\_ftnref22" name="\_ftn22" title="">[22]

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Consensus Policies has a particular meaning within the ICANN environment. Refer to

href="http://www.icann.org/general/consensus-policies.htm"><http://www.icann.org/general/consensus-policies.htm>

for the full list of ICANN's Consensus Policies.

name="\_ftn24" title="">[24]

The full list of reports are found in the Reference section at the end of the document.

name="\_ftn25" title="">[25] Particularly with ICANN's initiatives

to improve its operations href="http://www.icann.org/announcements/announcement-16oct06.htm"><http://www.icann.org/announcements/announcement-16oct06.htm>.

**EXHIBIT JJN-38**

## OUTCOMES REPORT OF THE GNSO INTERNATIONALIZED DOMAIN NAMES WORKING GROUP (IDN WG)

Last Updated:02 April 2018

**Date:**

22 March 2007

**OUTCOMES REPORT OF THE GNSO INTERNATIONALIZED DOMAIN NAMES WORKING GROUP (IDN WG)**

<http://gns0.icann.org/issues/idn-tlds/>

**Wiki:** <http://idn.wat.ch>

**Working Group Chair:** Ram Mohan

**ICANN Staff:** Olof Nordling, Maria Farrell

### SUMMARY

This is the final version of the GNSO IDN Working Group Outcomes Report. This report provides a written summary of areas of broad agreement, support and discussions of the GNSO IDN-WG on issues for consideration of the GNSO Council regarding further GNSO policy development activities on IDN issues for the generic top level domain (gTLD) space.

The report concludes the work of the GNSO IDN WG on the Terms of Reference as specified by the GNSO Council.

1 Contents.. 3

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3 Background.. 6

4 Outcomes.. 7

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4.2 Areas of Support 11

4.3 Agreement and Support Matrix, by Topic. 17

5 GNSO IDN WG Membership.. 23

6 Working definitions.. 25

**Objective of the IDN-WG:** The GNSO IDN Working Group (IDN-WG) was chartered to address policy issues that may arise from the impending introduction of Internationalized Domain Names at the top level (IDN TLDs). Specifically, the IDN-WG was chartered to provide a report to the ICANN GNSO Council with a view to assessing further steps to take, including the possible need for the creation of a Policy Development Process (PDP) on IDN issues for the top-level.

**Methodology of the IDN-WG:** The IDN-WG conducted its deliberations in a variety of ways: face-to-face meetings, teleconferences (transcripts and MP3 available [here](#)), an e-mail discussion list and a [wiki](#).

The first IDN-WG meetings held in December 2006 in Sao Paulo brought up some fifteen issues for discussion. These were compiled in a draft issues list at: <http://gnso.icann.org/issues/idn-tlds/draft-idn-issue-list-22dec06.htm> . Following discussions during the first conference calls of the Working Group, the issues were regrouped into seven issue areas. The WG decided that its time and attention should be allocated in proportion to the relative priority of these issue areas. The IDN-WG made no qualitative decisions regarding the importance of each issue. The following issue areas were prioritized for discussion:

- Aspects on introduction of IDN gTLDs in relation to new non-IDN gTLDs
- IDN aspects on Geo-Political Details
- Aspects relating to existing gTLD strings and existing IDN SLDs
- Aspects relating to existing SLD Domain Name Holders
- Specific Techno-Policy Details relating to IDN gTLDs

The following topics were accorded a lower priority and were only discussed initially by the Working Group:

- Particular IDN aspects relating to Privacy & Whois Details
- IDN aspects on Legal Details

This report describes the outcomes of the discussions on issues brought up following the above steps. For the expression of views, the Working Group agreed on the following conventions:

- **Agreement** there is broad agreement within the Working Group (largely equivalent to rough consensus as used in the IETF)

- **Support** there is some gathering of positive opinion, but competing positions may exist and broad agreement has not been reached

- **Alternative view** a differing opinion that has been expressed, without garnering enough following within the WG to merit the notion of either Support or Agreement.

This report also provides some references to consultations with the GNSO Reserved Names Working Group, where IDN-related topics were discussed, and where the IDN-WG provided both liaison and expert advice.

The GNSO IDN Working Group was chartered at a meeting of the GNSO Council on 16 November, 2006, minutes at <http://gnso.icann.org/meetings/minutes-gnso-16nov06.html> , when the earlier proposed Terms of Reference, available at: [http://gnso.icann.org/issues/idn-tlds/idn\\_tor\\_draft-12oct06.htm](http://gnso.icann.org/issues/idn-tlds/idn_tor_draft-12oct06.htm), were refined to a Charter for the Working Group, available at [http://gnso.icann.org/issues/idn-tlds/idn\\_working\\_group-18nov06.htm](http://gnso.icann.org/issues/idn-tlds/idn_working_group-18nov06.htm)

The Working Group was tasked to provide a report to the GNSO Council and conclude its work by the ICANN meeting in Lisbon, Portugal on 26-30 March 2007. Ram Mohan of the GNSO Registry Constituency was elected Chair by the Working Group members. Following a face to face meeting held during the ICANN meeting in Sao Paulo in December, 2006, as well as a joint meeting with the ccNSO IDN WG at the same location, the Working Group was convened 14 times in conference calls. Initially, weekly paired conference calls were organized to accommodate members in different time zones. The paired calls were eventually replaced by single calls each week, with alternating times to facilitate participation from different time zones. The members of the Working Group are listed in section 5. Observers were also invited to attend and contribute to the discussions.

The Working Group reviewed the following four key documents, in line with the Terms of Reference:

- Draft Recommendations from the New gTLD PDP Committee
- Draft IDN Issues Report
- RFC 4690 of the IETF
- ICANN IDN Guidelines

Pertinent excerpts of these documents were compiled in a document for the WG, available at: [http://gnso.icann.org/issues/idn-tlds/idn\\_wg\\_readers\\_digest.pdf](http://gnso.icann.org/issues/idn-tlds/idn_wg_readers_digest.pdf)

The IDN-WG deliberated on the topics as outlined in Section 2. The outcomes of its discussions are detailed in this section. The IDN-WG suggests that the GNSO Council review all outcomes. Outcomes in Section 4.1 (Areas of Agreement) are especially pointed out for review. Outcomes that have Support, with or without Alternative Views, also provide the Council input for deliberations on the potential need for, feasibility of and scope of any future IDN focused Policy Development Process (PDP) or other future steps.

#### 4.1 Areas of Agreement

**Definition:**

**Agreement** there is broad agreement within the Working Group (largely equivalent to rough consensus as used in the IETF).

The IDN-WG did not use the word consensus since that term has a particular meaning as used by the GNSO Council.

The IDN-WG reached Agreement on the following areas:

#### **4.1.1 Avoidance of ASCII-Squatting:**

**Agreement** to avoid ASCII-squatting situations where applications for new non-IDN gTLD strings, if accepted for insertion in the root at an earlier stage than IDN gTLDs, could pre-empt later applications for IDN gTLDs.

E.g. a new non-IDN gTLD .caxap, if accepted, would prohibit the acceptance of a later application for an IDN gTLD .caxap (in Cyrillic script and meaning sugar in Russian).

#### **4.1.2. GAC Consultation on Geo-political Impact:**

**Agreement** that, within the process for new gTLD consideration, the process for determining whether a string has a geo-political impact is a challenge, and that GAC consultation may be necessary but may not provide comprehensive responses.

#### **4.1.3. Language Community Input for Evaluation of new IDN gTLD Strings:**

**Agreement** that a suitable process for consultation, including with relevant language communities, is needed when considering new IDN gTLD strings.

#### **4.1.4. One String per new IDN gTLD:**

**Agreement** that the approach of the New gTLD PDP with one string for each new IDN gTLD application is relevant, except in the rare cases when there is a need to cover script-specific character variants of an IDN gTLD string.

#### **4.1.5. Limit Variant Confusion and Collision:**

**Agreement** that measures must be taken to limit confusion and collisions due to variants (i.e. substitutable characters/symbols within a script/language) while reviewing and awarding new IDN gTLDs.

#### **4.1.6. Limit Confusingly Similar Strings:**

**Agreement** that measures be taken to ensure that an IDN gTLD string with variants (see 4.1.4 and 4.1.5 above) be treated in analogy with current practice for IDN SLD labels, i.e. strings that only differ from an IDN gTLD string by variants (see above) are not available for registration by others.

Note: This is equivalent in effect to the provisions against confusingly similar strings foreseen in the New gTLD recommendations.

#### **4.1.7. Priority Rights for new gTLD strings and new domain names:**

**4.1.7a. Agreement** that priority rights for new strings on the top-level do not derive from existing strings.

**4.1.7b. Agreement** that applications for IDN gTLDs may face challenges/objections, for instance based on claims of intellectual property rights (IPR).

**4.1.7c. Agreement** that priority rights for new domain names do not derive from existing domain name strings as such, but may, for instance, derive from established IPR.

#### **4.1.8. Suggested Approach towards Aliasing:**

**Agreement** to address aliasing as a policy issue, rather than in terms of any specific technical mode for implementation of such a feature.

#### **4.1.9. Single Script Adherence:**

**4.1.9a. Agreement** to not require single script adherence across all levels in an IDN gTLD. Single script adherence across all levels in an IDN gTLD is not a technical requirement, only a potential policy requirement, especially since it would be difficult to enforce uniformly beyond the second level.

Note: Single script adherence across levels is not a requirement in existing gTLDs. Second-level IDNs have been introduced in those gTLDs in accordance with ICANN Guidelines.

**4.1.9b. Agreement** that there should be single script adherence within a label at the levels where registries maintain control. Where script mixing occurs or is necessary across multiple levels, registries must implement clear procedures to prevent spoofing and visual confusion for users. New gTLD registries must conform to the ICANN IDN Guidelines, and must publish their language tables in the IANA Registry. Registries should be required to limit the number of scripts across labels.

**4.1.9c. Agreement** that new gTLDs should observe the following guidelines:

1. Mix-in of ASCII characters in other scripts should be allowed as a special case, when justified.
2. Where the accepted orthographic practice for a language requires script mixing, such mixing must be allowed.

Note: Only scripts that have Unicode support are available for gTLDs.

**4.1.9d. Agreement** that other considerations in limiting scripts are:

1. Official/significant languages in a country exist.
2. An IDN gTLD registry should limit the degree of script mixing and have a limit for the number of scripts allowed for its domain names. Such limits, with justifications, should be proposed by the IDN gTLD applicant and be evaluated for reasonableness.
3. In all IDN gTLD applications, the applicant should adequately document its consultations with local language authorities and/or communities. See also 4.1.3.
4. The way to define language communities is not in the purview of the IDN-WG, but CNDC and INFITT (representing Chinese and Tamil language communities, respectively) are some models to consider.
5. ICANN should consult with the relevant language communities if in doubt whether an IDN gTLD string is in compliance with relevant tables.

#### 4.1.10. Dispute Resolution for Domain Names in new IDN gTLDs:

**Agreement** that UDRP proceedings regarding IDN SLDs show no deficiencies to date and that a review of the current UDRP would not be a prerequisite for accepting IDN gTLD applications.

## 4.2 Areas of Support

### Definitions:

**Support** there is some gathering of positive opinion, but competing positions may exist and broad agreement has not been reached

**Alternative view** a differing opinion that has been expressed, without getting enough following within the WG to merit the notion of either Support or Agreement.

### 4.2.1

**Support** for a first application round open to both non-IDN gTLDs and IDN gTLDs, if possible.

### 4.2.2

**Support** for avoiding hostage situations in planning a new non-IDN gTLD application round; neither non-IDN gTLDs nor IDN gTLDs should be delayed due to the other.

### 4.2.3

**Support** for promoting public awareness of IDN gTLD application opportunities at an early stage.

### 4.2.4

**Support** for prioritizing languages/scripts for the IDN gTLD launch according to demand/need, possibly using a notion of distance to ASCII (for example, by giving priority to right-to-left scripts).

#### 4.2.5

**Support** for preferential treatment of applications for particular communities in need of IDN gTLDs, for example through lower entry barriers, while safeguarding adequate levels of service to the relevant communities.

**Alternative view**; prioritize according to number of potential users. **Alternative view**; resolve policy before developing priority criteria. **Alternative view**; follow the approach of the new gTLD Recommendations, i.e. no priority provisions.

#### 4.2.6

**Support** for resolving IDN policy issues before launch of application round.

**Alternative view**; prioritize launch of IDN gTLD over non-IDN gTLDs.

**Alternative view**; provide opportunities to reserve IDN gTLD strings in case the first application round can only address non-IDN gTLD applications fully.

Note: Whether there will be a timing issue or not depends on the progress of the new gTLD policy, including IDN policy aspects, as well as on the progress of the protocol revisions and technical tests regarding IDN at the top-level. They all need to have advanced sufficiently before a decision can be made to go ahead with IDN TLD deployment.

#### 4.2.7

**Support** for avoiding further entrenchment of the usage of keyword[1] solutions.

#### 4.2.8

**Support** for the view to consider input from local/regional pre-existing developments regarding IDN at the top-level, for example the experimental IDN systems supported by the Arab league and other countries, when considering introduction of new IDN gTLDs.

#### 4.2.9

**Support** for a countrys rights to define/reserve IDN strings for the country name.

**Alternative view**; to also accept a countrys responsibility/right to approve any IDN gTLD strings featuring its particular script, if unique for that country.

**Alternative view**; to also acknowledge a countrys right to influence the definitions/tables of its scripts/languages.

**Alternative view**; to require a countrys support for an IDN gTLD string in its script, in analogy with the considerations for geo-political names.

**Alternative view:** recognition that countries rights are limited to their respective jurisdictions.

Note: There are potential political issues in the use of scripts, as some countries/regions claim rights to the standards for their scripts. This has also been expressed as a need to prove the support of the respective community for accepting a TLD in its particular script.

#### 4.2.10

In reference to the development of a suitable process for consultation (See previous section on Agreement that a suitable process for consultation, including with relevant language communities, is needed when considering new IDN gTLD strings); **Support** for a suitably convened language committee, fairly representing the geographic distribution of the respective language community worldwide, to review the selection/adoption of an IDN gTLD string in that particular language.

#### 4.2.11

**Support** for developing policy of general applicability regarding geo-political aspects.

**Alternative view;** to develop a set of circumstance-dependent policies, with input from relevant language communities on a case by case basis.

#### 4.2.12

**Support** for review of migration/exemption possibilities for existing IDN SLDs when reducing the number of allowed code points in the IDN protocol revision, while weeding out non-script/non-language characters, if possible.

**Alternative view;** to afford latitude for gTLDs to set policy for IDN SLDs within the limits of desirable consistency.

Note: The IDN protocol revision with an inclusion-based approach that is more restrictive regarding allowed code points, may affect some of today's around 2 million IDN SLDs.

#### 4.2.13

**Support** for addressing the topic of potential specific provisions regarding applications for IDN top-level strings from legacy gTLDs.

#### 4.2.14

**Support** for treating existing gTLD registries equally in cases when they apply for IDN gTLD strings.

**Alternative view;** to consider preferential rules for existing sponsored gTLD registries in the above context.

#### 4.2.15

**Support** for deferring the question of particular treatment of sponsored gTLDs to the New gTLD Committee, while recognizing that sponsored gTLDs differ with regard to the geographical and language scope of their sponsoring organizations.

#### 4.2.16

**Support** for not offering new IDN gTLDs the option to have a single extra LDH label for aliasing purposes.

**Alternative view:** to offer such an option for new IDN gTLDs..

Note: Such an extra LDH label would be different from, and in addition to, the standard (punycode) A-label for the IDN gTLD.

#### 4.2.17

**Support** for measures to protect the rights of others, for example through sunrise periods.

#### 4.2.19

**Support** for the view that aliasing provides protection of and reduce confusion for existing domain name holders, while recognizing that there may also be disadvantages.

**Support** for the view that aliasing does not alleviate confusion and should be struck from a list of potential solutions.

Note: The same result for domain name holders as aliasing provides could be achieved by normal DNS means. Aliasing per se is not an IDN specific feature, even if aliasing has raised much interest in the IDN context.

#### 4.2.20

**Support** for enabling a choice for an IDN gTLD registry with a string that has variants (i.e. substitutable characters/symbols within a script/language) to use variants for aliasing purposes.

#### 4.2.21

**Support** for elimination of non-language characters, as foreseen in the IDN protocol revision.

**Alternative view:** to signal concerns about symbols that may be eliminated but would potentially be needed for human communications.

#### 4.2.22

**Support** for regarding confusingly similar as visually confusingly similar or typographically confusingly similar.

**Alternative view:** to give confusingly similar a wider interpretation, including phonetic similarity.

#### 4.2.23

**Support** for IDN considerations for extension of reserved names list, possibly by introducing a notion of reserved concepts (for example; the concept of example as expressed in other languages/scripts).

Note: This was part of the input from the IDN WG to the RN WG for its considerations.

#### 4.2.24

**Support** for recognizing a current practice to display the registrant in local script and at least one of the contacts in ASCII.

**Alternative view;** to prescribe that both local script and ASCII versions of Whois should be available.

**Alternative view;** to recognize that there may be further IDN aspects on Whois issue to investigate, including but not limited to the debate on open Whois access versus privacy concerns.

Note: There are multiple solutions already in use today for Whois regarding IDNs. There have not been many complaints on Whois for IDNs yet, but that may change with increased IDN use and improved IDN support in browsers and other software.

### 4.3 Agreement and Support Matrix, by Topic

#### 4.3.1 Aspects on introduction of IDN gTLDs in relation to new non-IDN gTLDs

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##### Agreement:

---

**Agreement** to avoid ASCII-squatting situations where applications for new non-IDN gTLD strings, if accepted for insertion in the root at an earlier stage than IDN gTLDs, could pre-empt later applications for IDN gTLDs. 4.1.1

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---

##### Support (alternative views may exist):

---

**Support** for a first application round open to both non-IDN gTLDs and IDN gTLDs, if possible. 4.2.1

---

**Support** for avoiding hostage situations in planning a new non-IDN gTLD application round; neither non-IDN gTLDs nor IDN gTLDs should be delayed due to the other. 4.2.2

---

**Support** for promoting public awareness of IDN gTLD application opportunities at an early stage. 4.2.3

---

**Support** for prioritizing languages/scripts for the IDN gTLD launch according to demand/need, possibly using a notion of distance to ASCII (for example, by giving priority to right-to-left scripts). 4.2.4

---

---

**Support** for preferential treatment of applications for particular communities in need of IDN gTLDs, for example through lower entry barriers, while safeguarding adequate levels of service to the relevant communities. 4.2.5

---

**Support** for resolving IDN policy issues before launch of application round. 4.2.6

---

**Support** for avoiding further entrenchment of the usage of keyword solutions. 4.2.7

#### 4.3.2 IDN aspects on Geo-Political Details

---

**Agreement:**

---

**Agreement** that, within the process for new gTLD consideration, the process for determining whether a string has a geo-political impact is a challenge, and that GAC consultation may be necessary but may not provide comprehensive responses. 4.1.2

---

**Agreement** that a suitable process for consultation, including with relevant language communities, is needed when considering new IDN gTLD strings. 4.1.3

---

**Support** (alternative views may exist):

---

**Support** for the view to consider input from local/regional pre-existing developments regarding IDN at the top-level, for example the experimental IDN systems supported by the Arab league and other countries, when considering introduction of new IDN gTLDs. 4.2.8

---

**Support** for a countrys rights to define/reserve IDN strings for the country name. 4.2.9

---

In reference to the development of a suitable process for consultation (See previous section on Agreement that a suitable process for consultation, including with relevant language communities, is needed when considering new IDN gTLD strings); **Support** for a suitably convened language committee, fairly representing the geographic distribution of the respective language community worldwide, to review the selection/adoption of an IDN gTLD string in that particular language. 4.2.10

---

**Support** for developing policy of general applicability regarding geo-political aspects. 4.2.11

#### 4.3.3 Aspects relating to existing gTLD strings and existing IDN SLDs

---

**Agreement:**

---

**Agreement** that the approach of the New gTLD PDP with one string for each new IDN gTLD application is relevant, except in the rare cases when there is a need to cover script-specific character variants of an IDN gTLD string. 4.1.4

---

**Agreement** that priority rights for new strings on the top-level do not derive from existing strings. 4.1.7a

---

**Agreement** that applications for IDN gTLDs may face challenges/objections, for instance based on claims of intellectual property rights (IPR). 4.1.7b

---

**Support** (alternative views may exist):

---

**Support** for review of migration/exemption possibilities for existing IDN SLDs when reducing the number of allowed code points in the IDN protocol revision, while weeding out non-script/non-language characters, if possible. 4.2.12

---

**Support** for addressing the topic of potential specific provisions regarding applications for IDN top-level strings from legacy gTLDs. 4.2.13

---

**Support** for treating existing gTLD registries equally in cases when they apply for IDN gTLD strings. 4.2.14

---

**Support** for deferring the question of particular treatment of sponsored gTLD to the New gTLD Committee, while recognizing that sponsored gTLDs differ with regard to the geographical and language scope of their sponsoring organizations. 4.2.15

---

**Support** for not offering new IDN gTLDs the option to have a single extra LDH label for aliasing purposes. 4.2.16

#### 4.3.4 Aspects relating to existing SLD Domain Name Holders

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**Agreement:**

---

**Agreement** that priority rights for new domain names do not derive from existing domain name strings as such, but may, for instance, derive from established IPR. 4.1.7c

---

**Agreement** to address aliasing as a policy issue, rather than in terms of any specific technical mode for implementation of such a feature. 4.1.8

---

**Support** (alternative views may exist):

---

**Support** for measures to protect the rights of others, for example through sunrise periods. 4.2.17

---

---

**Support** for the view that aliasing provides protection of and reduces confusion for existing domain name holders, while recognizing that there may also be disadvantages.

**Support** for the view that aliasing does not alleviate confusion and should be struck from a list of potential solutions. 4.2.19

---

#### 4.3.5 Specific Techno-Policy Details relating to IDN gTLDs

---

**Agreement:**

---

**Agreement** that the approach of the New gTLD PDP with one string for each new IDN gTLD application is relevant, except in the rare cases when there is a need to cover script-specific character variants of an IDN gTLD string. 4.1.4

---

**Agreement** that measures must be taken to limit confusion and collisions due to variants (i.e. substitutable characters/symbols within a script/language) while reviewing and awarding new IDN gTLDs. 4.1.5

---

**Agreement** that measures be taken to ensure that an IDN gTLD string with variants (see 4.1.4 and 4.1.5 above) be treated in analogy with current practice for IDN SLD labels, i.e. strings that only differ from an IDN gTLD string by variants (see above) are not available for registration by others. 4.1.6

---

**Agreement** to not require single script adherence across all levels in an IDN gTLD. Single script adherence across all levels in an IDN gTLD is not a technical requirement, only a potential policy requirement, especially since it would be difficult to enforce uniformly beyond the second level. 4.1.9a

---

**Agreement** that there should be single script adherence within a label at the levels where registries maintain control. Where script mixing occurs or is necessary across multiple levels, registries must implement clear procedures to prevent spoofing and visual confusion for users. New gTLD registries must conform to the ICANN IDN Guidelines, and must publish their language tables in the IANA Registry. Registries should be required to limit the number of scripts across labels. 4.1.9b

---

**Agreement** that new gTLDs should observe the following guidelines:

1. Mix-in of ASCII characters in other scripts should be allowed as a special case, when justified.
2. Where the accepted orthographic practice for a language requires script mixing, such mixing must be allowed. 4.1.9c

---

**Agreement** that other considerations in limiting scripts are:

1. Official/significant languages in a country exist.
2. An IDN gTLD registry should limit the degree of script mixing and have a limit for the number of scripts allowed for its domain names. Such limits, with justifications, should be proposed by the IDN gTLD applicant and be evaluated for reasonableness.
3. In all IDN gTLD applications, the applicant should adequately document its consultations with local language authorities and/or communities. See also 4.1.3.

4. The way to define language communities is not in the purview of the IDN-WG, but CNDC & INFITT are some models to consider.

5. ICANN should consult with the relevant language communities if in doubt whether an IDN gTLD string is in compliance with relevant tables. 4.1.9d

---

**Support** (alternative views may exist):

---

**Support** for enabling a choice for an IDN gTLD registry with a string that has variants (i.e. substitutable characters/symbols within a script/language) to use variants for aliasing purposes. 4.2.20

---

**Support** for elimination of non-language characters, as foreseen in the IDN protocol revision. 4.2.21

---

**Support** for regarding confusingly similar as visually confusingly similar or typographically confusingly similar. 4.2.22

---

**Support** for IDN considerations for extension of reserved names list, possibly by introducing a notion of reserved concepts (for example; the concept of example as expressed in other languages/scripts). 4.2.23

#### 4.3.6 Particular IDN Aspects relating to Privacy & Whois Details

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**Agreement:**

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**Support** (alternative views may exist):

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**Support** for recognizing a current practice to display the registrant in local script and at least one of the contacts in ASCII. 4.2.24

#### 4.3.7 IDN Aspects on Legal Details

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**Agreement:**

---

**Agreement** that UDRP proceedings regarding IDN SLDs show no deficiencies to date and that a review of the current UDRP would not be a prerequisite for accepting IDN gTLD applications. 4.1.10

---

**Support** (alternative views may exist):

---

Ram Mohan RyC GNSO IDN WG Chair

Bruce Tonkin RrC GNSO Council Chair

Werner Staub RrC Liaison to ccNSO/GAC IDN WG

Paul Diaz RrC

Yoav Kheren RrC

Sophia Bekele NomC Liaison to RN WG

Avri Doria NomC

Mawaki Chango NCUC

Charles Shaban IPC

Marilyn Cade CBUC

Alistair Dixon CBUC

Cary Karp RyC

June Seo RyC

Mark McFadden ISPCP

Tony Holmes ISPCP

Greg Ruth ISPCP

Maggie Mansourkia ISPCP

Norbert Klein NCUC

Chun Eung Hwi NCUC

Mike Rodenbaugh CBUC

Jonathan Cohen IPC

Tin Wee Tan NCUC

Caroline Greer RyC

William Tan RyC

Susan Estrada RyC

Eva Frhlich RyC

Will Rodger CBUC

Edmon Chung RyC

Sadik Chandiwala RyC

Daniel Dougherty IPC

Hong Xue ALAC liaison

Steve Crocker SSAC liaison

Shahram Soboutipour Observer

Sergei Sharikov Observer

S. Maniam Observer

S. Subbiah Observer

Alexei Sozonov Observer

Glen de Saint Gry ICANN Staff

Tina Dam ICANN Staff

Maria Farrell ICANN Staff

Olof Nordling ICANN Staff

In order to get a common understanding of terminology during the WG discussions, the following glossary [with sources in square brackets] was developed jointly by ICANN staff and the WG members on a dedicated wiki page for the WG.

#### A-label

An "A-label" is the ASCII-Compatible (ACE) form of an IDNA-valid string. It must be valid as output of ToASCII, regardless of how it is actually produced. This means, by definition, that every A-label will begin with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm and hence a maximum of 59 ASCII characters in length. The prefix and string together must conform to all requirements for an IDN that can be stored in the DNS including conformance to the LDH rule. [IDNAbis, Klensin, Internet draft 23 Feb 2007]

#### Alias

- An alias is a pseudonym and may refer to multiple names for the same data location. [Wikipedia] (Review needed; Aliasing in the context of our discussions refers to the practice of making multiple domains effectively identical by means of using DNAME records or other policy / operational means.)

-

#### Character

- A member of a set of elements used for the organization, control, or representation of data. [The tables for all known languages are maintained by ISO/IEC 10646. See also Unicode.]

### DNAME records

- DNAME is a DNS Resource Record type. DNAME provides redirection from a part of the DNS name tree to another part of the DNS name tree. [RFC2672]

-

### Existing gTLD

- A gTLD that has been approved to be added to the root. [proposal]

### gTLD

- A generic top-level domain, directly under the top-level root of the domain name hierarchy. Most TLDs with three or more characters are referred to as "generic" TLDs, or "gTLDs". They can be subdivided into two types, "sponsored" and "unsponsored, (as well as into restricted and unrestricted). [ICANN Glossary (addition)]

### IDN ccTLD (or icTLD)

- A ccTLD (country code top-level domain, corresponding to a country, territory, or other geographic location) with a label that contains at least one character not appearing in LDH set. The lists of alpha-2 and alpha-3 codes allocated to countries and territories are maintained by the ISO 3166/MA. The ISO 3166-1:2006 document provides names of countries and territories in corresponding administrative languages.

### IDN gTLD

- A gTLD with a label that contains at least one character not appearing in the "LDH" set.

### Keyword

A keyword in an Internet search is one of the words used to find matching web pages. It was popularized during the early days of search engine development, as it was not possible to ask natural language questions and find the desired sites. Searches gave the best results if only a few keywords were chosen and searched for. These "keywords" captured the essence of the topic in question and were likely to be present on all sites listed by the search engine. [Wikipedia] In the IDN context, keywords usually refer to ISP-specific look-up functions in a local environment with a non-Latin script.[proposal]

### Label string

- A generic term referring to a string of characters that is a candidate for registration in the DNS or such a string, once registered. A label string may or may not be valid according to the rules of this specification and may even be invalid for IDNA use. The term "label", by itself, refers to a string that has been validated and may be formatted to appear in a DNS zone file. [RFC3743]

### Label

- A label is an individual part of a domain name. Labels are usually shown separated by dots; for example, the domain name "www.example.com" is composed of three labels: "www", "example", and "com". [RFC3490]

-

#### Language

- A language is a way that humans interact. The use of language occurs in many forms, including speech, writing, and signing. [RFC 4690]. The lists of alpha-2 and alpha3 codes allocated to languages are maintained by the ISO 639-2/RA.

-

#### LDH

- Letters-Digits-Hyphen, with 26 possible Latin Letters, upper and lower case alike, [a,b,c,d,e,f,g,h,i,j,k,l,m,n,o,p,q,r,s,t,u,v,w,x,y,z], 10 possible Digits [0,1,2,3,4,5,6,7,8,9], and Hyphen "-" (minus).

#### new gTLD (in GNSO parlance;)

- A gTLD that will ensue as a consequence of the implementation of the results of the New gTLD PDP. [proposal] (In practice, the WG increasingly used the expressions new non-IDN gTLDs and new IDN gTLDs to make clear distinctions.)

#### Normal delegation records (or NS records, name server records)

- An NS record or name server record maps a domain name to a list of DNS servers authoritative for that domain. Delegations depend on NS records. [Wikipedia]

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#### Punycode

Punycode is a bootstring encoding of Unicode for Internationalized Domain Names in Applications (IDNA). [RFC3492]

Punycode, defined in RFC 3492, is the self-proclaimed "bootstring encoding" of Unicode strings into the limited character set permitted in host names. The encoding is used as part of IDNA, which is a system enabling the use of internationalized domain names in all languages that are supported by Unicode, where the burden of translation lies entirely with the user application (a web browser for example). The encoding is applied separately to each component of a domain name which is not represented solely within the ASCII character set, and a reserved prefix 'xn--' is added to the translated Punycode string. For example, bcher becomes bcher-kva in Punycode, and therefore the domain name bcher.ch would be represented as xn--bcher-kva.ch in IDNA. [Wikipedia]

#### Script

- A script is a set of graphic characters used for the written form of one or more languages. [RFC 4690 and ISO/IEC 10646]

### Source script label

A source script label is the form of a label that is displayed to the end user. [proposal] This expression can be used in the IDN context to distinguish a label that the end user sees in a local script from the other forms of this label, notably A-label and U-label, which are for system internal use by software applications and the DNS.

-

### TLD: Top Level Domain

- A generic term used to describe both gTLDs and ccTLDs that exist under the top-level root of the domain name hierarchy. [RFC3375]

- TLDs are the names at the top of the DNS naming hierarchy. They appear in domain names as the string of letters following the last (rightmost) ".", such as "net" in "www.example.net". The administrator for a TLD controls what second-level names are recognized in that TLD. The administrators of the "root domain" or "root zone" control what TLDs are recognized by the DNS. Commonly used TLDs include .com, .net, .edu, .jp, .de, etc. [ICANN Glossary]

-

### Transcription

- Transcription maps the sounds of one language to the script of another language. [Wikipedia]

### Transliteration

- Transliteration is the practice of transcribing a word or text written in one writing system into another writing system. It is also the system of rules for that practice. Technically, from a linguistic point of view, it is a mapping from one system of writing into another. Transliteration attempts to be exact, so that an informed reader should be able to reconstruct the original spelling of unknown transliterated words. To achieve this objective transliteration may define complex conventions for dealing with letters in a source script which do not correspond with letters in a goal script. Romaji is an example of a transliterating method. [Wikipedia]

### U-label

A "U-label" is an IDNA-valid string of Unicode-coded characters that is a valid output of performing ToUnicode on an A-label, again regardless of how the label is actually produced. A Unicode string that cannot be generated by decoding a valid A-label is not a valid U-label. [IDNAbis, Klensin, Internet draft 23 Feb 2007]

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### Unicode

- Unicode is a coded character set containing tens of thousands of characters. A single Unicode code point is denoted by "U+" followed by four to six hexadecimal digits, while a range of Unicode code points is denoted by two hexadecimal numbers separated by "..", with no prefixes. [Unicode Character Code Charts and RFC3490].

### Variants

- Characters that can substitute for each other in a given language without changing the meaning of a word.  
[proposal, drawing on RFC3743]

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[1] See section 6 Working Definitions for an explanation.

**EXHIBIT JJN-39**

# GNSO Reserved Name Working Group Report

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## A. EXECUTIVE SUMMARY

1. This report summarizes the work of the GNSO Reserved Name Working Group including recommendations regarding nine subcategories of reserved names. It is presented to the GNSO Council for its consideration. Each subcategory was examined by a small subgroup, whose full reports are included in Appendices C through J. Members of the Working Group are listed in Appendix B. The Statement of Work for the Group is given in Appendix A. A description of the classifications of reserved names is presented in Appendix K.
2. This executive summary is intended for the GNSO and ICANN community generally and does not substitute for the actual recommendations in the report which follows.
3. Where the working groups were unable to come to rough consensus, the usual recommendation was for more work to be done. What follows is the *briefest possible* summary of the outcomes for each category or relevant subdivision thereof of the ASCII versions of reserved names, and selected IDN versions. Please refer to Section 4 and the individual subreports for the definitive version of the recommendations and those pertaining to IDNs. In some cases the recommendations are too complex to be usefully summarized and the reader is directed to the relevant section of the report.

### A very brief table of recommendations of ASCII and selected IDN reserved names

*See the actual tables for the complete recommendations*

Table	Reserved Name Category	Domain Name Level(s)	Abbreviated Recommendation
4.1	ICANN and IANA	All	More work
4.2	Symbols	All	Maintain reservation
4.3	Single character names, letters	Top	More work
	Single character names, numbers	Top	More work, concern for technical issues
	Single character IDNs	Top	More work
	Single character names	Second	Release, contingent upon creation of a suitable allocation framework
		Third	No recommendation, subgroup did not address

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<b>Table</b>	<b>Reserved Name Category</b>	<b>Domain Name Level(s)</b>	<b>Abbreviated Recommendation</b>
4.4	Two-character names, letters	Top	Maintain reservation based on the ISO-3166 list, no further work
4.4	Two-character IDNs	Top	More work
	Two-character names, numbers and letter-number combinations	Top	More work
	Two character names, letters and numbers	Second	Registries may propose release provided that measures to avoid confusion with any corresponding country codes are implemented.
	Two character names	Third	No recommendation, subgroup did not address
4.5	Tagged names	Top	Maintain reservation
		Second	Modify terms of reservation
4.6	Nic,whois,www	All	Maintain reservation
	Geographic and geopolitical		See actual recommendations in Section 4 or in Appendix G
	Three-character reserved names at the third level	Third	Maintain reservations
4.7	gTLD names at the second level	Second and third	More work
4.8	Controversial	Top	Create such a category. See Table 4.8 for details
		Second and third	Registry operators must comply with local laws and regulations

**Table A-1: Recommendation Table**

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## B. BACKGROUND

### *Statement of Work*

1. In its meeting on 18 January 2007, the GNSO Council approved the formation of the Reserved Name Working Group (RN-WG) for the purpose of performing “an initial examination of the role and treatment of reserved domain names at the first and second level, with the goal of providing recommendations for further consideration by the TF or Council.”<sup>1</sup> The statement of work for the RN-WG is provided in Appendix A; it lists the following tasks for the WG:
  - a. Providing an initial examination of reserved names at both the top and second level for both existing and new gTLDs to include:
    - i. Reviewing the present treatment and process for reservation of names at all levels
    - ii. Reviewing any other discussions to date that have occurred related to reserved names for top level strings for new gTLDs including IDN gTLDs
    - iii. Reviewing any ICANN staff reports related to reserved names
    - iv. Liaising with the ICANN staff as needed, including legal and operational, to identify and review any existing work or relevant experiences related to reserved names processes and procedures
    - v. Reviewing any relevant technical documents
    - vi. Liaising with the ccNSO and the ccTLD community in general as needed regarding the two letter names issues
    - vii. Defining the role of reserved strings
    - viii. Prioritizing sub-elements of the broad topic of reserved names in a manner that would facilitate breaking the broad topic of reserved names into smaller parts that could then be divided into separate policy efforts of a more manageable size and that might also allow some less complicated issues to be resolved in a more timely manner so that some policy changes might be included in the introduction of new gTLDs
    - ix. Recommending how to proceed with a full examination of issues and possible policy recommendations.

---

<sup>1</sup> Minutes of the meeting can be found at <http://gns0.icann.org/meetings/minutes-gns0-18jan07.shtml>.

## **Working Group Membership**

The Working Group was open for membership to GNSO Councilors and to GNSO Constituency members. ICANN advisory committees (e.g., ALAC, GAC) were allowed to appoint non-voting liaisons to the working group. The addition of WG members was allowed by the constituencies and the advisory groups at any time. Individual observers were also allowed to participate in the group.

Consistent with the terms of the Statement of Work, the GNSO Council appointed Chuck Gomes, a representative of the gTLD Registry Constituency from VeriSign, as Interim Chair of the WG. Mr. Gomes was subsequently elected chair by the WG in its initial meeting.

Table 1 summarizes the number of participants by organization. A complete list of WG members can be found in Appendix B.

**Table 1 Number of RN-WG Participants by Organization**

<b>Constituency/Organization</b>	<b>Role</b>	<b># of Participants</b>
Business Constituency	Regular Members	4
Intellectual Property Constituency	Regular Members	4
Internet Service & Connectivity Providers Constituency	Regular Members	0
Non-Commercial User Constituency	Regular Members	2
Registrars Constituency	Regular Members	3
gTLD Registries Constituency	Regular Members	4
GNSO Council Nominating Committee Representatives	Regular Members	1
Individual	Observer	2
ccNSO and GNSO IDN Working Group *	Liaisons	2
ICANN Staff **	Staff Support	7

### **Table B-1: Participant Information**

- \* Invitations were sent to the ccNSO, the GAC and the GNSO IDN Working Group to provide liaisons. The ccNSO and the IDN WG in fact provided liaisons while the ALAC was made aware of the opportunity to provide a liaison via their participation on the GNSO Council.

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\*\* Includes: Timothy Denton, consultant hired by the ICANN Policy Development team to support the WG; extensive administrative support by the GNSO Secretariat, Glen de Saint Gerry, and Victoria Tricamo; Patrick Jones of the Operational Staff; Policy Development team members; IDN program office; and General Counsel's Office.

## **Methodology**

As much as possible, the working group operated using a rough consensus approach. Every effort was made to arrive at positions that most or all of the full group or subgroup members were willing to support. In any case where there was disagreement with the consensus view, members were asked to submit minority statements.

The following steps were performed by the WG to accomplish its tasks:

1. A mailing list was established and used for communication within the WG. Archives of the list can be found at <http://forum.icann.org/lists/gnso-idn-wg/>.
2. Relevant documents were identified and reviewed.
3. A comparison of gTLD Registry reserved name requirements in all 16 gTLD registry agreements was prepared and reviewed. (See Appendix K)
4. Reserved names were divided into eight categories and subgroups were formed to work on each category. Each subgroup did the following:
  - a. Reviewed any relevant documents and provided summaries for the full WG (see Section 5 of each subgroup's report)
  - b. Wrote a background statement that described the reserved name category (see Section 1 of each subgroup's report)
  - c. Identified possible experts and consulted with those experts as a subgroup or arranged for a consultation with the full WG if needed (see Section 4 of each subgroup's report)
  - d. Developed a brief statement defining the role of the reserved names in their category (see Section 2 of each subgroup's report)
  - e. Attempted to reach rough consensus on what were referred to as 'straw recommendations' for consideration by the full working group
  - f. Prepared a report containing the following elements:
    - i. Background
    - ii. Role of reservations requirement (if any)
    - iii. 'Straw' recommendations for the entire WG
    - iv. Consultation with Experts
    - v. Summary of Relevant Information Sources
5. The full working group held consultations with experts as necessary.
6. The full working group reviewed all subgroup reports, suggested modifications as necessary and approved the final subgroup reports, including changing subgroup 'straw' recommendations into "WG recommendations".

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7. The approved subgroup reports were used to create this final WG report.

### ***Meetings***

Weekly teleconference meetings were held starting on 25 January, continuing through 15 March with two extra meetings added in March. One in-person meeting (with dial-in capability) was held in conjunction with the policy development process meetings held in Marina del Rey, California 22-24 February. A total of eleven full working group meetings were held. In addition, many meetings were held by subgroups.

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## C. SUMMARY OF RESERVED NAME CATEGORIES

Table 2 provides an abbreviated overview of nine reserved name categories considered by the RN-WG. (Note that the Single/2-Character category was divided into two separate categories in this table.) This summary is intended to be for easy understanding of the overall categories of reserved names and as such does not contain all details of the registry agreement requirements. For full details, see the registry agreements or the comparison of the reserved name requirements found in Appendix K.

**Table 2 Summary of Existing Reserved Name Requirements**

<b>Category of Names</b>	<b>TLD Levels</b>	<b>Reserved Names</b>	<b>Applicable gTLDs</b>
ICANN & IANA related	2 <sup>nd</sup> (and 3 <sup>rd</sup> if applicable)	ICANN: aso, gnso, icann, internic, ccNSO IANA: afrinic, apnic, arin, example, gtld-servers, iab, iana, iana-servers, iesg, ietf, irtf, istf, lacnic, latnic, rfc-editor, ripe, root-servers	All 16 gTLDs
Single Character	2 <sup>nd</sup> level	All 36 alphanumeric ASCII characters (e.g., a.biz, b.aero)	All 16 gTLDs (some of these were registered prior to the requirement)
Two Character	2 <sup>nd</sup> level	1296 combinations of ASCII letters and digits(e.g., xy.org, b2.info)	All 16 gTLDs (with some exceptions for certain gTLDs)
Tagged	2 <sup>nd</sup> (and 3 <sup>rd</sup> if applicable)	All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")	All 16 gTLDs
NIC, Whois, www	2 <sup>nd</sup> level	Nic, Whois, www (reserved for registry operations only)	All 16 gTLDs

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<b>Category of Names</b>	<b>TLD Levels</b>	<b>Reserved Names</b>	<b>Applicable gTLDs</b>
Geographic & Geopolitical	2 <sup>nd</sup> (and 3 <sup>rd</sup> if applicable)	All geographic & geopolitical names in the ISO 3166-1 list (e.g., Portugal, India, Brazil, China, Canada) & names of territories, distinct geographic locations (or economies), and other geographic and geopolitical names as ICANN may direct from time to time	.asia, .cat, .jobs, .mobi, .tel & .travel
Third Level	3 <sup>rd</sup> level	See Section 1.B of the subgroup report in Appendix H.	.pro and .name
Other 2 <sup>nd</sup> Level	2 <sup>nd</sup> level	See the section titled 'Other names reserved at the 2 <sup>nd</sup> level' in Appendix I	Varying lists for .aero, .biz, .coop, .info, .museum, .name and .pro
Controversial	No current requirement	N/A	None

**Table C-1: Reserved Names Existing Registries**

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## D. ROLES OF RESERVED NAMES

Table 3 shows the definition of roles as determined by the RN-WG for each of nine reserved name categories considered by the WG.

**Table 3 Roles of Reserved Names**

Category of Names	Reserved Names	Role
ICANN & IANA related	<b>ICANN:</b> aso, gnso, icann, internic, ccNSO <b>IANA:</b> afrinic, apnic, arin, example, gTLD-servers, iab, iana, iana-servers, iesg, ietf, irtf, istf, lacnic, latnic, rfc-editor, ripe, root-servers	The role of the reserved names held by IANA and ICANN has been to maintain for those organizations the exclusive rights to the names of ICANN (icann), its bodies (aso, ccnso, pso, etc.) or essential related functions (internic) of the two organizations.
Single Character	All 36 alphanumeric ASCII characters (e.g., a.biz, b.aero)	It appears that the original purpose for reserving the single characters was driven by technical concerns.
Two Character	1296 combinations of ASCII letters and digits(e.g., xy.org, b2.info)	Two letter reservations appear to have been based on concerns about confusion with two letter country codes.
Tagged	All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")	The role of the tagged name reservation requirement is to be able to provide a way to easily identify an IDN label in the DNS and to avoid confusion of non-IDN ASCII labels. Implicit in this role is the need to reserve tagged names for future use in case the ASCII IDN prefix is changed.
NIC, Whois, www	Nic, Whois, www (reserved for registry operations only)	The rationale for the reservation of these names for use by registry operators is based upon long standing and well established use of these strings by registry operators (both gTLD and ccTLDs) in connection with normal registry operations.

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<b>Category of Names</b>	<b>Reserved Names</b>	<b>Role</b>
Geographic & Geopolitical	All geographic & geopolitical names in the ISO 3166-1 list (e.g., Portugal, India, Brazil, China, Canada) & names of territories, distinct geographic locations (or economies), and other geographic and geopolitical names as ICANN may direct from time to time	Protection afforded to Geographic indicators is an evolving area of international law in which a one-size fits all approach is not currently viable. The proposed recommendations in this report are designed to ensure that registry operators comply with the national laws for which they are legally incorporated/organized.
Third Level	See Section 1.B of the subgroup report in Appendix H.	The role of the names specifically reserved at the third level is primarily to combat security concerns (e.g., a party registering www.med.pro could pose as the registrar for that domain). As a secondary matter, they may be needed to overcome technical challenges presented by 'double' addresses (e.g., www.www.med.pro) and, to a lesser extent, consumer confusion.

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Category of Names	Reserved Names	Role
Other 2 <sup>nd</sup> Level	See the section titled 'Other names reserved at the 2 <sup>nd</sup> level' in Appendix I.	1) reservation of gTLD strings at the second level was put in place by ICANN in order to avoid consumer confusion in relation to TLD.TLD addresses; 2) the reservation of registry-related names came about during contract negotiations and are in place in order to protect the Registries and their successors and to avoid consumer confusion; 3) for the .name, .mobi, .coop, .travel and .job Registries, certain non-ICANN reserved names directly benefit the communities that they represent and / or the reserved names are an integral part of the Registry's business model.
Controversial	N/A	There is no apparent role for controversial names among the existing categories of names reserved at the second level within gTLDs. The role of controversial second level names within several ccTLDs varies and includes an array of concepts such as the protection of national interests, illegal activities, obscenity, and social disorder.

**Table D-1: Role of Reserved Names**

## **E. RN-WG RECOMMENDATIONS**

1. The recommendations of the RN-WG for each of the reserved name categories considered by the WG are provided below. Note that for clarity some of the original eight categories were broken down into smaller categories. For some of the categories, recommendations are shown in tables; in those cases the recommendations are provided according to the level of the domain name (top, 2<sup>nd</sup>, 3<sup>rd</sup>) and within each of those levels they are broken down into any recommendations regarding ASCII domain names

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and IDN domain names. The column titled ‘More Work?’ indicates whether or not the WG recommends that additional work be done before making final recommendations. Additional information regarding the recommendations including guidelines for additional work, if applicable, is provided following each table.

2. The recommendations listed are those for which at least rough consensus was reached by the full WG. For any categories for which there are views different from the rough consensus of the WG, minority views are provided following the table or the narrative recommendations.

**Table 4.1 Recommendations regarding ICANN & IANA Related Reserved Names**

<b>Description of Current Reserved Name Requirement</b>			
<b>ICANN:</b> aso, gnso, icann, internic, ccNSO			
<b>IANA:</b> afrinic, apnic, arin, example, gtld-servers, iab, iana, iana-servers, iesg, ietf, irtf, istf, lacnic, latnic, rfc-editor, ripe, root-servers			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	Yes	More work is recommended. (See discussion below of what that work might entail).
Top	IDN	No, except for “example”	<ol style="list-style-type: none"> <li>1. For all but “example”, do not try to translate into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.</li> <li>2. In the case of “example”, we recommend the IDN working group be consulted with regard to whether the term “example” be reserved in corresponding versions of Unicode.</li> </ol>
2 <sup>nd</sup>	ASCII	Yes	More work is recommended. (See discussion below of what that work might entail).
2 <sup>nd</sup>	IDN	No, except for “example”	<ol style="list-style-type: none"> <li>1. For all but “example”, do not try to translate into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.</li> <li>2. In the case of “example”, we recommend the IDN working group be consulted with regard to whether the term “example” be reserved in corresponding versions of Unicode.</li> </ol>
3 <sup>rd</sup>	ASCII	Yes	For gTLDs with registrations at the third level, more work is recommended. (See discussion below of what that work

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<b>Description of Current Reserved Name Requirement</b>			
<b>ICANN:</b> aso, gnso, icann, internic, ccNSO			
<b>IANA:</b> afrinic, apnic, arin, example, gtld-servers, iab, iana, iana-servers, iesg, ietf, irtf, istf, lacnic, latnic, rfc-editor, ripe, root-servers			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
			might entail).
3 <sup>rd</sup>	IDN	No, except for "example"	For gTLDs with registrations at the third level: 1. For all but "example", do not try to translate into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist. 2. In the case of "example", we recommend the IDN working group be consulted with regard to whether the term "example" be reserved in corresponding versions of Unicode.

**Table E-1: ICANN & IANA Related Reserved Names**

Some members of the RN-WG wished to express the following personal views on the subject of ICANN and IANA reserved names.

Avri Doria wrote:

"These TLDs should be available to the appropriate organizations for registration; e.g. the IAB should be allowed register .iab or .irtf, ISOC should be able to register .ietf or .iesg and Afrinic should be able to register .afrinic - assuming, of course, they meet all the other requirements for registration and want to do so.

"The review, comment and challenge procedures that are being developed by the GNSO new gTLD process to deal with registration of a label by an entity that does not have the right to so register the label should be sufficient to prevent these names from being registered by organizations other than those who would have the right to do so.

"Note: the discussion of the reservation at the second and third levels should be subject to similar constraints as at the first level, though the processes for review and challenge would be different."

Michael Palage offered the following points:

"In accordance with Article I, Section 2 subparagraph 8 of the ICANN bylaws it states that in performing its mission, the following core values should guide the decisions and actions of ICANN "[m]aking decisions by

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applying documented policies neutrally and objectively, with integrity and fairness." Unlike other reservations that are based upon long standing and well established principles, ICANN/IANA staff has sought to continue reservation of a compilation of strings in which they have been unable to provide any documentation regarding the legal authority for such reservation. For ICANN/IANA to continue to reserve these names while similarly situated parties, in this case sovereign national governments (country names), IGOs and nationally recognized trademark holders, are not provided equal protection appear to be a clear violation of the bylaw provision cited above. More detailed discussion regarding the legal concerns regarding these reservation have been documented on the working groups mailing list, see <http://forum.icann.org/lists/gnso-rn-wg/msg00169.html>.

"In order for this or any other working group to make a determination based upon documented fact, the following inquiries should be explored:

- ICANN should make available to the group all written and historical references to the original basis of these reservations;
- ICANN should contact all organizations that have had their name reserved, and ask for documentation in connection with any actual confusion or security/stability concerns that have arisen in connection with the use of these strings in legacy gTLD (.com, .net and .org);
- ICANN should ask these organizations if they would prefer to have ICANN continue to reserve these names in existing and future TLDs, and the basis of this reservation request; and
- ICANN should undertake an analysis to determine any third parties that may have rights in the reserved strings (i.e. nationally registered trademarks, etc) and how this reservation potentially negatively impacts those rights."

Mike Rodenbaugh stated the following:

It appears obvious that these names were reserved to avoid end-user confusion if an entity other than the corresponding entity (ICANN, IANA, etc.) were to register a domain such as icann.info, iana.biz, afnic.travel, etc. Such problem is far more severe in the case of well-known brands (Yahoo!, Citibank, eBay, etc.) who receive exponentially more traffic to their websites and collect personal and financial information from users, making them far more frequent and severe targets for cybersquatting, phishing and other illegal activities.

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ICANN and related entities' brands should not receive any greater protection than more well-known brands. Rather, ICANN should determine methods to better protect all users and brands from these problems, taking into account the many years of experience that non-ICANN related brands have suffered in this regard.

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**Table 4.2 Recommendations regarding Symbols**

<b>Description of Current Reserved Name Requirement</b>			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
ALL	N/A	No	We recommend that current practice be maintained, so that no symbols other than the '-' [hyphen] be considered for use at any level, unless technology at some time permits the use of symbols.

**Table E-2: Symbols**

Minority statement from Avri Doria

I have a minority statement for symbols. I do not buy the blanket technical argument for all symbols, especially in IDNs.

There should be actual technical proof that symbols cause problems in the DNS. The prohibition should only be for those that are shown to prove harmful. Any symbols not found harmful should be released after technical testing.

I recommend that the use of symbols in the DNS be tested to see which cause problems.

**Table 4.3 Recommendations regarding Single Character Names**

<b>Description of Current Reserved Name Requirement</b>			
All 36 alphanumeric ASCII characters (e.g., a.biz, b.aero, 9.com)			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	Yes	Letters: We recommend further work to confirm that there are no technical reasons to prohibit single letter TLDs.
			Numbers: We recommend that further work be done on single numbers at the top level. There may be technical issues in that some programs may read such a string as a partial IP address.
Top	IDN	Yes	We recommend further work on the subject of one-character IDN TLDs, including outreach to experts and

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<b>Description of Current Reserved Name Requirement</b>			
All 36 alphanumeric ASCII characters (e.g., a.biz, b.aero, 9.com)			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
			discussion related to policies for IDNs.
2 <sup>nd</sup>	ASCII	Yes	Letters and numbers: We recommend that single ASCII letters and numbers be released at the second level in future TLDs, and that those currently reserved in existing TLDs should be released. This release should be contingent upon the development of an appropriate allocation framework.
2 <sup>nd</sup>	IDN	Yes	We recommend further work on the subject of two-character IDNs, including outreach to experts and discussion related to policies for IDNs.
3 <sup>rd</sup>	ASCII	No	The subgroup did not address single-letters and numbers at the third level for gTLDs that offer registrations at that level.
3 <sup>rd</sup>	IDN	No	The subgroup did not address single-character IDNs at the third level for gTLDs that offer registrations at that level.

### **Table E-3: Single Character Names**

#### Minority Statement from Mike Rodenbaugh

According to recent research conducted by IANA, out of 9540 possible combinations of single-character ASCII names at the second level (containing 26 letters, 10 numbers, but not symbols, across 265 TLDs), 1225 delegations of single-character ASCII names exist in the zone. 63 TLDs have at least one single-character ASCII delegation (see <http://forum.icann.org/lists/gnso-rn-wg/msg00039.html>). Given that single letter and number domains are widely in use at the second level in country codes and as IDNs (Unicode renderings of ACE forms of IDNA valid strings (“A-labels”)), it seems reasonable to examine how to release and allocate single letter and number top level names, both in ASCII and IDN.

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**Table 4.4 Recommendations regarding 2-Character Reserved Names**

<b>Description of Current Reserved Name Requirement</b> 1296 combinations of ASCII letters and digits (e.g., xy.org, b2.info, 29.biz)			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	No	Letters only: We recommend that the current practice of allowing two-letter ASCII names at the top level, only for ccTLDs, remain at this time. *
		Yes	One letter and one number or two numbers: We recommend further work regarding letter/number or 2-number TLDs including outreach to experts. This area needs further study, including discussion with technical experts before any recommendation is made.
Top	IDN	Yes	Two-character IDNs need further work including outreach to experts and discussion related to policies for two-character IDNs and IDN versions of the ISO 3166 list. This is a possible area for further work by the IDN WG.
2nd	ASCII	No	We recommend that registries may propose release of two letter and/or number strings at the second level, provided that measures to avoid confusion with any corresponding country codes are implemented. A standardized approach should be used which ensures consultation with appropriate parties, including the ccNSO and ISO-3166 Maintenance Agency, and where security and stability issues are identified, RSTEP. **
2nd	IDN	Yes	We recommend further work on the subject of two-character IDNs, including outreach to experts and discussion related to policies for IDNs.
3rd	ASCII	No	The subgroup did not address two-character letters and numbers at the third level.
3rd	IDN	No	The subgroup did not address two-character IDNs at the third level.

**Table E-4: Two Character Reserved Names**

\* The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter ASCII names at the top level. IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk

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of collisions between any interim allocations, and ISO-3166 assignments which may be desired in the future.

\*\* The existing gTLD registry agreements provide for a method of potential release of two-character ASCII names at the second level. In addition, two letter and/or number ASCII strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimises the potential for confusion with the ccTLDs."

#### Minority Statement by Mike Rodenbaugh

"I recommend that two letter ASCII gTLDs be allowed, provided that measures to avoid confusion with any corresponding country codes are implemented. A standardized approach should be used which ensures consultation with appropriate parties, including the ccNSO and ISO-3166 Maintenance Agency, and where security and stability issues are identified, RSTEP. While there may be political reasons, there appears no strong policy reason to withhold every possible two-letter TLD from use, on the assumption that some of them may be desired by countries that may be created in the future. In addition, this concern would diminish if countries were able to use their own name as a TLD, including in its IDN form, or in an IDN two letter ccTLD.

"I recommend that single and two IDN character names continue to be released at the second level in future TLDs in accord with ICANN IDN Guidelines, as they have already been released in existing TLDs."

**Table 4.5 Recommendations regarding Tagged Reserved Names**

To avoid user confusion that might result in not being able to tell the difference between a legitimate IDN name and an illegitimate one and to provide maximum flexibility in the unlikely case that the xn-- prefix should ever need to be changed, we make the recommendations shown in the following table.

<b>Description of Current Reserved Name Requirement</b>			
All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	No	<ol style="list-style-type: none"> <li>1. In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved.<sup>2</sup></li> <li>2. For each IDN gTLD proposed, applicant must provide both the "ASCII compatible (ACE) form of an IDNA valid string" ("A-label") and in local script form (Unicode) of the top level domain ("U-label").<sup>3</sup></li> </ol>
Top	IDN	No	N/A
2 <sup>nd</sup>	ASCII	No	The current reservation requirement be reworded to say, " <i>In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved.</i> " <sup>4</sup> – added words in <i>italics</i> . (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)
2 <sup>nd</sup>	IDN	No	N/A
3 <sup>rd</sup>	ASCII	No	Same as for the 2 <sup>nd</sup> -level for any gTLDs for which registrations occur at the 3 <sup>rd</sup> -level
3 <sup>rd</sup>	IDN	No	N/A

<sup>2</sup> Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves 1296 names (36x36).

<sup>3</sup> Internet Draft IDNAbis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt> (J. Klensin), Section 3.1.1.1

<sup>4</sup> Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves 1296 names (36x36).

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### **Table E-5: Tagged Reserved Names**

The Tagged Name Subgroup relied exclusively on Ram Mohan, and Tina Dam as experts and did not believe that additional expert consultation was needed for the topic of tagged name reservations, but did recommend scheduling of a full WG consultation with Ram, Tina and Cary Karp to assist in the finalization of reports for other reserved name categories with regard to IDNs. That WG consultation occurred on 1 March 2007.

**Table 4.6 Recommendations regarding Reservation of NIC, Whois and www for Registry Operations**

<b>Description of Current Reserved Name Requirement</b> NIC, Whois, www			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	No	The following names must be reserved: nic, whois, www.
Top	IDN	No	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.
2 <sup>nd</sup>	ASCII	No	The following names must be reserved for use in connection with the operation of the registry for the Registry TLD: nic, whois, www. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN.
2 <sup>nd</sup>	IDN	No	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries.
3 <sup>rd</sup>	ASCII	No	For gTLDs with registrations as the third level, the following names must be reserved for use in connection with the operation of the registry for the Registry TLD: nic, whois, www. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN.
3 <sup>rd</sup>	IDN	No	For gTLDs with registrations as the third level, do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries.

**Table E-6: NIC, WHOIS, WWW Reserved Names**

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## **Recommendations regarding Geographic & Geopolitical Reserved Names**

### **Top Level (ASCII and Unicode strings):**

In order to approve the introduction of new gTLDs using geographic identifiers, ICANN shall require the solicitation of input from GAC members(s) and/or government(s) associated with the potential geographic string (ASCII and/or Unicode).

Additionally, Registries incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (“Member States”), or have other related applicable national laws must take appropriate action to comply with those guidelines and those national laws. Registries incorporated under the laws of those countries that have not expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (“Non-Member States”) must take appropriate action to comply with any related applicable national laws.

### **Second Level (ASCII and Unicode strings):**

Registries incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (“Member States”) must take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.

### **Third Level (ASCII and Unicode strings):**

Registries that register names at the third level and are incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (“Member States”) must take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.

If any of the above recommendations are not supported by the community, it is recommended that further consultation with WIPO, the ccNSO and the GAC be conducted. Proposed questions for such consultation can be

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found in Section 5, Consultation with Experts, in the Geographic and Geopolitical Reserved Names Report in Appendix G.

### **Recommendations regarding 3-Character Reserved Names at the 3<sup>rd</sup>-Level**

We do not recommend any change in the treatment of “prohibited third level labels” and “patterns of names staying with the registry.” While recognizing the right of registries to reserve names for a variety of technical, security and/or business reasons, the registry operators should provide some documentation for the basis of these reservations. The ICANN and IANA reserved names at the third level should be harmonized with the recommendations regarding those names at the second level.

If these or other registries reserving names at the third level are considering offering IDNs, the registry may wish to reserve IDN versions of the registry’s reserved names, except where those name are abbreviations or acronyms.

**Table 4.7 Recommendations regarding Reserved gTLD Strings**

<b>Description of Current Reserved Name Requirement</b>			
gTLD names at the 2 <sup>nd</sup> level			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	No	N/A
Top	IDN	Yes	More work is recommended. (See guidelines below.)
2 <sup>nd</sup>	ASCII	Yes	More work is recommended. (See guidelines below.)
2 <sup>nd</sup>	IDN	Yes	More work is recommended. (See guidelines below.)
3 <sup>rd</sup>	ASCII	Yes	Recommendations for the 2 <sup>nd</sup> level, if any, could likely be applied at the third level for gTLDs registering names at the 3 <sup>rd</sup> level.
3 <sup>rd</sup>	IDN	Yes	Recommendations for the 2 <sup>nd</sup> level, if any, could likely be applied at the third level for gTLDs registering names at the 3 <sup>rd</sup> level.

**Table E-7: Reserved gTLD Strings**

### **Guidelines for Additional Work**

Three alternative recommendations were considered by the subgroup:

[ALT1] The provision be retained in order to avoid consumer confusion.

[ALT2] The reservation requirement is overly restrictive and seems to create an unfair advantage for some existing registries over new registries. Thus, the reservation requirement should be removed.

[ALT3] The reservation requirement should be retained unless the two Registries in question come to agreement between themselves to release the names.

Section 4 (Consultation with Experts) summarizes the feedback received from about half of the existing gTLD registries. The opinions expressed are mixed so it might be helpful to solicit responses from the remaining gTLD registries.

It might also be helpful to attempt to collect data regarding ccTLD practices regarding use of gTLD strings at the second level.

Finally, there are at least three considerations regarding IDNs that need to be investigated: 1) should Unicode versions of existing ASCII strings be reserved in any scripts at the top level; 2) should ASCII and/or Unicode strings of future gTLDs be reserved; and 3) if it is decided that ASCII gTLD strings should be

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reserved at the second level, should corresponding Unicode strings be reserved in any scripts? Much of this work possibly should be done by the GNSO IDN working group or similar groups with IDN expertise.

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## **Recommendations regarding Reserved Registry-Specific Names**

Further consideration of this particular reservation requirement is advised. It does not appear that this issue clearly fits within the remit of the PRO WG and so future work is required by an alternative working group.

### **Guidelines for Further Work**

The subgroup considered the following alternative recommendations:

[ALT1] Registries may propose such reservations during contract negotiations with the standard comment period to apply, allowing for input from all interests.

[ALT2] Registries should be allowed to reserve *and register* such names.

[ALT3] Referral to the Protecting Rights of Others (PRO) Working Group for further consideration in light of potential infringement of rights issues.

Other alternatives are possible and should be further investigated along with the above. For example, this type of reservation requirement could be handled strictly via the new gTLD application process with opportunity for public comments in that process.

Finally, if further work is done for this category of names, it would be helpful to obtain input from NeuStar regarding the .biz list of reserved names in this category.

## **Recommendations regarding Other Reserved Names**

It is recommended that more work be done on this subcategory of names. With regard to that work, the following recommendation was supported by several people in the working group and should be further considered in any follow-on work:

It was the group's observation that each gTLD's list of reserved names and its business model may be unique. There may not be any one-size-fits-all approach for all gTLDs. For new gTLDs, applicant's approach to this category of reserved names (if applicable) must continue to be set during contract process and must include an opportunity for public comment by all interested parties.

The following information must be included in new gTLD applications that involve names in this category:

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1. A proposed list of reserved names from the registry, and a proposed procedure for opposing any names on such list, including a proposed administrator of such dispute resolution service (e.g., dotMobi's Premium Name Application Process for Trademark Holders which was administered by WIPO)
2. An overview as to why the various groups of names are being reserved and how this serves the community or forms part of the Registry's business model
3. An outer time limit, five years or less, as to how long the names will be reserved
4. A proposed procedure for releasing the names (e.g., an allocation method).

It is important to note that innovation should not be stifled and Registries should be allowed a degree of flexibility - provision should be allowed for Registry learning over time (e.g., as per the .name example). Therefore, the Registry Service Approval Process must be capable of handling such change requests or appropriate guidelines should be in place as regards notice given on any upcoming public comment period.

#### Minority Statement by Victoria McEvedy

I refer to my minority report in relation to Controversial Names and the comments of that Subgroup. For many of the same reasons I do not support any proposal that allows Registries to unilaterally deny applications at their discretion, without transparent and objective criteria, and without allowing for a proper external legal remedy by which the applicant can challenge the decision. Obviously there are concerns as to Freedom of Expression issues here. I support further work being undertaken on this issue.

#### Minority Statement by Marilyn Cade

This will be short. I think Greg/others identified an area that this group can make rapid progress on but which needs more work to determine how names are reserved, and then released by the registry.

I understand it may be a unique category but for now, addressing it will be most efficient by the present group who has some expertise.

#### Minority Statement from Caroline Greer

If Registries submit a list of reserved names for public comment during contract negotiations they should not also be required to provide for an opposition procedure administered by a third party. Such an opposition procedure may not

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be necessary or appropriate depending on the gTLD / names proposed and any opposition could be voiced during the public comment period. dotMobi's Premium Name Application Process for Trademark Holders was a unique process appropriate for that Registry (and developed after contract execution).

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**Table 4.8 Recommendations regarding Controversial Reserved Names**

<b>Definition of Controversial Names used in this report</b>			
<ol style="list-style-type: none"> <li>1. Qualifies as a TLD under the then prevailing String Criteria</li> <li>2. Does not fall under any other Reserved Name category</li> <li>3. Is disputed for reasons other than: i) It falls under any other Reserved Name category; ii) It infringes on the prior legal rights of others</li> </ol>			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	Yes	<ol style="list-style-type: none"> <li>1. Propose creating a category called Controversial Names for use at the top level only. A label that is applied for would be considered Controversial if during the Public Comment phase of the new gTLD application process the label becomes disputed by a formal notice of a consensus position from an ICANN Advisory Committee or ICANN Supporting Organization, and otherwise meets the definition of Controversial Names as defined above.</li> <li>2.               <ol style="list-style-type: none"> <li>a. In the event of such dispute, applications for that label would be placed in a HOLD status that would allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications would reenter the processing queue. The period of time allowed for dispute should be finite and should be relegated to a, yet to be defined, external dispute resolution process. The external dispute process should be defined to be objective, neutral, and transparent. The outcome of any dispute should not result in the development of new categories of Reserved Names.</li> <li>b. Notwithstanding the outcome of any such dispute, National law must apply to any applicants within its jurisdiction and in cases where the processes of International law allow enforcement of one nation's law on applicants from a different jurisdiction, those processes should apply.</li> </ol> </li> <li>3. It is recommended that more work needs to be done in regards to dispute resolution processes, including minimizing the opportunity for such processes to be gamed or abused.</li> </ol>

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<b>Definition of Controversial Names used in this report</b>			
1. Qualifies as a TLD under the then prevailing String Criteria 2. Does not fall under any other Reserved Name category 3. Is disputed for reasons other than: i) It falls under any other Reserved Name category; ii) It infringes on the prior legal rights of others			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
			4. The process [or lack thereof] described in 2 above could also be applied to new or existing strings that fall under other reserved name categories, for example, geographic and geopolitical names. The process may apply equally well to names at the second level.
Top	IDN	Yes	These recommendations may apply equally well to IDNs at the top level, but more work needs to be done.
2 <sup>nd</sup>	ASCII	No	Processes, if any, to deal with controversial names at the second level should be left to the discretion of the gTLD Registry Operator with the exception that Registry Operators must comply with applicable local laws and regulations.
2 <sup>nd</sup>	IDN	No	Processes, if any, to deal with controversial IDN names at the second level should be left to the discretion of the gTLD Registry Operator with the exception that Registry Operators must comply with applicable local laws and regulations.
3 <sup>rd</sup>	ASCII	No	Same as for the 2nd-level for any gTLDs for which registrations occur at the 3rd-level.
3 <sup>rd</sup>	IDN	No	Same as for the 2nd-level for any gTLDs for which registrations occur at the 3rd-level.

**Table E-8: Controversial Reserved Names**

**Comments of Avri Doria (In consultation with Victoria McEvedy, Solicitor, International Dispute Resolution Practice Consultant.):**

This report is concerned to identify comprehensively the issues raised by the principles and to examine them.

**Trade Mark Laws and ccTLDs as models**

It should be noted that both Nation States' trade mark laws, which are territorially limited and ccTLDs are premised on the assumption that a Nation is monocultural with a unitary legal system and a generally accepted standard of morality and taste often with only one or two dominant religions.

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Issues arise from attempts to extrapolate standards globally in a multicultural context is clearly problematic. These analogies must be considered with this limit in mind.

Trade mark laws also give inadequate weight to Freedom of Expression concerns which are relevant in an internet context given that much of the use is non-commercial. Consideration must also be given to the special considerations arising from the government sanction and exclusivity involved in trade marks which may not be applicable to the internet.

### **International Law**

. . . Arts 19 and 29 of the UN Convention on Human Rights . . . together subject Freedom of Expression to only such limitations as are determined by law. The ECHR provides similarly at Art. 10. Considerations arise as to the desirability of improving on such standards and questions as to the availability of other options.

Most nations have some restrictions on speech and inciting racial hatred or discrimination and crime tend to be included. It may be that common standards can be extracted after a review. Criticism of other religions is a tenant of Freedom of Expression in the West but prohibited in the Middle East. A full and proper study of the appropriateness of imposing the Eastern standards on the West should be considered.

### **Content v Strings**

Another issue that arises is the possibility that no action should be taken as to the strings on the basis that content is regulated by all nations so that for example, while .Nazi itself would not infringe French or German laws against glorification of the Nazi – the issue would be content related and depend on the content. See for example the Yahoo litigation.

### **The Veto**

The ability of any one nation to block an application requires serious consideration.

Comments of Marilyn Cade:

While the GAC is developing public policy principles, these are presently not available in final version to the Working Group, or GNSO Council. It is therefore not possible to fully consider the GAC's principles, although earlier draft versions are being discussed. Indications are that there will be some guidance from the GAC regarding criteria. Ideally, in the future, ongoing discussion and dialogue about draft principles will be undertaken in a 'multi stakeholder' discussion, before principles are finalized. Changes and improvements in sharing of information by the GNSO with the GAC should be considered as work in progress and undertaken during the

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GNSO improvements process. All such changes should accommodate the interests and perspectives of the GAC.

The GAC's advisory role to the ICANN processes is based on consensus of the GAC members. The Working Group should provide its best judgment, and provide for consultation and dialogue with the GAC, in conjunction with the GNSO Council, once the GAC principles are available for discussion. Ideally, the GAC will engage in dialogue with the GNSO Council, its Task Forces/Working Groups, and other ICANN expert bodies, before finalizing principles.

In my view, the establishment of the controversial/disputed names category is largely as a placeholder, where a name can be parked, and the disputed or controversial issues be addressed, in an established time frame. It is not my view that all strings that are proposed will be ultimately approved. Some will be denied for technical or political reasons, e.g. the name of a country proposed as a string by someone other than the country itself. While some believe that a TLD should be a matter of freedom of speech, I am not inclined to expect such lofty goals of a simple TLD. It is important to remember that second level registrations remain available to registrants, and the operating a registry is an obligation, not a right. The availability of second, third level registrations, and the ability to register for access to the Internet via ISPs for web pages and email addresses remains a core mechanism for users. Of today's 1 billion users, the vast majority use email addresses, web pages from ISPs, for their access and identity on the Internet.

#### Comments of Tim Ruiz:

The basis for my support of the straw recommendation is the desire that all applications for a new gTLD registry should be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process, and that it is impossible for ICANN to pre-determine all terms that may be morally offensive or of national, cultural or religious significance for all of the world's cultures and create predictable criteria for applicants.

It is my view that 2.v. of TOR two in the draft final report should be applied more as a warning to applicants, not as a criteria that ICANN can actually proactively apply when considering applications. The warning is that any string applied for may be contested as something contrary to public policy. If contested, the application will be moved to a holding status as 'controversial' until the public policy claims can be further investigated.

The only exception might be the seven words banned by the US Federal Communication Commission. While I have not asked that this be added to the straw recommendation, it is my belief that the US Department of Commerce, who has ultimate approval of all additions to the root, would

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never allow a gTLD string that exactly matches one of the seven banned words into the root.

#### Minority Statement by Victoria McEvedy

I wish to supplement the work of the Committee by adding these comments.

It is my view that any general Principle which seeks to prohibit any gTLD promoting hatred, racism, discrimination, crime or any abuse of religions or cultures is fundamentally flawed insofar as it fails to include any reference to Freedom of Expression.

GACs own Operating Principles, as amended at Mar del Plata, April 2005, provide at §6.3 that ICANN's decision making should take into account public policy objectives including, among other things:

- secure, reliable and affordable functioning of the Internet, including uninterrupted service and universal connectivity;
- the robust development of the Internet, in the interest of the public good, for government, private, educational, and commercial purposes, world wide;
- *transparency and non-discriminatory practices in ICANN's role in the allocation of Internet names and address;*
- effective competition at all appropriate levels of activity and conditions for fair competition, which will bring benefits to all categories of users including, greater choice, lower prices, and better services;
- fair information practices, including respect for personal privacy and issues of consumer concern; and
- *freedom of expression.*

Given that one of GACs overall policy objectives is Freedom of Expression, it is critical that it be referred to in any statement the GAC may make on the new gTLDs. It is more significant than the concerns of Rights' claimants.

The internet is not solely concerned with commercial use and speech and it is critical that proper consideration be given to Freedom of Expression.

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This is a consumer concern and is why trade mark law is so often an inadequate analogy.<sup>5</sup>

It is now well established in international jurisprudence that Freedom of Expression should only be subject to limits prescribed by law. A classic example is the balance in Article 10 of the European Convention on Human Rights. E.g.:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...(2) The exercise of these freedoms, since it carries with it duties and responsibilities, *may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society*, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Freedom of Expression is therefore predominant and subject only to those limits both prescribed by law *and* necessary in a democratic society for one of the enumerated purposes.

I propose that any GAC policy statement or Principles reflect a similar balance. The predominant concern should be Freedom of Expression, subject only to those limits supplied by law and in the interests of preventing the promotion of hatred, racism, discrimination etc. Most nations do have laws preventing this type of speech so this should not be problematic.

In relation to “abuse of specific religions or cultures,” unless that abuse would fall within one of the laws aforementioned, then presumably in the delicate balancing act between Freedom of Expression and limits prescribed, this conduct is deemed by a given society to fall within the right to Freedom of Expression.

Different societies have reached different answers to these difficult questions. Whose should prevail? The danger is that the nation with the most restrictive approach would drag the rest down to its standards.

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<sup>5</sup> Not only does trade mark law contain many compromises in its complex defences which are not reflected in the Domain System, but entry on the register, for registered marks, was at the government’s discretion and thus contained an element of state sanction –allowing it to impose a Victorian “taste and decency” approach.

Certainly in democratic traditions, it has never been acceptable to have secret closed committees, accountable to no-one, decide what can be said or published based on criteria known only to them and not subject to law or of law –this is censorship. This is the problem with the first stage of the “disputed application” approach as recommended. Arguably pre-determined criteria or restricted lists are more transparent.

ICANN should defer to the law but whose law? The choices are broadly Country of Origin or Countries of Destination. Destination is not feasible -- -unless, if the proposed name would infringe a law in a nation state which objects to the application—the application could be granted with conditions restricting or preventing its use in the objecting state(s). I understand however that this may not be technically possible. It would however prevent one State imposing its laws on others. The technical issues should be investigated.

An alternative might be agreed rules for jurisdiction and choice of law. Experts should be consulted.

This applies similarly to names at the second level, and other levels, where it should not be left to the discretion of the Registrars.

## F. RESERVED NAME TOPICS NOT CONSIDERED BY THE RN-WG

Because of limited time constraints, the RN-WG was not able to spend much time on the following topics related to reserved names that were suggested as possible topics for consideration in the statement of work:

1. Whether reserved name requirements need to be the same for all gTLDs and, if not, which ones might vary
2. Whether there should be a procedure by which staff publishes new categories of reserved names before adding them to registry agreements
3. Processes by which names could be put into reserved status at the top level
4. Processes by which names can be unreserved at the **top level** and made available for allocation, including discussion of whether there are unique treatments in allocation for names that are reserved
5. Whether and how categories of names can be unreserved and allocated at the **second level** from the existing categories
6. Should there be a process by which new names or categories are added to the reserved status in the second level (e.g., should we assume that all new strings allocated for operation as registries are reserved at the second level when they are awarded?)

It may be useful for the GNSO Council to consider whether separate working groups should be established to consider any of the above topics either independently or in combination with related topics.

It should also be noted that the RN-WG did not consider whether trademark names should have any reserved status because it was assumed that the Protecting the Rights of Others Working Group (PRO-WG) recently formed by the GNSO Council will cover this area.

## G. REPORTS FOR RESERVED NAME CATEGORIES

As stated earlier in the Methodologies subsection of this document, a separate report was written and approved for each of the reserved name categories considered by the RN-WG. The roles of reserved names and recommendations for all eight categories come directly from those reports. The basis used by the WG in arriving at the roles and recommendations can be better understood by reviewing the full reports for each category. Each report contains:

- Important background information to facilitate understanding of the reserved name category along with some historical information where applicable (Section 1 of each report)
- A listing of possible experts and a summary of the results of any consultations done with experts (Section 4 of each report)
- A summary of relevant sources of information (Section 5 of each report).

Because of the large number of information sources used for each report, they will not be repeated here. Please refer to Section 5 of each report to see the list of all sources reviewed for each category along with links or references as applicable. The following information sources were reviewed by the full RN-WG at the beginning of the process:

- gTLD Registry Agreement Reserved Names Appendices
  - URL for agreements:  
<http://www.icann.org/registries/agreements.htm>
    - Attachment 11 - .aero, .coop, .museum<sup>6</sup>
    - Appendix 6 - .asia, .biz, .cat, .com, .info, .jobs, .mobi, net, .org, .tel, .travel
    - Appendix K - .name, .pro
- Relevant RFCs which discuss reserved names
  - RFC 2606 (<http://www.rfc-editor.org/rfc/rfc2606.txt>)<sup>7</sup>
  - RFC 2141 (<http://www.ietf.org/rfc/rfc2141.txt>)
  - RFC 3491 (<http://www.rfc-editor.org/rfc/rfc3491.txt>)

Table 6.1 lists the appendices where individual subgroup reports for each reserved name category can be found.

### Table 6.1 List of Appendices for Subgroup Reports

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<sup>6</sup> Note that ICANN posted a revised .museum sTLD agreement for comment on 2 March 2007. That agreement contains a reserved names list in Appendix 6 that can be found here: <http://www.icann.org/tlds/agreements/museum/draft-proposed-museum-appendices-02mar07.pdf>. This report does not include details of the revised reservation requirements because they have not yet been approved by the ICANN Board.

<sup>7</sup> Note that RFC 2606 has the most relevance to reserved names of the three RFCs listed.

Category of Names	Reserved Names	Appendix
ICANN & IANA related	<b>ICANN:</b> aso, gnso, icann, internic, ccNSO <b>IANA:</b> afrinic, apnic, arin, example, gtld-servers, iab, iana, iana-servers, iesg, ietf, irtf, istf, lacnic, latnic, rfc-editor, ripe, root-servers	C
Single Character	All 36 alphanumeric ASCII characters (e.g., a.biz, b.aero)	D
Two Character	1296 combinations of ASCII letters and digits(e.g., xy.org, b2.info)	D
Tagged	All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")	E
NIC, Whois, www	Nic, Whois, www	F
Geographic & Geopolitical	All geographic & geopolitical names in the ISO 3166-1 list (e.g., Portugal, India, Brazil, China, Canada) & names of territories, distinct geographic locations (or economies), and other geographic and geopolitical names as ICANN may direct from time to time	G
Third Level	All three-character labels	H
Other 2 <sup>nd</sup> Level	See the section titled 'Other names reserved at the 2 <sup>nd</sup> level' in Appendix K	I
Controversial	N/A	J

### Table G-1: Appendices for Sub-Group Reports

The full RN-WG consulted with two IDN experts on 1 March 2007: **Ram Mohan** (Chair of the GNSO IDN Working Group); **Cary Karp** (Member of the ICANN President's IDN Committee). Individual subgroups consulted with many experts who are listed in their reports.

## H. OTHER CONCLUSIONS FROM THE WORK

The conclusions of each separate working group report speak for themselves and no additions or modifications are made here. In this section we add some observations to the report that arise from the nature of the process we were engaged in.

### **The role of technology**

One thought which the Working Group had arose from the role of technology in justifying the reservation of names. It is quite predictable that technology may change in ways that would undermine the continuing rationale for some names to be reserved. In that case, the WG thought that there needs to be some ongoing thought given to the role of technology.

It is recommended that, for names which continue to be reserved for technological reasons, ICANN should continue to monitor the rationales for keeping them reserved. It should put in place a process whereby names thus reserved would be released in an orderly way as technological evolution permits. Further work needs to be done to consider what an orderly process would consist of.

# APPENDIX A – STATEMENT OF WORK

## I. Formation of the Working Group

The Working Group (WG) is chartered by the GNSO Council with an approved statement of work, as defined below. This Statement of Work is intended to guide the work of the group.

### 1. Voting:

In general, the working group should operate using a rough consensus approach. Every effort should be made to arrive at positions that most or all of the group members are willing to support. "Straw poll voting" should be used to determine whether there is rough consensus on particular issues. In order to ensure that each constituency does not have to provide the same number of members, constituencies, regardless of number of representatives, can hold 3 votes, and each individual nominating committee councilor hold one vote. Liaisons are non voting.

### 2. Membership

The Working Group is open for membership to Councilors and to GNSO Constituency members; advisory committees (e.g., ALAC, GAC) may appoint non-voting liaisons to the working group. Members may be added by the constituencies and the Advisory groups at any time during the work of the WG. The ccNSO could be invited to have representatives participate as observers because there may be implications for the treatment of the two letter country codes, which are presently reserved at all levels. The WG may invite external experts as speakers or advisors (in the role of observer) that may be able to constructively contribute to the effort.

Every effort should be made to ensure that the working group include and consider the varying points of view on key issues. It is more important that all varying points of view are examined and reflected than for every constituency or group to have representation or equal numbers of members. If this goal is achieved and recommendations are developed that have rough consensus of the group, then the full Council, with balanced representation from all constituencies and NomCom appointees, will then have opportunity to act.

Members should be selected who can commit sufficient time during the next three-four months to facilitate achievement of the targeted accomplishments describe in the next section (Working Timeline).

The Council will appoint an initial or interim chair [or co-chairs] and the Working Group should, at its initial meeting, elect or confirm the chair and co-chair(s).

### 3. Working Timeline

The Working Group is asked to convene at the earliest possible time and to achieve the following targets:

1. Progress report in the upcoming intercessional working sessions of Dec05 PDP committee and the Feb06 PDP task force, scheduled for February 22-25
2. Deliver written recommendations for next steps forward to the GNSO Council at least one week prior to the start of the Lisbon ICANN meetings (16 March 2007), at which time the working group would end unless otherwise decided by the GNSO Council.
3. Provide any follow-up actions requested by the Council within 30 days after the Lisbon meetings.

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As appropriate, the Working Group should coordinate throughout with the Dec05 PDP Committee, the Feb06 PDP Task Force and the GNSO Council.

## **II. Purpose of the Working Group**

The purpose of the WG will be to perform an initial examination of the role and treatment of reserved domain names at the first and second level., with the goal of providing recommendations for further consideration by the TF or Council. This working group should focus initially on defining the role of reserved strings, and how to proceed with a full examination of issues and possible policy recommendations. This will include prioritizing sub-elements of the broad topic of reserved names in a manner that would facilitate breaking the broad topic into smaller parts that could then be divided into separate policy efforts of a more manageable size and that might also allow some less complicated issues to be resolved in a more timely manner so that some policy changes might be included in the introduction of new gTLDs.

The treatment of reserved names is a matter of contract for existing gTLDs and will be a matter of contract for future gTLDs. As such it relates to the work of both the Dec05 PDP regarding the Introduction of New gTLDs including IDNs and the Feb06 PDP regarding Contractual Conditions for Existing Registries, Therefore the WG needs to provide an initial examination of reserved names at both the top and second level for both existing and new gTLDs. Should it be determined that the ToR for Feb 06 does not allow for addressing contractual conditions, the WG report to the Council regarding relevant recommendations.

## **III. Working Group Responsibilities, Tasks and Proposed Working Approach**

A. To perform its initial examination of the role and treatment of reserved domain names at the first (top) level, WG responsibilities and tasks should include but need not be limited to the following:

1. Review the present treatment and process for reservation of names at all levels (using Appendix 6 in the latest gTLD Registry Agreements as examples), including reviewing treatment of reserved names that may differ in existing contracts – link provided in Background Section
2. Review any other discussions to date that have occurred related to reserved names for top level strings for new gTLDs including IDN gTLDs (e.g., the GNSO's Task Force on new gTLDs; constituency comments, etc.)
3. Review any ICANN staff reports related to reserved names – see Background Section
4. Review any relevant technical documents ,e.g., relevant RFCs –see Background Section and determine what technical outreach (IETF, IAB, SSAC, etc.) is needed and complete.
5. Liaise with the ICANN staff as needed, including legal and operational, to identify and review any existing work or relevant experiences related to reserved names processes and procedures
6. Liaise with the ccNSO and the ccTLD community in general as needed regarding the two letter names issues, including whether the present approach, as outlined in Appendix 6, is sufficient or necessary

B. Proposed Working Approach for Working Group:

1. Initially, examine the sub-elements of the broad topic of reserved names to consider breaking the broad topic into smaller parts
2. Estimate the complexity of issues associated with each of the sub-elements and briefly describe the elements of complexity (e.g., more controversial issues involving multiple stakeholder groups with competing views might be rated more complex; consultation with the GAC might be rated as more complex; etc.)
3. Prioritize the sub-elements according to these two factors:

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- a. Estimated level of complexity (less complex to higher)
- b. Importance/relevance to complete any future policy work prior to the introduction of new gTLDs
- c. Other {to be developed}
4. Identify any sub-elements for which any needed policy work may be able to be completed in time for the introduction of new gTLDs and develop recommendations about how that might best be accomplished/launch development of recommendations
5. Identify the remaining sub elements and establish a working plan to address these, including considering parallel work tracks, if feasible and resources permit, versus sequential work.
6. Prepare and submit an interim report to the relevant PDP group and/or the Council so that any additional policy work needed could be started as soon as possible referencing the Time Line provided by the Council
7. Prepare and submit a final report regarding all of the above for both PDP groups and the Council upon conclusion of work..

Regular progress reports should be provided for both PDP groups and the Council corresponding to scheduled meetings of those groups and the Council.

#### IV. Example of Topics for Reserved Names

*This section provides an example of a work plan outline for the work of the Working Group. It is provided as an initial resource for potential use by the Working Group and to attempt to help to launch the Working Group quickly, due to the pressures of time limitations. It is not intended to be comprehensive nor prescriptive. It should be assumed that the work will need to ask the question of how reserved names apply to IDNs at both second and first levels, as well as Latin character gTLDs.*

7. Identify possible roles and purposes for reserved names at the top level and review and examine those roles and purposes, including how to address the role of reserved names in IDNs
8. Identify and develop proposals to address any policy issues that should be or are under consideration by the existing GNSO PDPs regarding policy considerations related to the role, use, reservation, and release and allocation of reserved names at the top and second level
9. Determine:
  - a. The various roles that reserved names may play in new gTLDs in addressing controversial categories of names, including whether trademark names and country/geopolitical names should have initial or permanent reserved status; etc.
  - b. Whether existing reserved names at the second level should automatically be included at the first level or
  - c. Whether there is different treatment proposed for existing reserved names at the second level, in the first level
  - d. Whether reserved name requirements need to be the same for all gTLDs and, if not, which ones might vary
  - e. Whether there should be a procedure by which staff publishes new categories of reserved names before adding them to registry agreements
10. Discuss and review processes by which names could be put into reserved status at the top level
11. Discuss and propose processes by which names can be unreserved at the **top level** and made available for allocation, including discussion of whether there are unique treatments in allocation for names that are reserved
12. Discuss whether and how categories of names can be unreserved and allocated at the **second level** from the existing categories, including second level reservations in single

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character<sup>8</sup> and two character labels, and reservations for geographic and geopolitical names, to include examination of any existing technical concerns

13. Reconfirm whether there should be a process by which new names or categories are added to the reserved status in the second level (e.g., should we assume that all new strings allocated for operation as registries are reserved at the second level when they are awarded?)

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## APPENDIX B -- BACKGROUND MATERIALS AND RELEVANT INITIATIVES

Background:

- 1) Existing Registry Agreements Reserved Names (Annex 6 and other examples)  
<http://www.icann.org/registries/agreements.htm>
- 2) Relevant RFCs which discuss reserved names  
<http://www.rfc-editor.org/rfc/rfc2606.txt>  
<http://www.ietf.org/rfc/rfc2141.txt>  
<http://www.rfc-editor.org/rfc/rfc3491.txt>
- 3) Status report on single letter names – to be provided

Relevant Initiatives:

- (1) PDP 05: developing policy recommendations on new gTLDs, as part of a policy development process called PDP-Dec05.  
<http://www.gnso.icann.org/issues/new-gtlds/>
- (2) PDP 06 [need link]
- (3) IDN Working Group  
<http://www.gnso.icann.org/issues/idn-tlds/issues-report-02aug06.htm>

Submitted by: Marilyn Cade and Chuck Gomes

### **Attachment 1:**

#### **Additional considerations:**

For a policy issue to warrant a policy development process it must Meet the following criteria:

- (A) Is within the scope of ICANN's mission statement;
- (B) is broadly applicable to multiple situations or organizations;
- (C) is likely to have lasting value or applicability, albeit with the need for occasional updates;
- (D) Will establish a guide or framework for future decision-making; or
- (E) Implicates or affects an existing ICANN policy.

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## APPENDIX C -- RESERVED NAMES WORKING GROUP MEMBERS

	Name	Company	Location	Constituency / Organization
1	Alistair Dixon	Telstra Clear Ltd	Wellington, New Zealand	BC
2	Neal Blair	Capitol Strategies	Las Vegas, NV	BC
3	Marilyn Cade	Consultant	Falls Church, D.C., USA	BC
4	Mike Rodenbaugh	Yahoo! Inc.	Sunnyvale, CA, USA	BC
5	Avri Doria	Independent Research Consultant	USA & Sweden	GNSO Council NomCom Appointee
6	Dan Dougherty	Yahoo! Inc.	San Francisco, CA, USA	IPC
7	Gregory S. Shatan	ReedSmith LLP	New York, NY, USA	IPC
8	Lucila King	AIPPI (INTA)	Buenos Airers, Argentina	IPC
9	Tamara Reznik	Expedia, Inc.	Bellevue, WA, USA	IPC
10	Mawaki Chango	Syracuse Univ.	New York	NCUC
11	Victoria McEvedy			NCUC
12	Jonathon Nevett	Network Solutions LLC	Herndon, VA, USA	Registrars
13	Seth Jacoby	Basic Fusion, Inc.	New York, NY, USA	Registrars
14	Tim Ruiz	The Go Daddy Group, Inc.	Cedar Rapids, Iowa, USA	Registrars
15	Edmon Chung	I. DOT ASIA ORGAN IZATION N	Hong Kong, China	RyC
16	Caroline Greer	J. mTLD TOP LEVEL DOMAI N LTD	Dublin, Ireland	RyC
17	Chuck Gomes	VeriSign, Inc.	Sacramento, CA, USA	RyC
18	Michael D. Palage	Consultant	Palm Beach, FL, USA	RyC
19	Dr. Kung-Chung Liu	National Communications Commission Distinct Economy of Taiwan	Taiwan	Individual

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	<b>Name</b>	<b>Company</b>	<b>Location</b>	<b>Constituency / Organization</b>
20	Bilal Beiram	Internet Affairs Manager, Talal Abu-Ghazaleh Organization	Amman, Jordan	Individual
21	Minjung Park	NIDA (National Internet Development Agency of Korea)	Seoul, Korea	ccNSO - Liaison
22	Sophia Bekele	CBS Enterprise Group		IDN WG Liaison
23	Timothy Denton	Consultant	Ottawa, Canada	ICANN Consultant
24	Denise Michel	K. ICANN	Brussels, Belgium	ICANN Staff
25	Glen de Saint Gerry	L. ICANN	France	ICANN Staff
26	Liz Williams	M. ICANN	Brussels, Belgium	ICANN Staff
27	Tina Dam	N. ICANN	Marina del Rey, CA, USA	ICANN Staff
28	Dan Halloran	O. ICANN	Marina del Rey, CA, USA	ICANN Staff
29	Patrick Jones	P. ICANN	Marina del Rey, CA, USA	ICANN Staff

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# APPENDIX D -- ICANN & IANA RELATED RESERVED NAMES

Prepared Timothy Denton and Mawaki Chango

## 1. Background

This report provides an overview and assesses the current status of the category of reserved names related to ICANN and IANA. As such, the reserved names are not available for registration by members of the public.

More specifically, the Registry Agreements negotiated by ICANN state that “the following names shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations”.

The two tables below present the set of reserved names for two organizations: ICANN and IANA. In the case of ICANN, there are five reserved names for each registry. In the case of the IANA, they are seventeen (17) for each registry.

**Table 1: ICANN-related names,  
in order of year of ICANN-Registry agreement**

<b>GTLD</b>	<b>Reserved Names</b>					<b>Date of Agreement</b>
<a href="#">.aero</a>	aso	dns0	icann	internic	pso	2001
<a href="#">.coop</a>	aso	dns0	icann	internic	pso	2001
<a href="#">.museum</a>	aso	dns0	icann	internic	pso	2001
<a href="#">.name</a>	aso	dns0	icann	internic	pso	2001
<a href="#">.pro</a>	aso	dns0	icann	internic	pso	2002
<a href="#">.jobs</a>	aso	gnso	icann	internic	ccnso	2005
<a href="#">.mobi</a>	aso	gnso	icann	internic	ccnso	2005
<a href="#">.net</a>	aso	gnso	icann	internic	ccnso	2005
<a href="#">.travel</a>	aso	gnso	icann	internic	ccnso	2005
<a href="#">.cat</a>	aso	gnso	icann	internic	ccnso	2005
<a href="#">.tel</a>	aso	gnso	icann	internic	ccnso	2006
<a href="#">.asia</a>	aso	gnso	icann	internic	ccnso	2006
<a href="#">.biz</a>	aso	gnso	icann	internic	ccnso	2006
<a href="#">.com</a>	aso	gnso	icann	internic	ccnso	2006
<a href="#">.info</a>	aso	gnso	icann	internic	ccnso	2006

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<a href="#">.org</a>	aso	gnso	icann	internic	ccnso	2006
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**Table 2: IANA-Related Names**

TLD		Reserved Names
.aero	All names in Reserved Names column at right are reserved in each TLD at left.	afrinic
.asia		apnic
.biz		arin
.cat		example
.com		gtld-servers
.coop		iab
.info		iana
.jobs		iana-servers
.mobi		iesg
.museum		ietf
.name		irtf
.net		istf
.org		lacnic
.pro		latnic
.tel		rfc-editor
.travel		ripe
	root-servers	

### Justification for ICANN reserved names

The words reserved by ICANN are mostly acronyms that basically relate to the organization structures (bodies) and functions, as it has evolved, and the justification for reservation is equally obvious.

The "schedule of reserved names" was born with the new TLD registry agreements in early 2001. A consultation with ICANN officials yielded the same result: no one recalls any record of any public or private document that describes the rationale for having a scheduled names list, or that describes the reasons why particular strings were included (or excluded).

Some members of the Working Group on Reserved Names believe that ICANN and IANA should not be able to reserve if other entities must register names in order to keep them from public use.

A further point was made by Patrick Jones of ICANN, in relation to ICANN- and IANA-reserved names.

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“... just to clarify that IANA/ICANN names are reserved, provided that if ICANN/IANA or the related entities whose names are on reserve wanted to use one of the names, those names could be registered by the requesting entity. For example, ICANN registered and paid for the registration costs to un-reserve ICANN.jobs. If ICANN wanted to use ICANN.info in the future, it should be able to un-reserve the name.”

### **Justification for IANA's reserved names**

There has been little need in the past to justify decisions about some reserved names, some of which must date from the days of John Postel. A search has revealed only a few paragraphs here and there of justification.

The IANA-reserved names relate to functions and institutions within the purview of IANA: subordinate nameservers, IANA's regional nodes, the request for comment editor, and so forth.

The standard explanation offered to those seeking to register such names is basically given by IANA along the following lines.

General responses to other reserved domains:

Thank you for your enquiry.

Domain names reserved by the Internet Assigned Numbers Authority are not available for sale, registration or transfer. These have been reserved on policy grounds, and include single letter domains, domains with hyphens in the third and fourth positions, and other reserved words.

Should the policies regarding these rules change, they will be released from IANA's registration according to revised policy.

### **A note on http, https, and html**

In the course of the work of the Working Group, the question of whether the following names should also be reserved has come up. They are:

*http*, *https* and *html*

A review of the *whois* sites showed that, as of March 5, *http.org* had been registered. All three names are currently registered in *.com* and there appear to be no issues with them.

*https.com* since 1999 (monetized)

*http.com* since 1995 (not currently resolving)

*html.com* since 1993 (hosting company)

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As of March 8, consultations with IANA or other authorities had not taken place about these three names.

The view of the working group was that no further work needed to be done in relation to these three additional names, and that there was no persuasive reason to reserve them. Since they have never been reserved, no further recommendations have been made in relation to them.

## 2. Role

The role of the reserved names held by IANA and ICANN has been to maintain for those organizations the exclusive rights to the names of ICANN (icann), its bodies (aso, ccnsso, pso, etc.) or essential related functions (internic) of the two organizations.

## 3. Recommendations regarding ICANN and IANA reserved Names

<b>Description of Current Reserved Name Requirement</b>			
<b>ICANN:</b> aso, gnso, icann, internic, ccNSO			
<b>IANA:</b> afrinic, apnic, arin, example, gtld-servers, iab, iana, iana-servers, iesg, ietf, irtf, istf, lacnic, latnic, rfc-editor, ripe, root-servers			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	Yes	More work is recommended. (See discussion below of what that work might entail).
Top	IDN	No, except for "example"	<ol style="list-style-type: none"> <li>1. For all but "example", do not try to translate into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.</li> <li>2. In the case of "example", we recommend the IDN working group be consulted with regard to whether the term "example" be reserved in corresponding versions of Unicode.</li> </ol>
2 <sup>nd</sup>	ASCII	Yes	More work is recommended. (See discussion below of what that work might entail).
2 <sup>nd</sup>	IDN	No, except for "example"	<ol style="list-style-type: none"> <li>1. For all but "example", do not try to translate into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.</li> </ol>

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<b>Description of Current Reserved Name Requirement</b>			
<b>ICANN:</b> aso, gnso, icann, internic, ccNSO			
<b>IANA:</b> afrinic, apnic, arin, example, gTLD-servers, iab, iana, iana-servers, iesg, ietf, irtf, istf, lacnic, latnic, rfc-editor, ripe, root-servers			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
			2. In the case of “example”, we recommend the IDN working group be consulted with regard to whether the term “example” be reserved in corresponding versions of Unicode.
3 <sup>rd</sup>	ASCII	Yes	For gTLDs with registrations at the third level, more work is recommended. (See discussion below of what that work might entail).
3 <sup>rd</sup>	IDN	No, except for “example”	For gTLDs with registrations at the third level: 1. For all but “example”, do not try to translate into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist. 2. In the case of “example”, we recommend the IDN working group be consulted with regard to whether the term “example” be reserved in corresponding versions of Unicode.

Some members of the RN-WG wished to express the following personal views on the subject of ICANN and IANA reserved names.

Avri Doria wrote:

“These TLDs should be available to the appropriate organizations for registration; e.g. the IAB should be allowed register .iab or .irtf, ISOC should be able to register .ietf or .iesg and Afrinic should be able to register .afrinic - assuming, of course, they meet all the other requirements for registration and want to do so.

“The review, comment and challenge procedures that are being developed by the GNSO new gTLD process to deal with registration of a label by an entity that does not have the right to so register the label should be sufficient to prevent these names from being registered by organizations other than those who would have the right to do so.

“Note: the discussion of the reservation at the second and third levels should be subject to similar constraints as at the first level, though the processes for review and challenge would be different.”

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Michael Palage offered the following points:

“In accordance with Article I, Section 2 subparagraph 8 of the ICANN bylaws it states that in performing its mission, the following core values should guide the decisions and actions of ICANN “[m]aking decisions by applying documented policies neutrally and objectively, with integrity and fairness.” Unlike other reservations that are based upon long standing and well established principles, ICANN/IANA staff has sought to continue reservation of a compilation of strings in which they have been unable to provide any documentation regarding the legal authority for such reservation. For ICANN/IANA to continue to reserve these names while similarly situated parties, in this case sovereign national governments (country names), IGOs and nationally recognized trademark holders, are not provided equal protection appear to be a clear violation of the bylaw provision cited above. More detailed discussion regarding the legal concerns regarding these reservation have been documented on the working groups mailing list, see <http://forum.icann.org/lists/gnso-rn-wg/msg00169.html>.

“In order for this or any other working group to make a determination based upon documented fact, the following inquiries should be explored:

- ICANN should make available to the group all written and historical references to the original basis of these reservations;
- ICANN should contact all organizations that have had their name reserved, and ask for documentation in connection with any actual confusion or security/stability concerns that have arisen in connection with the use of these strings in legacy gTLD (.com, .net and .org);
- ICANN should ask these organizations if they would prefer to have ICANN continue to reserve these names in existing and future TLDs, and the basis of this reservation request; and
- ICANN should undertake an analysis to determine any third parties that may have rights in the reserved strings (i.e. nationally registered trademarks, etc) and how this reservation potentially negatively impacts those rights.”

Mike Rodenbaugh stated the following:

It appears obvious that these names were reserved to avoid end-user confusion if an entity other than the corresponding entity (ICANN, IANA, etc.) were to register a domain such as icann.info, iana.biz, afnic.travel,

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etc. Such problem is far more severe in the case of well-known brands (Yahoo!, Citibank, eBay, etc.) who receive exponentially more traffic to their websites and collect personal and financial information from users, making them far more frequent and severe targets for cybersquatting, phishing and other illegal activities.

ICANN and related entities' brands should not receive any greater protection than more well-known brands. Rather, ICANN should determine methods to better protect all users and brands from these problems, taking into account the many years of experience that non-ICANN related brands have suffered in this regard.

### **3. Consultation with Experts**

Both Dan Halloran and Kurt Pritz have been approached to supply a rationale for the continuing reservation of these names. Kurt Pritz wrote:

“Regarding the reasoning for making the name reservation on these 17 names: present staff at ICANN were not involved in the decision making process. We have started the documentation search regarding these reservations and will make contact with those involved with making the reservation. We have had discussions regarding this issue but will not be able to generate a formal report in the near-term.

“In the meantime, it is ICANN's position [is] that these names continue to be reserved.”

Other members of ICANN have supplied information to this report.

Dan Halloran has pointed out that if IANA's or ICANN's current set of reserved names were ever disputed, the entire UDRP process is under the aegis of ICANN. This would have the effect of making it appear that ICANN was sitting in judgment of its own interests. The better way to avoid this possibility was to keep them reserved.

#### **IDN Implications**

As regards the IDN implications of these two categories of names, both Cary Karp and Ram Mohan were consulted in a teleconference of March 1, 2007. The advice received was that these names were “integral designators” to be used “without translation”. In other words, there was no need to reserve these strings in other languages. Ram Mohan also agreed that they should not be reserved in foreign languages or scripts. “Find the equivalent and reserve them at that time”, he suggested. “Don't try to translate them”, referring to the acronyms.

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The one possible exception to the general advice was in relation to the single word “example”, which was capable of being used in translated form in many languages.

#### **4. Summary of Relevant Information Sources**

The [ICANN registry agreements](http://www.icann.org/registries/agreements.htm) set forth the reserved names in question (<http://www.icann.org/registries/agreements.htm>).

We have been unable to find directly relevant RFCs or other documents pertaining to this class of reserved name.

# APPENDIX E -- SINGLE AND DUAL CHARACTER RESERVED NAMES

## Report regarding Single- and Dual Character Domains

Prepared by Patrick Jones, Marilyn Cade, Mike Rodenbaugh, Alistair Dixon, Neil Blair and Timothy Denton

### 1. Background

This report addresses the Reserved Names that contain one or two characters. "Characters" include letters, numbers and symbols (such as #, \$, &, !, \*, -, \_, +, =). For purposes of this discussion, five subcategories will be addressed:

- Single and two character symbols at the first and second level
- Single letters and numbers at the first level
- Single letters and numbers at the second level
- Two letters and numbers at the first level
- Two letters and numbers at the second level

This report will examine each of the above categories, recognizing that the technical and policy issues may differ across each of the sub categories. The purpose of this report is to examine whether there are any technical, policy or practical concerns about releasing these names. Domain names are defined in RFC 1034 (published in November 1987 and recognized as an Internet Standard, <ftp://ftp.rfc-editor.org/in-notes/rfc1034.txt>).

The initial treatment of using a 'reservation' developed with Jon Postel and involved both single and two character strings. Some discussion about reserved names can be traced back to specific RFCs, while the 'reservation category' has also evolved via gTLD registry agreements. The reserved names list was created during the proof-of-concept round of new TLDs in 2001. The reserved names list was a topic of discussion during the ICANN Meeting in Melbourne, Australia in March 2001. An information page on the registry agreement appendices was first posted in February 2001 (<http://www.icann.org/melbourne/new-tld-agreements-topic.htm>). Subsequently, the category of Geographical and Geopolitical names were added as a category to the 'standard appendix for reserved names, beginning with .info.

#### 1.1 Single and two character symbols at the first and second level:

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Only ASCII characters are permitted in the DNS – limiting the characters to the letters a-z; the numbers 0-9, and the hyphen-dash (-). "." has a special status: it is permitted by the DNS but used as a "separator" for labels. No other symbols are permitted in the DNS, to the left of the TLD.

Discussions with technology experts indicate that there would not be support for making any changes to allow the release of symbols in one or two character domain names, at any level. .

## **1.2 Single characters (letters or numbers) – Top Level:**

Single-character TLDs have never been released by ICANN. In 2000, ICANN received an application for .i. This application was not approved (see <http://www.icann.org/tlds/i1/>).

RFC 1035 (see <http://www.ietf.org/rfc/rfc1035.txt>) states that domain names “must start with a letter, end with a letter or digit, and have as interior characters only letters, digits, and hyphen. There are also some restrictions on the length. Labels must be 63 characters or less.”

There may be potential user confusion from mistyping single characters or numbers at the top level (i.e., .l versus .1, .m versus .n, .q versus .g). There may be other “technical” issues as yet unidentified, particularly as to single numbers.

Some businesses own trademarks in single letters, such as Overstock, Nissan Motors, T-Mobile and Yahoo! [Examples are provided merely for illustration and discussion]. Such trademark owners may be interested in registering a corresponding TLD.

According to recent research conducted by IANA, out of 9540 possible combinations of single-character ASCII names at the second level (containing 26 letters, 10 numbers, but not symbols, across 265 TLDs), 1225 delegations of single-character ASCII names exist in the zone. 63 TLDs have at least one single-character ASCII delegation (see <http://forum.icann.org/lists/gnso-rn-wg/msg00039.html>).

Given that single letter and number domains are widely in use at the second level in country codes and as IDNs (Unicode renderings of ACE forms of IDNA valid strings (“A-labels”)), it seems feasible to examine how to release and allocate single letter and number top level names, both in ASCII and IDN.

The release and allocation of single letters has been subject of some discussion during the PDPs regarding contractual terms for TLD registries.

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### 1.3 Single characters (letters and numbers) – Second Level

Currently, all 16 gTLD registry agreements (.aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel) provide for the reservation of single-character names at the second level. ICANN's gTLD registry agreements contain the following provision on single-character names. See, e.g., Appendix 6 of the .TEL Registry Agreement, <http://www.icann.org/tlds/agreements/tel/appendix-6-07apr06.htm> ("the following names shall be reserved at the second-level:... All single-character labels.").

Letters, numbers and the hyphen symbol are allowed within second level names in both top level and country code TLDs. Single letters and numbers also are allowed as IDNs -- as single-character Unicode renderings of ASCII compatible (ACE) forms of IDNA valid strings.

Before the current reserved name policy was imposed, in 1993, Jon Postel took steps to register all available single character letters and numbers at the second level, purportedly to reserve them for future extensibility of the Internet (see 20 May 1994 email from Jon Postel, <http://ops.ietf.org/lists/namedroppers/namedroppers.199x/msg01156.html>). All but six (q.com, x.com, z.com, i.net, q.net, and x.org) of the possible 144 single-letter or numbers at the second-level in .COM, .EDU, .NET and .ORG were registered and remain reserved by IANA. Those six registrations have been grandfathered, and several have been used for various purposes and/or transferred amongst different registrants. Under current policy, these names would be placed on reserve if the registrations were allowed to expire.

Since the initial registration of single-letter names by IANA, IANA has uniformly turned down all offers by third parties to purchase the right to register these names, and has advised these parties that the names are reserved for infrastructure purposes to help ensure stable operation of the Internet.

An email of 27 May 2000 to the then DNSO-GA list provides further background on single-letter names (see <http://www.dnsso.org/clubpublic/ga/Arc04/msg00442.html>).

According to recent research conducted by IANA, out of 9540 possible combinations of single-character ASCII names (containing 26 letters, 10 numbers, but not symbols, across 265 TLDs), 1225 delegations of single-character ASCII names exist in the zone. 63 TLDs have at least one single-character ASCII delegation (see <http://forum.icann.org/lists/gnso-rn-wg/msg00039.html>).

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We understand that some businesses **may** own trademarks in single letters, such as Overstock, Nissan Motors, T-Mobile and Yahoo! [Examples have been provided merely for illustration and discussion]. These trademark owners, if they have not already registered their single-character trademarks as domain names, may be interested in doing so across a number of TLDs.

There may be potential user confusion from mistyping single characters or numbers at the top level (i.e., 1.com versus l.com, m.com versus n.com, q.com versus g.com).

Given that single letter and number second level domains are widely used in country codes and as IDNs (Unicode renderings of ACE forms of IDNA valid strings (“A-labels”)), and six letters are used in the existing legacy generic top level domains, it seems feasible to examine how to release and allocate single letter and number second level names, both in ASCII and IDN. (RFC 1035 definition of domain names would seem to preclude domains that start with numbers, but there is much existing use of such domain names.)

The release and allocation of single letters has been subject of some discussion during the PDPs regarding contractual terms for TLD registries.

#### **1.4 Two characters (letters and numbers) – Top Level**

To date, two-character TLDs have been released only as two-letter ccTLDs. No combinations of letters and numbers, and no two-number strings have been allocated at the top level. The sub-group is conducting expert outreach to examine any implications of release of such combination or two-number TLDs.

An early RFC issued in October 1984 (RFC 920) defined country codes as the “The English two letter code (alpha-2) identifying a country according the ISO Standard for ‘Codes for the Representation of Names of Countries’”. This RFC was issued before ccTLDs had been established (see <ftp://ftp.rfc-editor.org/in-notes/rfc920.txt>, page 7).

RFC 1032, issued in November 1987, states that “countries that wish to be registered as top-level domains are required to name themselves after the two-letter country code listed in the international standard ISO-3166.”

Two character/letter strings at the top level are now identified with the ISO 3166 list, which has a two letter code associated with all of the over 200 countries and recognized economies. Country code or ccTLDs correspond directly to the two character letters on the ISO 3166 list. The ISO 3166-Maintenance Agency governs the list of country codes. Further information on the ISO 3166 list is available at <http://www.iso.org/iso/en/prods-services/iso3166ma/index.html>. According to RFC 1591, “IANA is not in the business of deciding what is and is

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not a country” (<http://www.rfc-editor.org/rfc/rfc1591.txt>). “The selection of the ISO 3166 list as a basis for country code top-level domain names was made with the knowledge that ISO has a procedure for determining which entities should be and should not be on that list.”

Further, RFC 1591 defines a country code as “a domain in the top level of the global domain name system assigned according to a two-letter code based on the ISO 3166-1 standard ‘Codes for the Representation of Names of Countries and Their Subdivisions.’”

In the 2000 round, ICANN received an application for .GO. This string was not allocated on the ISO 3166 list to a country. This application was rejected.

The GAC Principles and Guidelines for the Delegation and Administration of Country-Code Top Level Domains (5 April 2005) contains a statement on ccTLDs:

4.1.2. Every country or distinct economy with a government or public authority recognised in accordance with article 3.8 above should be able to ask for its appropriate country code to be represented as a ccTLD in the DNS and to designate the Registry for the ccTLD concerned.

A 27 February 2007 email from Kim Davies provides context to support the reservation of two-letter strings at the top level for use as future ccTLDs (see <http://forum.icann.org/lists/gnso-rn-wg/msg00163.html>).

A 4 March 2007 email from Chris Disspain states in part:

“gTLDs in ASCII – there is, if I understand it correctly, a current prohibition on issuing new gTLDs with 2 characters. I imagine the vast majority of the ccTLD community would be in favour of this prohibition being retained. Apart from anything else, reservation of 2 characters at the top level is the only way of ensuring that a new ccTLD code will be available for new territories.”

There may be potential user confusion from mistyping combinations of letters and numbers (eg. .c0 versus .co, .t0 versus .to, .1l versus .li, m0 versus .mo), with two-number strings (.00 versus .oo, .11 versus .ll, .l0 versus .lo), and with two-letter strings (ll versus li, .vy versus .yv, .pq vs. .pg).

Some businesses own trademarks in single letters, such as Overstock, Nissan Motors, T-Mobile and Yahoo! [Examples are provided merely for illustration and discussion]. Such trademark owners may be interested in registering a corresponding TLD.

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The release and allocation of single letters has been subject of some discussion during the Dec05 PDP regarding the introduction of new gTLDs.

## **1.5 Two characters (letters and numbers) – Second Level**

In 2001, in considering a proposal from .AERO for the limited release of two-letter airline codes, a GAC Communique (<http://www.icann.org/committees/gac/communique-09sep01.htm>) noted that the WIPO II report addressed this category of names and recommended that “If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimizes the potential for confusion with the ccTLDs.” This recommendation has been incorporated into the reserved names appendix of 14 of ICANN’s current, gTLD registry agreements.

The WIPO II Report is available at <http://www.wipo.int/amc/en/processes/process2/report/html/report.html> and included in this report under Section 5(k).

Fourteen out of sixteen of the present gTLD registry agreements (.aero, asia, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .pro, .tel and .travel) provide for the reservation of two-character names at the second level, via the following provision. (See, e.g., Appendix 6 of the .TEL Registry Agreement, <http://www.icann.org/tlds/agreements/tel/appendix-6-07apr06.htm>.)

Except to the extent that ICANN otherwise expressly authorizes in writing, the Registry Operator shall reserve names formed with the following labels from initial (i.e. other than renewal) registration within the TLD: ... All two-character labels shall be initially reserved. The reservation of a two-character label string shall be released to the extent that the Registry Operator reaches agreement with the government and country-code manager, or the ISO 3166 maintenance agency, whichever appropriate. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.

Two of the sixteen present gTLD strings, .BIZ and .ORG registry agreements say only “Registry Operator shall reserve names formed with the following labels from initial (i.e. other than renewal) registration within the TLD: ... All two-character labels shall be initially reserved.” See

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<http://www.icann.org/tlds/agreements/biz/appendix-06-08dec06.htm> and <http://www.icann.org/tlds/agreements/org/appendix-06-08dec06.htm>).

There may be potential user confusion between the combination of letters and numbers (eg. c0.com versus co.com; t0.com versus to.com; 1l.com versus li.com, m0.com versus mo.com), with two-number strings (00.com versus oo.com, 11.com versus ll.com), and with two-letter strings (ll.com versus li.com, vy.com versus yv.com).

At the second level, two-character names have been registered, re-sold directly or via auction, and/or transferred by a wide variety of parties for many years. The GNR RSTEP report noted that there have been 18 UDRP cases involving two-character names at the second level.

Some businesses use two letter identifiers or two-character abbreviations, such as FT for Financial Times, GM for General Motors, DT for Deutsche Telecom, BT for British Telecom, HP for Hewlett-Packard, or have corporate names of characters and number, such as 3M. [Examples are provided merely for illustration and discussion]. These trademark owners, if they have not already registered their two-character trademarks as domain names, may be interested in doing so across a number of TLDs.

In the past, ICANN has approved the release of certain two-character names from the reserved names lists through one-on-one communication with the requesting registry operator. There are no public information sources on the release of these names, but in the past ICANN has agreed to the release of e8.org, a2.coop, nz.coop and uk.coop. NZ.coop and UK.coop were released with the approval of the UK and NZ government representatives and ccTLD managers. A2.coop and e8.org were released without objection from the ISO 3166-Maintenance Agency. On 25 May 2004, the ICANN Board approved the limited release of two-character airline codes in .AERO (<http://www.icann.org/minutes/resolutions-25may04.htm>). On 16 January 2007, the ICANN Board approved the limited use of two-character names in .NAME (<http://www.icann.org/minutes/prelim-report-16jan07.htm>) (see summary of relevant information sources below for further information on the GNR proposal).

On 21 February 2007, Fundació puntCAT proposed release of three two-character names from the .CAT Sponsorship Agreement. .CAT has proposed release of UB.cat, UV.cat and UA.cat. Only UA.cat corresponds to a country code TLD (Ukraine). ICANN has approved this release.

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The existing registry agreement provisions provide a mechanism for the release of two-character names at the second level, as set forth above. In addition, registries may submit a proposal for the release of two-character names through the process for new registry services (also known as the “Funnel”), which was approved as a GNSO Consensus Policy on 8 November 2005 (<http://www.icann.org/minutes/resolutions-08nov05.htm>) and implemented 25 July 2006 (<http://www.icann.org/announcements/rsep-advisory-25jul06.htm> and <http://www.icann.org/registries/rsep/rsep.html>).

## 2. Role of the Name Reservation Requirement

It appears that the original purpose for reserving the single characters was driven by technical concerns. Two letter reservations appear to have been based on concerns about confusion with two letter country codes.

## 3. Recommendations

**Table 3.1 Recommendations regarding Symbols**

Description of Current Reserved Name Requirement			
Level	Type	More Work?	Recommendations
ALL	N/A	No	We recommend that current practice be maintained, so that no symbols other than the ‘-’ [hyphen] be considered for use at any level, unless technology at some time permits the use of symbols.

Minority statement from Avri Doria

I have a minority statement for symbols. I do not buy the blanket technical argument for all symbols, especially in IDNs.

There should be actual technical proof that symbols cause problems in the DNS. The prohibition should only be for those that are shown to prove harmful. Any symbols not found harmful should be released after technical testing.

I recommend that the use of symbols in the DNS be tested to see which cause problems.

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**Table 3.2 Recommendations regarding Single Character Names**

<b>Description of Current Reserved Name Requirement</b>			
All 36 alphanumeric ASCII characters (e.g., a.biz, b.aero, 9.com)			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	Yes	Letters: We recommend that further work be done to confirm that there are no technical reasons to prohibit single letter TLDs.
			Numbers: We recommend that further work be done on single numbers at the top level. There may be technical issues in that some programs may read such a string as a partial IP address.
Top	IDN	Yes	We recommend further work on the subject of one-character IDN TLDs, including outreach to experts and discussion related to policies for IDNs.
2 <sup>nd</sup>	ASCII	Yes	Letters and numbers: We recommend that single ASCII letters and numbers be released at the second level in future TLDs, and that those currently reserved in existing TLDs should be released. This release should be contingent upon the development of an appropriate allocation framework.
2 <sup>nd</sup>	IDN	Yes	The subgroup did not have time to address single-character IDNs at the second level. This is also an area that could be addressed by the IDN WG.
3 <sup>rd</sup>	ASCII	No	The subgroup did not address single-letters and numbers at the third level for gTLDs that offer registrations at that level.
3 <sup>rd</sup>	IDN	No	The subgroup did not address single-character IDNs at the third level for gTLDs that offer registrations at that level.

Minority Statement from Mike Rodenbaugh:

According to recent research conducted by IANA, out of 9540 possible combinations of single-character ASCII names at the second level (containing 26 letters, 10 numbers, but not symbols, across 265 TLDs), 1225 delegations of single-character ASCII names exist in the zone. 63 TLDs have at least one single-character ASCII delegation (see <http://forum.icann.org/lists/gnso-rn-wg/msg00039.html>). Given that single letter and number domains are widely in use at the second level in country codes and as IDNs (Unicode renderings of

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ACE forms of IDNA valid strings (“A-labels”)), it seems reasonable to examine how to release and allocate single letter and number top level names, both in ASCII and IDN.

**Table 3.3 Recommendations regarding 2-Character Reserved Names**

<b>Description of Current Reserved Name Requirement</b> 1296 combinations of ASCII letters and digits (e.g., xy.org, b2.info, 29.biz)			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	No	Letters only: We recommend that the current practice of allowing two-letter ASCII names at the top level, only for ccTLDs, remain at this time. *
		Yes	One letter and one number or two numbers: We recommend further work regarding letter/number or 2-number TLDs including outreach to experts. This area needs further study, including discussion with technical experts before any recommendation is made.
Top	IDN	Yes	Two-character IDNs need further work including outreach to experts and discussion related to policies for two-character IDNs and IDN versions of the ISO 3166 list. This is a possible area for further work by the IDN WG.
2nd	ASCII	No	We recommend that registries may propose release of two letter and/or number strings at the second level, provided that measures to avoid confusion with any corresponding country codes are implemented. A standardized approach should be used which ensures consultation with appropriate parties, including the ccNSO and ISO-3166 Maintenance Agency, and where security and stability issues are identified, RSTEP. **
2nd	IDN	Yes	We recommend further work on the subject of two-character IDNs, including outreach to experts and discussion related to policies for IDNs.
3rd	ASCII	No	The subgroup did not address two-character letters and numbers at the third level.
3rd	IDN	No	The subgroup did not address two-character IDNs at the third level.

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\* The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter ASCII names at the top level. IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk of collisions between any interim allocations, and ISO-3166 assignments which may be desired in the future.

\*\* The existing gTLD registry agreements provide for a method of potential release of two-character ASCII names at the second level. In addition, two letter and/or number ASCII strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimises the potential for confusion with the ccTLDs."

#### Minority Statement by Mike Rodenbaugh

"I recommend that two letter ASCII gTLDs be allowed, provided that measures to avoid confusion with any corresponding country codes are implemented. A standardized approach should be used which ensures consultation with appropriate parties, including the ccNSO and ISO-3166 Maintenance Agency, and where security and stability issues are identified, RSTEP. While there may be political reasons, there appears no strong policy reason to withhold every possible two-letter TLD from use, on the assumption that some of them may be desired by countries that may be created in the future. In addition, this concern would diminish if countries were able to use their own name as a TLD, including in its IDN form, or in an IDN two letter ccTLD.

"I recommend that single and two IDN character names continue to be released at the second level in future TLDs in accord with ICANN IDN Guidelines, as they have already been released in existing TLDs."

#### **4. Consultations with Experts**

In some cases the working group was able to consult with experts and in other cases we recommend that certain experts might be consulted if further work is to be done.

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#### **4.1 Single letters and numbers – Top level:**

Single letters and numbers are widely delegated at the second level, in 63 TLDs and as IDN (U-label) versions. Further work is required to examine potential user confusion and unidentified technical issues.

#### **4.2 Single letters and numbers – Second level**

Single letters and numbers are widely delegated at the second level, in 63 TLDs and as IDN (U-label) versions. Therefore, we presume there is no technical reason why remaining letters, at least, should remain reserved. Further work may be required before any recommendations can be drafted on potential release of single numbers at the second level, due to the definition of 'domain name' in RFC 1035 ("must start with a letter").

While it appears that single letters and numbers at the second can be released, further examination of allocation options is needed.

#### **4.3 Two letters and/or numbers – Top level:**

Two-letter strings at the top level have only been allowed for country codes as defined by the ISO 3166 list. Chris Disspain, Chair of the ccNSO, believes the vast majority of the ccTLD community would be in favour of this practice being retained. Kim Davies, IANA Technical Liaison believes the current practice should be continued, as a policy matter, due to potential need for some two-letter strings by future countries.

#### **4.4 Two letters and/or numbers – Second level:**

Second level strings with two letters and/or numbers have been widely used for a long time. Therefore we presume there is no technical reason why remaining strings should remain reserved. There may be other policy or political reasons to maintain the present reservation process, unless registries follow the previously given GAC advice and propose release of two-character names using methods to avoid confusion with any corresponding country codes.

In 2001 the GAC addressed potential release of two-character names at the second level as part of its consideration of a request from .AERO for the limited release of two-letter airline codes. This issue has been addressed in 14 registry

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agreements as set forth above. Two-number or letter-number combinations, and two-letter combinations that are not likely to correspond to country codes, should be possible at the second level.

#### **4.5 Possible experts**

The Working Group identified the following people who could act as experts in these issues.

- Lyman Chapin, Chair of the Registry Services Technical Evaluation panel

- Glenn Kowack, Chair of the RSTEP Review Team for the GNR two-character proposal
- Patrik Falstrom
- Lars Liman
- Steve Bellovin
- Ram Mohan/Tina Dam
- Steve Crocker
- Kim Davies
- Others as necessary

## 5. Summary of Relevant Information Sources

- a.) ICANN Staff's Status Report on Single-Level Domains, dated Sept. 12, 2005. [insert link]
- b.) Recent data from Kim Davies at IANA, showing single-letters delegated in 63 TLDs (<http://forum.icann.org/lists/gnso-rn-wg/msg00039.html>), and from Patrick Jones, showing almost 3000 single- and dual-character domains for sale at Sedo: 7 February 2007 email from Patrick Jones on Sedo auction (<http://forum.icann.org/lists/gnso-rn-wg/msg00041.html>) and <http://forum.icann.org/lists/gnso-rn-wg/msg00042.html>).
- c.) Correspondence:
- 8 March 2007 email from Roberto Gaetano to GA list on single-letter names (<http://gnso.icann.org/mailing-lists/archives/ga/msg06100.html>)
  - 8 March 2007 email from Patrick Jones to RN WG on TRAFFIC auction of two-character names (<http://forum.icann.org/lists/gnso-rn-wg/msg00275.html>)
  - 20 January 2007 email from John Klensin on single-letter names to GNSO Council (<http://gnso.icann.org/mailing-lists/archives/council/msg03166.html>).
  - 20 January 2007 email from Patrick Jones to Liz Williams for GNSO Council on GNR proposal and Funnel process (<http://gnso.icann.org/mailing-lists/archives/council/msg03165.html>)
  - 18 January 2007 email from John Klensin on single-letter names to GNSO Council list (<http://gnso.icann.org/mailing-lists/archives/council/msg03164.html>).
  - Policy Recommendation from Overstock.com, May 2006 (insert hyperlink)
  - Letter from Overstock.com, 28 November 2006 (<http://www.icann.org/correspondence/warren-to-board-28nov06.pdf>).
  - Letter from Yahoo to ICANN, 12 December 2005 (<http://www.icann.org/correspondence/filo-to-icann-12dec05.pdf>).

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- Letter from Lisa Martens to John Jeffrey, 12 December 2005  
(<http://www.icann.org/correspondence/martens-to-jeffrey-12dec05.pdf>).
- Letter from Overstock.com, 11 November 2005  
(<http://www.icann.org/correspondence/byrne-to-twomey-11nov05.pdf>).

Letter from K Computing, 30 June 2005  
(<http://www.icann.org/correspondence/dankwardt-to-pritz-30jun05.htm>).

d.) GNR proposal re two-character names, and supporting docs, 2006.

- GNR Proposal: [http://www.icann.org/registries/rsep/GNR\\_Proposal.pdf](http://www.icann.org/registries/rsep/GNR_Proposal.pdf)
- Submitted Applications page on GNR proposal  
([http://www.icann.org/registries/rsep/submitted\\_app.html#2006004](http://www.icann.org/registries/rsep/submitted_app.html#2006004)).
- 20 October 2006 ICANN letter to RSTEP  
(<http://www.icann.org/registries/rsep/icann-to-rstep20oct06.pdf>)
- RSTEP Report on GNR Two-character name proposal  
(<http://www.icann.org/registries/rsep/RSTEP-GNR-proposal-review-team-report.pdf>).
- 16 January 2007 ICANN Board Resolution approving GNR service  
(<http://www.icann.org/minutes/prelim-report-16jan07.htm>).

“Rainbow document” from Chuck Gomes re existing gTLD contract conditions re Reserved Names

Additional historical information on two-character names:

25 May 2004 Board resolution approving release of two-character strings in .AERO:  
<http://www.icann.org/minutes/resolutions-25may04.htm>

9 Sept 2001 GAC Communique: <http://www.icann.org/committees/gac/communique-09sep01.htm>

30 Aug 2001 Letter from ISO 3166/MA to Louis Touton & Paul Twomey:  
<http://www.icann.org/tlds/wischhoefer-to-touton-30aug01.htm>.

Correspondence from Kim Davies to Tim Denton, dated 7 January 2007:

“The single-letter/number domains in .com, .net, .org, .edu, .biz, .info, .name, .pro, .aero, .coop, and .museum are reserved by the IANA.

Accordingly, these names are not for "sale" or subject to transfer under established policy. A few of the single-letter names were registered before this reservation was made.

The IANA obtained the registration for most single-character names under

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.com in 1993 to implement a policy designed to enhance the extensibility of the domain-name space.

Since then, these names have been continuously under registration by the IANA. The IANA has received many inquiries from people seeking to register these names. As required by the existing policy, the IANA advises those inquiring that these names are already registered to the IANA and reserved for infrastructure purposes to help ensure stable operation of the Internet. The IANA has uniformly turned down all offers by third parties to purchase the right to register these names.

Four of the single-character names under .com were registered by other parties before the IANA entered its registration of these names. The registrations of these names have been (and are) grandfathered for the time being. Recently some of these registrations have been transferred from one third party to another. Those transfers are consistent with the grandfathering policy.

Having assumed the responsibility for operating the IANA, and for overall technical management of the Internet, ICANN is following the same policies for the operation of the IANA as were followed by Dr. Postel and his colleagues at the Information Sciences Institute. ICANN's charter and bylaws, together with its obligations under its various agreements with the United States Government, establish consensus-based procedures for modification of existing policies, fostering participation by affected parties. Until the policy is changed by the established procedures, ICANN is required to continue its registration of the single-letter .com domain names for the benefit of the Internet community.”

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There is also an Information page at <http://res-dom.iana.org/>.

Email correspondence from Kim Davies, IANA Technical Liason, to Patrick Jones, posted on RN WG list 27 February 2007: <http://forum.icann.org/lists/gnso-rn-wg/msg00163.html>:

RFC 1591, sect 2 reads:

"In the Domain Name System (DNS) naming of computers there is a hierarchy of names. The root of system is unnamed. There are a set of what are called "top-level domain names" (TLDs). These are the generic TLDs (EDU, COM, NET, ORG, GOV, MIL, and INT), and the two letter country codes from ISO-3166."

As any possible two-letter combination is eligible to be allocated or reserved in the ISO 3166-1 alpha-2 standard in the future, the working group is strongly encouraged not to consider using these possibilities for other applications. There is a risk of collisions between such allocations, and future ISO-3166 assignments, and in such cases would mean ICANN is unable to grant a ccTLD to a valid country.

IANA has, since the introduction of the DNS, relied upon the determinations within the ISO-3166 standard to identify what constitutes a country, and what is the appropriate two-letter code for that country. This shields the organisation from making value judgements that would be very political, and instead lets and independent third party decide (the ISO 3166 Maintenance Agency, which is guided by the United Nations Statistics Office). On this matter, RFC 1591 is clear:

"The IANA is not in the business of deciding what is and what is not a country."

The selection of the ISO 3166 list as a basis for country code top-level domain names was made with the knowledge that ISO has a procedure for determining which entities should be and should not be on that list."

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The ISO-3166 standard is not static, and evolves with changes to countries and their territories. Most importantly, new codes are added for new regions and countries. Just this year "AX", "ME" and "RS" have been new additions. One can assume there will be more changes in the future that we can not predict.

If a conflict is introduced between a newly created ccTLD code, and an allocated gTLD, IANA's neutrality would be compromised. It would either need to deprive a country of a country-code top-level domain, or it would need to stop adhering to the ISO 3166 standard which would be problematic. It would represent a key divergence from one of the most central tenets of ccTLD policy.

i.) email from Chris Disspain to Patrick Jones, dated March 4, 2007]

I am copying this to the ccNSO members and council lists. Those who wish to comment, will you please send your comments to Gabi ([gabriella.schittek@icann.org](mailto:gabriella.schittek@icann.org)) who will collate them and forward to Patrick.

I am unclear as to whether the draft report is intended to deal only with reserved names/characters in ASCII and so I'd like to make the following general points in respect to reserved names/characters at the top level. I believe this issue splits into 2 categories:

gTLDs in ASCII – there is, if I understand it correctly, a current prohibition on issuing new gTLDs with 2 characters. I imagine the vast majority of the ccTLD community would be in favour of this prohibition being retained. Apart from anything else, reservation of 2 characters at the top level is the only way of ensuring that a new ccTLD code will be available for new territories.

IDNs – here is where the problems start. I won't go into details here of the myriad challenges of .idn but the issue of reserved names serves to illustrate my serious concerns about the gNSO's decision to couple new gTLD policy with IDN policy. What is a relatively simple issue for new ASCII gTLDs (see paragraph above) becomes a minefield in respect to .idn. This is because there are currently no rules and no precedents.

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So, for example, we could say that all 2 character names at the top level are reserved for ccTLD registrations in both ASCII and IDN characters but that assumes that new .idn ccTLDs will be limited to 2 characters and that is an assumption which cannot be made at this stage. It might end up being the case but we can't assume it now.

Further, the ccTLD community cannot sensibly create ccTLD .idn policy on an issue by issue basis. Reserved names is but one issue of many and whilst we can sensibly comment on it in regard to ASCII names we cannot in regard to IDNs.

If the report on single and dual characters is intended to cover only ASCII (and if that is the case then it needs to say so clearly) then I imagine that you will be able to get input from the cc community within a reasonable time. However, if it is also intended to cover IDNs the ccNSO will, I suspect, be unable to respond at this stage and the matter will need to be placed in the 'further time and research' category that you have outlined below.

Finally, I believe that this situation is not isolated and my response above is likely to arise time and time again with respect to IDNs where there are cc and g crossover issues.

j) GAC Principles and Guidelines for the Delegation and Administration of Country-Code Top Level Domains (5 April 2005)

4.1.2. Every country or distinct economy with a government or public authority recognised in accordance with article 3.8 above should be able to ask for its appropriate country code to be represented as a ccTLD in the DNS and to designate the Registry for the ccTLD concerned.

k) WIPO II Report (Second WIPO Internet Domain Name Process, published 3 September 2001), <http://www.wipo.int/amc/en/processes/process2/report/html/report.html>.

19. The ccTLDs are those top-level domains which bear two letter codes essentially derived from the International Organization for Standardization's (ISO) Standard 3166.

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### **ISO 3166 Country Code Elements**

254. The origin of the codes reflecting country top-level domains is the International Organization for Standardization (ISO). ISO, which was established in 1947 as a non-governmental organization, is a worldwide federation of national standards bodies from 137 countries. Its mission is to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity.[\[244\]](#) One of ISO's most famous standards is Part 1 of ISO 3166 concerning codes for the representation of names of countries and their subdivisions. Part 1 of ISO 3166 contains two letter country codes (alpha-2 codes; for example, au for Australia) and three letter country codes (alpha-3 codes, for example, aus for Australia). It is on the basis of the alpha-2 codes that the country code top-level domains (ccTLDs) were created by the Internet Authority for Assigned Names and Numbers (IANA) during the late eighties and early nineties.[\[245\]](#) Since the creation of the ccTLDs, registrations in the country domains have flourished, as the use of the Internet has spread throughout the world. It is expected that the importance of the ccTLDs will continue to grow in the future.

255. A phenomenon concerning ccTLDs that merits attention is the registration at the second level in the gTLDs of the country code elements (for example, *uk.com*). Often these domain names are registered by persons or entities in order to make them available to the public for the registration of names at the third level (for example, *company.uk.com*).[\[246\]](#) The implications of such practices are discussed below.

### **ISO 3166 Country Code Elements**

268. The Interim Report recommended the exclusion of the ISO 3166 alpha-2 country code elements from registration as domain names in the new gTLDs, in the absence of an agreement to the contrary from the relevant competent authorities. Furthermore, the Interim Report recommended that persons or entities who have registered such codes at the second level in the existing gTLDs and who accept registrations of names under them should take measures to render the UDRP applicable to such lower level registrations.

269. Several commentators favored the exclusion mechanism proposed in the Interim Report for the ISO 3166 alpha-2 country code elements,[\[278\]](#) while others opposed it.[\[279\]](#) Some of the entities offering the possibility of registrations under the codes in the existing gTLDs have expressed a willingness to adopt the UDRP or a similar procedure, as recommended in the Interim Report.[\[280\]](#) Few administrators of ccTLDs submitted comments on the Interim Report's recommendations in this area. Trademark owners have expressed concerns that

the exclusion mechanism proposed in the Interim Report would prevent the legitimate registration of two-letter trademarks or acronyms of trademarks.[\[281\]](#)

### ***ISO 3166 Alpha-2 Country Code Elements***

290. The Interim Report formulated two recommendations in relation to ISO 3166 country code elements. First, it proposed that these codes be excluded from registration in the new gTLDs, unless the relevant authorities grant permission for their registration. Secondly, it recommended that persons or entities who have registered such codes at the second level in the existing gTLDs and who accept registrations of names under them take measures to ensure that the UDRP applies to such lower level registrations.

291. In connection with the first recommendation, we note that the current version of Appendix K to the Registry Agreements between ICANN and the sponsors and operators of the new gTLDs states that [a]ll two-character labels shall be initially reserved. The reservation of a two-character label string shall be released to the extent that the Registry Operator reaches agreement with the government and country-code manager, or the ISO 3166 maintenance agency, whichever appropriate. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.[\[292\]](#)

*Exclusions for ISO 3166 Country Code Elements.* A number of factors, highlighted in the comments and reactions received on the Interim Report, have lead us to re-consider our recommendation that the ISO 3166 alpha-2 country code elements should be excluded from registration as domain names in the gTLDs. These factors are as follows:

(i) While, on the Internet, the ISO 3166 codes have been associated in particular with country code top-level domains, in the physical world they find broad application and use throughout a wide variety of industries. This is consistent with the nature and purpose of the standard, which itself states that [it] provides *universally applicable* coded representations of names of countries and that [it] is intended for use *in any application* requiring the expression of current country names in coded form. (*Emphasis added*)[\[293\]](#) We observe that some of the industries which traditionally have used the ISO 3166 codes to structure themselves in the physical world are migrating some aspects of their operations to the online world, and that this trend may intensify in the future. As they move to the Internet, these industries may wish to rely on the same codes to replicate their structures in the networked environment, including the DNS. Excluding the registration of the ISO 3166 codes as domain names may, under certain circumstances, unfairly hamper those industries in their on-line activities, by establishing an overly exclusive linkage between the codes in question and the country domains.

(ii) Certain ISO 3166 country codes correspond to the acronyms of other identifiers, in particular trademarks. Excluding the codes from registration in the DNS would prevent such other identifiers from being registered as domain names without seeming justification.

292. In light of the above considerations, we no longer subscribe to the view that the ISO 3166 country code elements should be excluded from registration in the new gTLDs under all circumstances. Nonetheless, we remain concerned that, depending on the manner in which these codes are registered and used in the DNS, confusion may be created with the ccTLDs. That being the case, we believe that the proper focus should be on the avoidance of confusion with regard to those codes, rather than on an absolute prohibition of their registration and use.

293. If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimizes the potential for confusion with the ccTLDs.

# APPENDIX F -- TAGGED NAME RESERVED NAMES

Prepared by Chuck Gomes and Patrick Jones

## 1. Background

All existing ICANN registry agreements as of the date of this report contain the requirement for gTLD registries to reserve all labels with hyphens in the third and fourth positions (e.g., “xn--ndk061n”). This requirement comes directly from the approved technical standards for Internationalized Domain Names (IDNs). Note that this reservation requirement does not specify any domain name level, so it is assumed that it applies to all levels of names registered by a given gTLD registry.

Only ASCII characters are permitted in the Domain Name System (DNS) thereby limiting characters to the letters a-z, the numbers 0-9 and the hyphen-dash (-), the last of which cannot be the first or last character of a domain name. Consequently, to be able to allow representation of domain names in non-ASCII characters, standards were developed in the Internet Engineering Task Force (IETF) that map international scripts to strings of ASCII characters. Those standards require that all ASCII representations of IDNs begin with a 4-character prefix with hyphens in the third and fourth positions.

The current prefix is “xn--”. To avoid confusion of IDNs with ASCII names having the same prefix, it is necessary to reserve the “xn--” prefix. Prior to the finalization of the IDN standards, other prefixes were used, the most recent of which was “bq--”. At that time, speculators started registering ASCII names with the “bq--” prefix. To avoid this possibility with future prefixes, it was decided to reserve all prefixes of this form.

It is also important to note that the current prefix might need to be changed in the future. If that happens, confusion will be avoided by the fact that all labels with hyphens in the third and fourth positions are reserved.

For further information regarding IDNs, please refer to the ICANN Internationalized Domain Names (IDN) information area: <http://www.icann.org/topics/idn/> .

## 2. Role of tagged name reservation requirement

The role of the tagged name reservation requirement is to be able to provide a way to easily identify an IDN label in the DNS and to avoid confusion of non-IDN ASCII labels. Implicit in this role is the need to reserve tagged names for future use in case the ASCII IDN prefix is changed.

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### 3. WG Recommendations

- a. To avoid user confusion that might result in not being able to tell the difference between a legitimate IDN name and an illegitimate one and to provide maximum flexibility in the unlikely case that the xn-- prefix should ever need to be changed, we make the recommendations shown in the following table.

<b>Description of Current Reserved Name Requirement</b>			
All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
Top	ASCII	No	<ol style="list-style-type: none"> <li>1. In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved.<sup>9</sup></li> <li>2. For each IDN gTLD proposed, applicant must provide both the "ASCII compatible (ACE) form of an IDNA valid string" ("A-label") and in local script form (Unicode) of the top level domain ("U-label").<sup>10</sup></li> </ol>
Top	IDN	No	N/A
2 <sup>nd</sup>	ASCII	No	The current reservation requirement be reworded to say, " <i>In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved.</i> " <sup>11</sup> – added words in <i>italics</i> . (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)
2 <sup>nd</sup>	IDN	No	N/A
3 <sup>rd</sup>	ASCII	No	Same as for the 2 <sup>nd</sup> -level for any gTLDs for which registrations occur at the 3 <sup>rd</sup> -level
3 <sup>rd</sup>	IDN	No	N/A

<sup>9</sup> Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves 1296 names (36x36).

<sup>10</sup> Internet Draft IDNabis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt> (J. Klensin), Section 3.1.1.1

<sup>11</sup> Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves 1296 names (36x36).

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- b. The Tagged Name Subgroup relied exclusively on Ram Mohan, and Tina Dam as experts and did not believe that additional expert consultation was needed for the topic of tagged name reservations, but did recommend scheduling of a full WG consultation with Ram, Tina and Cary Karp to assist in the finalization of reports for other reserved name categories with regard to IDNs. That WG consultation occurred on 1 March 2007.

#### 4. Consultation with Experts

Since this category of reserved names is relatively straight forward and has little if any controversy, it was decided that only minimal consultation with experts is necessary. The authors of this report consulted with Ram Mohan, Chair of the GNSO IDN Working Group and Tina Dam, ICANN IDN Program Director.

The following questions were asked of Tina Dam and Ram Mohan:

- Would it be possible to only reserve a subset of the tagged names of the form character-character-dash-dash instead of all 1296 variations?
  - If so, how big a subset would be needed?
  - Would we need feedback from the technical community in this regard?
  - If so, who do you think we should contact in that regard?

Here is Ram's response:

"The IETF has defined "xn--" for IDNA, as you know. It is safe to say that questions of defining a subset of the available CCHH range should definitely be run by the IAB, with a note sent to the IAB Chair (Leslie).

"To your question regarding how big a subset would be "needed", the fact is that all CCHH names are restricted so that we don't have charlatans who sell unwitting customers some other CCHH name(s) that will absolutely not work with the existing technical protocols for resolving IDN names worldwide. Therefore, my sense is that it is much safer to restrict all CCHH combinations than to allow just a few, because the end-user is just not going to be able to tell the difference between a legitimate IDN name and an illegitimate one."

Here is Tina's response:

". . I agree with Ram. There is no reason currently to believe that the xn prefix will change but I still think it might be a good pre-caution to keep all labels with "--" in third and fourth place reserved.

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One additional comment. The reservation of these kinds of labels must include a process for allowing such reserved labels to be registered (at the time where internationalized top level labels are available for registration) and possible some reference to the Unicode version of that label (following the IDNA protocol) is reserved as well. The latter is to make sure that both the stored and displayed names are reserved together. More specific and clear terminology for the stored/displayed label will come for the protocol revision work. As soon as this is available I will send you another note for potential inclusion in the RN-WG work.”

Numerous exchanges occurred involving Tina and Ram to clarify Tina’s suggestion regarding Unicode versions of labels. Rather than pasting all of the email, we report that the basic suggestion is that, for any IDN gTLDs that are proposed, the applicant should be required to provide the "ASCII compatible (ACE) form of an IDNA valid string" representations along with the corresponding Unicode representation to ensure that there is a one-to-one mapping between the "ASCII compatible (ACE) form of an IDNA valid string" and Unicode representations.

Tina also reported that clearer terminology will come from the protocol revision group and suggests that all IDN related WGs incorporate this terminology. It is expected that the protocol revision, soon to be released, will likely recommend against the use of the term "punycode string" and instead recommend the use of "ASCII compatible (ACE) form of an IDNA valid string". She went on to clarify that “an IDNA valid string is a string that fulfills the requirements of the IDNA protocol” and noted that “the protocol document goes into further details of what this means”. She suggested using the following term: "ASCII compatible (ACE) form of an IDNA protocol valid string”. Finally, she stated that under the revised protocol, “Every ACE label will begin with the IDNA ACE prefix, ‘xn--’.”

## 5. Summary of Relevant Information Sources

### a. ICANN Registry Agreement Requirements

All 16 existing gTLD registry agreements posted on ICANN’s website as of 2 February 2007 (.aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel) contain the following requirement<sup>12</sup>

Except to the extent that ICANN otherwise expressly authorizes in writing, the Registry Operator shall reserve names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

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<sup>12</sup> See “Comparison of gTLD Registry Reserved Names” prepared for the RN-WG and ICANN Registry Agreements located at (<http://www.icann.org/registries/agreements.htm>).

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C. Tagged Domain Names. All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n").

ICANN also has ccTLD Sponsorship Agreements and MOUs in place with 12 ccTLD managers.<sup>13</sup> Each of those agreements contain the following requirement on tagged names:

4. Tagged Domain Names. In addition, domain names in the Delegated ccTLD (excluding subdomain names under domains registered to third parties) having labels with hyphens in the third and fourth character positions (e.g., "rq--1k2n4h4b") are reserved from initial (i.e. other than renewal) registration, except as authorized by ICANN policy or by written exception from ICANN.<sup>14</sup>

b. RFC 3490, Internationalizing Domain Names in Applications (IDNA)<sup>15</sup>

The Introduction of RFC 3490 says:

“IDNA works by allowing applications to use certain ASCII name labels (beginning with a special prefix) to represent non-ASCII name labels.

“To allow internationalized labels to be handled by existing applications, IDNA uses an "ACE label" (ACE stands for ASCII Compatible Encoding). An ACE label is an internationalized label that can be rendered in ASCII and is equivalent to an internationalized label that cannot be rendered in ASCII . . . Every ACE label begins with the ACE prefix specified in section 5.”

Section 5 (ACE Prefix) reads:

“The ACE prefix, used in the conversion operations (section 4), is two alphanumeric ASCII characters followed by two hyphen-minuses. It cannot be any of the prefixes already used in earlier documents, which includes the following: "bl--", "bq--", "dq--", "lq--", "mq--", "ra--", "wq--" and "zq--". . . .

“The ACE prefix for IDNA is "xn--" or any capitalization thereof. This means that an ACE label might be "xn--de-jg4avhby1noc0d", where "de-jg4avhby1noc0d" is the part of the ACE label that is generated by the encoding steps in [PUNYCODE].

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<sup>13</sup> ICANN ccTLD Agreements located at (<http://www.icann.org/cctlds/agreements.html>).

<sup>14</sup> .AU ccTLD Sponsorship Agreement, Attachment F, <http://www.icann.org/cctlds/au/sponsorship-agmt-attf-25oct01.htm>. The identical provision appears in the other 11 ccTLD agreements.

<sup>15</sup> <http://www.ietf.org/rfc/rfc3490.txt?number=3490> (P. Faltstrom and P. Hoffman)

“While all ACE labels begin with the ACE prefix, not all labels beginning with the ACE prefix are necessarily ACE labels. **Non-ACE labels that begin with the ACE prefix will confuse users and SHOULD NOT be allowed in DNS zones.**” (Bold font added – this is the primary reason for reserving the ACE prefix.)

- c. RFC 3492, Punycode: A Bootstring encoding of Unicode for Internationalized Domain Names in Applications (IDNA), March 2003<sup>16</sup>

The Introduction of this RFC says the following:

“[IDNA] describes an architecture for supporting internationalized domain names. Labels containing non-ASCII characters can be represented by ACE labels, which begin with a special ACE prefix and contain only ASCII characters. The remainder of the label after the prefix is a Punycode encoding of a Unicode string satisfying certain constraints. For the details of the prefix and constraints, see [IDNA] and [NAMEPREP].”

- d. GNSO Preliminary Issues Report Policy Issues relating to IDN at the top-level, 28 May 2006<sup>17</sup>

An introduction of PUNYCODE is provided in this document:

“Punycode is a bootstring encoding that will convert the local characters in a domain name into the limited character set that is supported by the DNS. The encoding is applied to each component of a domain name and a prefix 'xn--' is added to the translated Punycode string. For example, the first component of the domain name rødgrødmedfløde.dk becomes 'xn--rdgrdmedflde-vjbdg', and the domain will be represented as xn--rdgrdmedflde-vjbdg.dk. This kind of encoding would apply for top-level labels with characters from non-Latin scripts.”

- e. Informational RFC 4690, Review and Recommendations for Internationalized Domain Names (IDNs), September 2006<sup>18</sup>

The following excerpt relates to the possibility of the need to change the Punycode prefix:

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<sup>16</sup> <http://www.ietf.org/rfc/rfc3492.txt?number=3492> (A. Costello)

<sup>17</sup> <http://gnso.icann.org/issues/idn-tlds/issues-report-28may06.htm>

<sup>18</sup> <http://www.ietf.org/rfc/rfc4690.txt?number=4690> (J. Klensin, P. Faltstrom, C. Karp)

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“It is worth noting that sufficiently extreme changes to IDNA would require a new Punycode prefix, probably with long-term support for both the old prefix and the new one in both registration arrangements and applications. An alternative, which is almost certainly impractical, would be some sort of “flag day”, i.e., a date on which the old rules are simultaneously abandoned by everyone and the new ones adopted. However, preliminary analysis indicates that few, if any, of the changes recommended for consideration elsewhere in this document would require this type of version change. For example, suppose additional restrictions, such as those implied above, are imposed on what can be registered. Those restrictions might require policy decisions about how labels are to be disposed of if they conformed to the earlier rules but not to the new ones. But they would not inherently require changes in the protocol or prefix.”

- f. Internet Draft, Proposed Issues and Changes for IDNA - An Overview, October 16, 2006<sup>19</sup>

Section 5, The Question of Prefix Changes, says the following:

“The conditions that would require a change in the IDNA “prefix” (“xn--” for the version of IDNA specified in [RFC3490]) have been a great concern to the community. A prefix change would clearly be necessary if the algorithms were modified in a manner that would create serious ambiguities during subsequent transition in registrations. This section summarizes our conclusions about the conditions under which changes in prefix would be necessary.

#### “5.1. Conditions requiring a prefix change

“An IDN prefix change is needed if a given string would resolve or otherwise be interpreted differently depending on the version of the protocol or tables being used. Consequently, work to update IDNs would require a prefix change if, and only if, one of the following four conditions were met:

1. The conversion of a Punycode string to Unicode yields one string under IDNA2003 (RFC3490) and a different string under IDNA200x.
2. An input string that is valid under IDNA2003 and also valid under IDNA200x yields two different Punycode strings with the different versions. This condition is believed to be essentially equivalent to the one above.

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<sup>19</sup> <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-00.txt> (J. Klensin)

Note, however, that if the input string is valid under one version and not valid under the other, this condition does not apply. See the first item in Section 5.2, below.

3. A fundamental change is made to the semantics of the string that is inserted in the DNS, e.g., if a decision were made to try to include language or specific script information in that string, rather than having it be just a string of characters.
  5. Sufficient characters are added to Unicode that the Punycode mechanism for offsets to blocks does not have enough capacity to reference the higher-numbered planes and blocks. This condition is unlikely even in the long term and certain to not arise in the next few years.”
- g. Internet Draft, Proposed Issues and Changes for IDNA - An Overview (IDNAbis Issues), February 23, 2007<sup>20</sup>

(Note: This is version 01, an update to the previously listed Internet Draft of the same name, version 00.)

Section 8.1, Design Criteria, says the following regarding tagged names:

- “3. Anyone entering a label into a DNS zone must properly validate that label -- i.e., be sure that the criteria for an A-label are met -- in order for Unicode version-independence to be possible. In particular:
- Any label that contains hyphens as its third and fourth characters MUST be IDNA-valid. This implies in particular that, (i) if the third and fourth characters are hyphens, the first and second ones MUST be "xn" until and unless this specification is updated to permit other prefixes and (ii) labels starting in "xn--" MUST be valid A-labels, as discussed in Section 3 above.”

Section 8.3, The Question of Prefix Changes, says:

“The conditions that would require a change in the IDNA "prefix" ("xn--" for the version of IDNA specified in [RFC3490]) have been a great concern to the community. A prefix change would clearly be necessary if the algorithms were modified in a manner that would create serious ambiguities during subsequent

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<sup>20</sup> IDNAbis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt> (J. Klensin)

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transition in registrations. This section summarizes our conclusions about the conditions under which changes in prefix would be necessary.

#### “8.3.1. Conditions requiring a prefix change

“An IDN prefix change is needed if a given string would resolve or otherwise be interpreted differently depending on the version of the protocol or tables being used. Consequently, work to update IDNs would require a prefix change if, and only if, one of the following four conditions were met:

1. The conversion of a Punycode string to Unicode yields one string under IDNA2003 (RFC3490) and a different string under IDNA200x.
2. An input string that is valid under IDNA2003 and also valid under IDNA200x yields two different Punycode strings with the different versions of IDNA. This condition is believed to be essentially equivalent to the one above.

Note, however, that if the input string is valid under one version and not valid under the other, this condition does not apply. See the first item in Section 8.3.2, below.

3. A fundamental change is made to the semantics of the string that is inserted in the DNS, e.g., if a decision were made to try to include language or specific script information in that string, rather than having it be just a string of characters.
4. A sufficiently large number of characters is added to Unicode so that the Punycode mechanism for block offsets no longer has enough capacity to reference the higher-numbered planes and blocks. This condition is unlikely even in the long term and certain not to arise in the next few years.”

“Section 8.3.2, Conditions not requiring a prefix change, says:

“In particular, as a result of the principles described above, none of the following changes require a new prefix:

1. Prohibition of some characters as input to IDNA. This may make names that are now registered inaccessible, but does not require a prefix change.

2. Adjustments in Stringprep tables or IDNA actions, including normalization definitions, that do not affect characters that have already been invalid under IDNA2003.
3. Changes in the style of definitions of Stringprep or Nameprep that do not alter the actions performed by them.”

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# APPENDIX G -- NIC, WHOIS & WWW RESERVED NAMES FOR REGISTRY OPERATIONS

Prepared by Timothy Denton

## 1. Background

The following three names are reserved for use in connection with the operation of the registry for the Registry TLD.

nic  
whois  
www

All 16 of the current gTLD registry agreements prohibit these from being used by any other gTLD registry at the second-level .aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel

Fourteen (14) out of 16 agreements specify that the Registry Operator may use them, but upon conclusion of the Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN. These include the following 14 agreements: .aero, asia, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .pro, .tel and .travel. The successor rights clause does not appear in the cases of: .biz, .org.

<b>Names</b>	<b>Registries affected</b>	<b>Successor Rights clause not found in</b>	<b>Who may use the names</b>
Nic Whois www	.aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel	.biz, .org	Only the registries in question, no one else

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In the course of the work, the question arose whether to reserve *html*, *http* and *https* on reserve. That issue is dealt with in the report on ICANN and IANA reserved names. Because the names which this report addresses (NIC, Whois, www) are for registry operational uses and because there does not seem to be any identified registry operational need for html, http and https, it is not recommended that html, http and https be added to this category.

## 2. Role of the Reservation of these three names

The rationale for the reservation of these names for use by registry operators is based upon long standing and well established use of these strings by registry operators (both gTLD and ccTLDs) in connection with normal registry operations.

## 3. Recommendations

### Recommendations regarding Reservation of NIC, Whois and www for Registry Operations

Description of Current Reserved Name Requirement NIC, Whois, www			
Level	Type	More Work?	Recommendations
Top	ASCII	No	The following names must be reserved: nic, whois, www.
Top	IDN	No	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.
2 <sup>nd</sup>	ASCII	No	The following names must be reserved for use in connection with the operation of the registry for the Registry TLD: nic, whois, www. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN.
2 <sup>nd</sup>	IDN	No	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries.
3 <sup>rd</sup>	ASCII	No	For gTLDs with registrations as the third level, the following names must be reserved for use in connection with the operation of the registry for the Registry TLD: nic, whois, www. Registry Operator may use them, but upon

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Description of Current Reserved Name Requirement			
			conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN.
3 <sup>rd</sup>	IDN	No	For gTLDs with registrations as the third level, do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries.

#### 4. Consultation with Experts

Two kinds of question arose in connection with these names: first, why the difference in the reservation of names for dot biz and dot org, and second, the general question of principle as to whether these names should be reserved.

##### a) successor rights clause

The successor rights clause does not appear in the registry agreements of dot biz and dot org. Upon inquiry of Jeff Neuman, Senior Director, Law and Advanced Systems, of Neustar, operator of .biz, he replied that:

“To tell you the truth, we did not focus on this exhibit at all during the renegotiation and did not realize that this was any different than the other operators. Any deviation from the original 2001 agreement we signed was inadvertent and missed by both us and ICANN during the renegotiations.”

David Maher, Senior Vice President, Law and Policy, of the Public Interest Registry, wrote as follows:

“The answer appears to be that these 2d level names are in use. They were registered before there was a policy limiting their use. If the registrations were ever terminated, then they would become reserved.”

##### b) reservations of these names in principle

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The official contact people within top-level and country code registries were consulted via email and in one case by telephone this past week. We heard from dot aero, dot org, dot name and dot travel.

David Maher of dot org responded: "Yes, the names should be kept reserved."

Marie Zitkova of dot aero responded as follows:

1) As a registry, do you wish to keep those names reserved?

Yes, these name are traditionally used by TLDs to designate specific functions key to the operation of registry and it makes sense for ICANN to maintain a certain standard across the board.

2) If they were not reserved, what actions would you take to protect your interests in those names?

I am not sure I understand the question. First, these names were reserved from day 1 so no such question ever came up and it cannot come up anymore because the names are in use.

Second, I certainly do not understand what is implied by "our interest" in those names. We are not talking about tradenames or trademarks. Surely, the reservation above was mandated not because of an interest of any individual sponsor or registry operator but because it makes sense for the entire system of TLDs to have some minimum level of predictability to locate elementary functions associated with the operation of the TLD.

Third, and that is answering the very hypothetical question what would happen before the launch of our TLD if these three names were not reserved by ICANN. We are a Sponsor of a sponsored TLDs, availability of names and eligibility criteria for the registration would be determined by the policies set by the Sponsor in consultation with the sponsored community and in the best interests of the aviation community, same process as we follow in all other cases, and the Registry Operator would implement those policies upon the request from the Sponsor.

Hakon Haugnes of dot name responded:

1) yes, they are in use and are expected to exist by the community.

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2) They are in use by the Registry so I guess that would be protection enough. It would be silly to have to defend them under UDRP, for example. We believe, though, that they belong to the Registry and not to the Company, of course.

I must admit I am not fully aware of the work of the WG, but what would be the purpose of not making them reserved?

Cherian Mathai of dot travel could only be reached by telephone, owing to a computer failure in his office. When asked whether he wanted those three names reserved, he responded "yes".

Eric Brown of Neulevel responded as follows:

"1. We believe that NIC and WHOIS should remain reserved. They are used to denote functionality to the .BIZ registry. For example, if one types in WHOIS.BIZ, they will be taken to our official WHOIS website for .BIZ domain names. In addition, with respect to NIC.BIZ, this is essential to keep reserved as well. This is because there are a number of people that do not know who a particular registry operator is and therefore have no way to get to the official registry site. NIC.TLD is important because it is a predictable place that one could (and should) always go when they know the TLD, but not the operator.

2. It is not that we believe we have some sort of intellectual property rights in the names so there are no actions we would take to protect it from an IP perspective. However, to not reserve these names (at least NIC and WHOIS), would cause confusion among consumers looking for the official WHOIS database of the TLD or looking for the official website of the registry (when they do not know the name)."

Cary Karp of dot museum responded as follows:

"...In my conceptual frame of reference, reservation places constraints on the circumstances under which a name may be registered. By definition, the reservation is terminated (or suspended, if you'd prefer) when that registration takes place. If such name should subsequently ever be removed from the DNS it could be placed back on the reserved list. In the hope that it properly answers your question, that is what I would intend to happen with the labels nic, whois, and www if they are ever removed from the .museum zone.

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2) If they were not reserved, what actions would you take to protect your interests in those names?

Karp: "If they had not been reserved we would have protected our interests in them by registering them in precisely the manner that we have."

Ray Fassett of dot jobs responded as follows:

1) As a registry, do you wish to keep those names reserved?

"Before I can answer this question, I must qualify with how I define a reserved name: A name that is prohibited to be allocated by the TLD operator to a third party of the contract.

I believe it is appropriate for the names www, nic, and whois to be prohibited from allocation by the TLD operator to a third party of the contract."

2) If they were not reserved, what actions would you take to protect your interests in those names?

"I believe an interest – or expectation - from the user community has evolved for these 3 names more so than an "interest" to us as the TLD operator in need of "protecting". Given the hypothetical nature of this question, the best I can answer would be an action felt to be in the best interests of the HR Community, consistent to the mission of .jobs."

It is likely that these names could be removed from the reserved list by negotiation between each registry and ICANN, if they thought this was to their respective advantages. Second, the fact that these names were not in contention suggests that the reservation of these names is not controversial.

To generalize from a few respondents, it appears that country codes are rather freer to follow less consistent policies. Michael Haberler of dot at wrote:

"what we did in the past is register "interesting" (which might be contentious if held by the wrong party) names like [www.at](http://www.at), internet.at etc on trustworthy registrants, like ourselves, or the ISP association. We do register others for our own purposes or likely fields of activity. But conceptually that's just a registration, not a reservation. We had the issue come up with registrars bitching about it and I just told them that we reserve the right to acquire names for our own purposes, and that's it, period."

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Sabine Dolderer responded as follows:

1) does dot de have reserved names?

We have only some minor restrictions for domains which could not be registered but that are no real reservations. It is

- no domain name with less than 3 characters is allowed
- no domain name which is equal to an existing TLD is allowed (actually only com/net/org/edu/int) because of problems related to RFC1535
- no domains which are equal to local community carplate numbers are allowed. This is done because when the rule was created it was unclear if one would need a future structuring mechanism.

2) Does it reserve /nic, www/, and or /whois/?

No.

3) Does it give a reason for these reservations, if it has them?

- 2-character and existing TLDs has the reason because of problems with TLD. TLD as described in RFC 1535
- carplate numbers because of the potential structuring-issue – [The reasons are] no longer really valid but there are only viewed with 3-characters; most have 1- or 2-character abbreviations

Canada's Bernard Turcotte wrote back in relation to dot ca that these names are not reserved in the case of CIRA, but that, on reflection, he thought they ought to have been reserved.

A more systematic process of consultation with country code operators might enlighten us about their practices but would not be directly pertinent to whether the three names should be reserved at the generic TLD level.

### **c) Consultations with IDN experts**

As regards the IDN implications of these three names, both Cary Karp and Ram Mohan were consulted in a teleconference of March 1, 2007. The advice received was that these names were "integral designators" to be used "without translation". In other words, there was no need to reserve these strings in other languages. Ram Mohan suggested "Find the

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equivalent and reserve them at that time" and added "Don't try to translate them", referring to the acronyms and/or abbreviations."

#### **4. Summary of Relevant Information Resources**

The primary source is the set of ICANN-registry agreements, found at <http://www.icann.org/registries/agreements.htm>

There do not appear to be any official rationales or explanations other than those reported in this document.

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# APPENDIX H -- GEOGRAPHIC & GEOPOLITICAL RESERVED NAMES

Prepared by Mike Palage, Avri Doria, Jon Nevett

## 1. Background

Geographic and geopolitical domain name reservations are a relatively new class of reservations that were first incorporated into the ICANN registry contracts in connection with the 2004 sTLD round. However, the genesis for this type of reservation can be specifically tracked back to ICANN Board resolution 01-92<sup>21</sup> involving issues surrounding the rollout of the .INFO gTLD. This topic has also received significant attention in other International fora, most notably the World Intellectual Property Organization's Second WIPO Internet Domain Name Process (hereinafter WIPO II Process).<sup>22</sup> As the WIPO II Process notes, "[t]his is a difficult area on which views are not only divided, but also ardently held."<sup>23</sup>

It is important to note at the outset that "geopolitical domain name reservations" is a term that has not been widely used within the broader geographical identifier discussion. In fact, the term is only used once in a parenthetical in the entire WIPO II Process final report.<sup>24</sup> Given the lack of any legal construct involving the term geopolitical domain names, it is most prudent to use the terminology contained in the WIPO II Process final report as a framework for discussion. Specifically, geographical identifiers should serve as an umbrella

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<sup>21</sup> <http://www.icann.org/minutes/minutes-10sep01.htm>. It is also noteworthy that the passage of the resolution by the ICANN Board was far from unanimous (11 in favor, 7 in opposition).

<sup>22</sup> <http://www.wipo.int/amc/en/processes/process2/report/html/report.html>

<sup>23</sup> Paragraph 237, Second WIPO Internet Domain Process

<sup>24</sup> See Paragraph 55,

term that includes not only country names, but names of places within countries<sup>25</sup>, geographical indications<sup>26</sup>, and names of indigenous peoples<sup>27</sup>.

The first action by ICANN to seek protection for this class of names was in connection with ICANN Board Resolution 01-92. This action was taken by the ICANN Board in response to the 9 September 2001 Government Advisory Committee (GAC) communiqué<sup>28</sup> sent by Dr. Paul Twomey acting in his capacity as GAC Chair, which states in relevant part:

The GAC confirmed that this is an issue of considerable political importance and complexity that merits thorough study by qualified and competent experts. The issue also relates to the overall taxonomy of the DNS and its evolution concerning the expansion of the TLD space.

...

The GAC notes that the issue of geographical and geopolitical names is very complex and the subject of ongoing international discussion. Without prejudice to any future discussions, general policy or international rules in this area, and considering the very special nature of **.info**, and problems that have become apparent with the registration of such names in the sunrise period, the GAC agreed that interim *ad hoc* measures should be taken by ICANN and the Registries to prevent avoidable conflicts in **.info**. The GAC agreed that the use of names of countries and distinct economies as recognised in international fora as second level domains in the **.info** TLD should be at the discretion of the respective governments and public authorities.

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<sup>25</sup> As the Second WIPO Internet Domain Process acknowledges “the list of names of places in the world that may have been registered as domain names is virtually limitless” See Paragraphs 256, Second WIPO Internet Domain Process.

<sup>26</sup> Geographical indications refer to “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.” See Paragraph 217, Second WIPO Internet Domain Name Process. Examples of Geographical Indicators include Champaign, Napa Valley, Cognac etc.

<sup>27</sup> See Paragraphs 262 thru 263 of the WIPO II Process.

<sup>28</sup> See <http://gac.icann.org/web/communiques/gac10com.htm>

It is important to note that the GAC communiqué was limited to just the .INFO top-level domain (TLD) citing “the very special nature” of that TLD. Also noteworthy is the fact that none of the other six proof of concept TLDs had formerly launched.<sup>29</sup>

Notwithstanding the narrow construct of the GAC communiqué and the corresponding board action, the new registry contract language resulting from the 2004 sTLD round included several provisions dealing with geographic and geopolitical names which are summarized below.

**E.Geographic and Geopolitical Names.** All geographic and geopolitical names contained in the ISO 3166-1 list from time to time shall initially be reserved at both the second level and at all other levels within the TLD at which the Registry Operator provides for registrations. All names shall be reserved both in English and in all related official languages as may be directed by ICANN or the GAC.

NOTE: This is the exact provision contained with the .ASIA registry contract. The other 2004 sTLD registry contracts (.CAT, .JOBS, .MOBI, .TEL and .TRAVEL include the same language with the exception of “as may directed by ICANN or the GAC” which has been excluded in these contracts. There is no such corresponding provision in the .AERO, .BIZ, .COM, .COOP, .INFO, .MUSEUM, .NAME, .NET, .ORG or .PRO registry contracts.

In addition, Registry Operator shall reserve names of territories, distinct geographic locations, and other geographic and geopolitical names as ICANN may direct from time to time. Such names shall be reserved from registration during any sunrise period, and shall be registered in ICANN's name prior to start-up and open registration in the TLD. Registry Operator shall post and maintain an updated listing of all such names on its website, which list shall be subject to change at ICANN's direction. Upon determination by ICANN of appropriate standards and qualifications for registration following input from interested parties in the Internet community, such names may be approved for registration to the appropriate authoritative body.

NOTE: This is the exact provision contained with the .ASIA registry contract. The other 2004 sTLD registry contracts (.CAT, .JOBS, .MOBI, .TEL and

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<sup>29</sup> Although other proof of concept registry strings had already been added to the root, i.e. .BIZ, no other proof of concept registries were allowing domain name registrants to register resolving names at the time of the GAC communiqué.

.TRAVEL include the same language but “geographic locations” is replaced by “economies”. There is no such corresponding provision in the .AERO, .BIZ, .COM, .COOP, .INFO, .MUSEUM, .NAME, .NET, .ORG or .PRO registry contracts

## 2. **Role for Geographic and Geopolitical Reservations**

Protection afforded to Geographic indicators is an evolving area of international law in which a one-size fits all approach is not currently viable. The proposed recommendations below are designed to ensure that registry operators comply with the national laws for which they are legally incorporated/organized.

## 3. **Recommendation of the Group**

### Top Level (ASCII and Unicode strings):

In order to approve the introduction of new gTLDs using geographic identifiers, ICANN shall require the solicitation of input from GAC members(s) and/or government(s) associated with the potential geographic string (ASCII and/or Unicode).

Additionally, Registries incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (“Member States”), or have other related applicable national laws must take appropriate action to comply with those guidelines and those national laws. Registries incorporated under the laws of those countries that have not expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (“Non-Member States”) must take appropriate action to comply with any related applicable national laws.

### Second Level (ASCII and Unicode strings):

Registries incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (“Member States”) must take appropriate action to

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promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.

Third Level (ASCII and Unicode strings):

Registries that register names at the third level and are incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (“Member States”) must take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.

If any of the above recommendations are not supported by the community, it is recommended that further consultation with WIPO, the ccNSO and the GAC be conducted as described in the following section, Consultation with Experts.

#### 4. **Consultation with Experts**

Because this topic has been discussed extensively in various international fora, the use of experts could prove beneficial. However, the scope of the expert involvement would likely be limited toward confirming the existing divided and ardently held views.<sup>30</sup> The reason that these experts are unlikely to assist in the advancement of any consensus position is rather articulately stated in Paragraph 287 of the WIPO II Process Final Report in which it states:

Both points lead us to conclude that we have reached the limits of what can be achieved legitimately through consultation processes, such as WIPO Internet Domain Name Processes or any similar ICANN processes. In other words, we agree with those commentators who are of the view that this particular question is one more appropriately dealt with by governments.

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<sup>30</sup> Paragraph 237 WIPO II Process Final Report.

To date there are one-hundred and seventy-five WIPO Member States that have supported the protection of country names within the domain name system (DNS). Therefore, a representative from WIPO would be one potential expert to articulate the views held by these countries. However, the Delegations of Australia, Canada and the United States of America have opposed this protection.<sup>31</sup> Therefore a representative from one of these Delegations would potentially constitute a second expert. A possible third expert would be a representative from the International Trademark Association (INTA) that has a standing committee on geographic identifiers.

In addition to this consultation, the answers to the following questions would also be very beneficial to the working group.

#### **Question #1 to WIPO:**

In Francis Gurry's correspondence to ICANN dated 21 February 2003<sup>32</sup>, in Annex 2 Paragraph 7 (iv) states in relevant part that "the protection should be extended to all future registrations of domain names in generic top-level domains (gTLDs)" citing the Summary by the Chair of the SCT dated 15 November 2002.<sup>33</sup> This appears to be a narrowing of the scope of protection originally sought during the second Special Session of the SCT in May 2002, where the chair concluded that "the protection should be extended to all top-level domains, both gTLD and ccTLDs." However, in document WO/GA/30/2<sup>34</sup> prepared for the WIPO Generally Assembly and dated 7 August 2003, Paragraph 14 cites the original May 2002 report affording protection of country names in both gTLDs and ccTLDs.

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<sup>31</sup> Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, Ninth Session, Geneva, November 11 to 15, 2002. SCT/9/8 Date 15 November 2002.

<sup>32</sup> <http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm>

<sup>33</sup> [http://www.wipo.int/edocs/mdocs/sct/en/sct\\_9/sct\\_9\\_8.pdf](http://www.wipo.int/edocs/mdocs/sct/en/sct_9/sct_9_8.pdf)

<sup>34</sup> [www.wipo.int/documents/en/document/govbody/wo\\_gb\\_ga/doc/wo\\_ga\\_30\\_2.doc](http://www.wipo.int/documents/en/document/govbody/wo_gb_ga/doc/wo_ga_30_2.doc)

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Are WIPO Member States seeking protection for country names in just gTLDs as noted in Summary of the Chair dated 15 November 2002, or protection for country names in both gTLDs and ccTLDs as noted in the May 2002 and August 2003 documentation?

### **Question #2 to WIPO**

If WIPO Member States are only seeking protection for country names in gTLDs, can WIPO point to any interventions or documentation following the May 2002 report that lead to the narrowing of this protection to just gTLDs?

### **Question #3 to GAC:**

Paragraph 2.12 of the Draft GAC Principles and Guidelines on Public Policy Issues Regarding the Implementation of New gTLDs states in relevant part that “[e]ach government should have the right, without cost, to reserve or block its geographical name(s) in its' official language(s) in any new gTLD.”

The scope of this protection on its face appears to represent an expanse of the protection documented through the WIPO Member States in the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications which calls for the following protection:

- (i) protection should be extended to the long and short names of countries, as provided by the United Nations Terminology Bulletin;
- (ii) the protection should be operative against the registration or use of a domain name which is identical or misleadingly similar to a country name, where the domain name holder has no right or legitimate interest in the name and the domain name is of a nature that is likely to mislead users into

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believing that there is an association between the domain name holder and the constitutional authorities of the country in question;

(iii) each country name should be protected in the official language(s) of the country concerned and in the six official languages of the United Nations; and

(iv) the protection should be extended to all future registrations of domain names in generic top-level domains (gTLDs).

Can the GAC provide a basis for the broadened scope of protection they are seeking under Paragraph 2.12 of the draft GAC principles that call for an absolute right of denial/registration of a country's name while apparently abandoning the SCT recommendations that call for legal determination based on a number of factors.

**Question #4 to the GAC and the ccNSO:**

Paragraph 261 of the WIPO II Report cites eight ccTLD administrators that have adopted policies for “excluding the names of places in their countries from registration as domain names, at least under certain conditions.” Is the GAC or ccNSO aware of any ccTLD administrator that has provided protection for geographic indicators from another country, if so which ones?

**Question #5 to the GAC and the ccNSO:**

Is the GAC or ccNSO aware of any ccTLD administrator that has provided the protection sought by the GAC in Paragraph 2.12 of the draft GAC principles, if so which ones?

**5. Summary of Relevant Information Sources**

Second WIPO Internet Domain Name Process

<http://www.wipo.int/amc/en/processes/process2/report/html/report.html>

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- Q. WIPO GENERAL ASSEMBLY, TWENTY-EIGHTH (13TH EXTRAORDINARY) SESSION;  
GENEVA, SEPTEMBER 23 TO OCTOBER 1, 2002
- R. [HTTP://WWW.WIPO.INT/DOCUMENTS/EN/DOCUMENT/GOVBODY/WO\\_GB\\_GA/INDEX\\_28.HT  
M](http://www.wipo.int/documents/en/document/govbody/wo_gb_ga/index_28.htm)
- S. [HTTP://WWW.WIPO.INT/EDOCS/MDOCS/SCT/EN/SCT\\_9/SCT\\_9\\_8.PDF](http://www.wipo.int/edocs/mdocs/sct/en/sct_9/sct_9_8.pdf)

WIPO Presentation to the GAC on GIs and WIPO II

[http://gac.icann.org/web/meetings/mtg15/RioPresentations/WIPOSecondProcess/WI  
POSecondProcess.ppt](http://gac.icann.org/web/meetings/mtg15/RioPresentations/WIPOSecondProcess/WIPOSecondProcess.ppt)

Letter from WIPO to ICANN

<http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm>

GAC Communiqué:

<http://gac.icann.org/web/communiques/gac10com.htm>

ICANN Board Resolution:

<http://www.icann.org/minutes/minutes-10sep01.htm>

ICANN Country Name Action Plan w.r.t. Afilias (.INFO)

<http://www.icann.org/montevideo/action-plan-country-names-09oct01.htm>

DNSO Resolution on Geographical Identifiers

<http://www.dnso.org/clubpublic/council/Arc06/msg00202.html>

GAC Commentary to DNSO Resolution:

[http://www.icann.org/committees/gac/names-council-resolution-commentary-  
26oct01.htm](http://www.icann.org/committees/gac/names-council-resolution-commentary-26oct01.htm)

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.COOP Community Names Program involving country names

<http://www.icann.org/tlds/agreements/coop/>

<http://www.nic.coop/information.asp>

[www.coop/downloads/registrars/RegistrarBackgroundInfo.doc](http://www.coop/downloads/registrars/RegistrarBackgroundInfo.doc)

<http://www.australia.coop>

<http://www.icann.org/montevideo/action-plan-country-names-09oct01.htm>

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# APPENDIX I -- THIRD LEVEL RESERVED NAMES

Prepared by Greg Shatan and Dan Dougherty.

## 1. Background

### A. General Background

There are currently two TLDs that expressly reserve names at the third level, .pro and .name. In these two TLDs, domain names at the second level serve essentially as TLDs; the second level names are not registered to individual owners. Instead, they serve as quasi-domains where individual owners can register their individual domain name at the third level.

#### i. .Pro

The .pro TLD was proposed by RegistryPro as an unsponsored TLD restricted to registrations by persons and entities that provide professional services and are credentialed by governmental bodies, professional organizations and other appropriate entities. A key feature of the proposal, and one mentioned in the Board's selection process, is that the registration process for .pro provides a highly trustworthy framework for registrations by professionals.

The .pro TLD has second-level domains for specific professions, such as .med.pro for physicians. Members of the medical, legal, accounting and engineering professions, licensed in the United States, Canada, Germany or the United Kingdom, are eligible to register for third-level .Pro domains within the appropriate profession-specific second level domain (PS-SLD). Registrants can secure profession-specific third-level names such as [name].law.pro, [name].med.pro and [name].cpa.pro.

#### ii. .Name

The .name TLD was established by The Global Name Registry, Ltd. in 2002 as an unsponsored TLD where the second level represented the proper names of individuals (e.g., smith.name), including fictional characters for whom the registrant has rights. The third level would be the given name of a person (e.g., John.Smith.name) or fictional character (e.g., Harry.Potter.name), and could be registered by an individual or rightsholder.

### B. Types of Reservations, Restrictions and Prohibitions

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i. Prohibited Third-Level Labels

Appendix L to the Registry Agreements for .Pro and .Name specify certain strings (or “labels”) that are not available for registration. Both .Pro and .Name prohibit the following labels at the 3<sup>rd</sup> level: dir, directory, email, http, mail, mx, mx[followed by a number from 0 to 100], ns, ns[followed by a number from 0 to 100], wap, www and www[followed by a number from 0 to 100]. In addition, each TLD prohibits certain additional labels. Specifically, .Pro prohibits av, ca, cca, cert, certificate, grpa, pro, registrypro, verify, and verification, while .Name prohibits genealogy.)

ii. ICANN and IANA Reserved Names.

Appendix K to both Registry Agreements includes a list of names that are reserved “at all other levels within the TLD at which Registry Operator makes registrations.” Thus, these names are reserved at the third level. The names listed are the “ICANN and IANA Reserved Names,” which are dealt with in the report of that name. These Reserved Names are:

ICANN:

- aso
- dnso
- icann
- internic
- pso

IANA-related names:

- |                |                |
|----------------|----------------|
| • afrinic      | • ietf         |
| • apnic        | • irtf         |
| • arin         | • istf         |
| • example      | • lacnic       |
| • gtld-servers | • latnic       |
| • iab          | • rfc-editor   |
| • iana         | • ripe         |
| • iana-servers | • root-servers |
| • iesg         |                |

iii. Patterns of names staying with the registry.

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Appendix X to the Registry Agreements specifies that “directory” and “www” are not available for registration at the third level and will be delegated to the registry, as follows:

a. .Pro

1. directory.<PS-SLD>.pro
2. www.<PS-SLD>.pro

b. .Name

1. Directory.<second-level name>.name
2. www.<second-level name>.name

We note that these two names are also among the “prohibited third-level labels” in Appendix L, discussed above in Section 1.B.i.

iv. Names Registered to Registry Operator

We note that Appendix X also lists certain names registered to the Registry Operator (and identified in the respective Appendices X for .name and .pro). These names are not dealt with here, since these are second level names and they are registered (or at least registerable) by the Registry Operator, and not reserved.

## 2. Role of Third Level Domain Name Reservation Requirement

Based on our discussions with experts, it appears that the role of the names specifically reserved at the third level is primarily to combat security concerns (e.g., a party registering www.med.pro could pose as the registrar for that domain). As a secondary matter, they may be needed overcome technical challenges presented by ‘double’ addresses (e.g., www.www.med.pro) and, to a lesser extent, consumer confusion. No documentation has been identified to date which provided the rationale for the reserved names.

## 3. Recommendations

We do not recommend any change in the treatment of “prohibited third level labels” and “patterns of names staying with the registry.” While recognizing the right of registries to reserve names for a variety of technical, security and/or business reasons, the registry operators should provide some documentation for the basis of these reservations. The ICANN and IANA reserved names at the third level should be harmonized with the recommendations regarding those names at the second level.

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If these or other registries reserving names at the third level are considering offering IDNs, the registry may wish to reserve IDN versions of the registry's reserved names, except where those name are abbreviations or acronyms.

#### **4. Consultation with Experts**

The list of restricted names for both registries is very similar (though the restrictions for .name do not include av, ca, cca, cert and certificate, among others). The decisions regarding these reserved names date back to 2001, and neither we nor the registries have been able to identify any documents that exist and which provide any context or detailing, for example, why: (i) these names were selected, (ii) the class of .name restrictions is more narrow than .pro; (iii) other names that were considered and rejected; etc.

However, in speaking with the registry experts it was learned that a common sense approach was taken to identify names that could cause security concerns and which should naturally be reserved (e.g., fraud concerns where a registrant poses as a registry through domain registrations such as www.law.pro). While security concerns outweighed technical limitations, there are scalability issues that helped identify names to be reserved at the third level. For example, where a very large number of users are added to a specific third level domain (e.g., [first name].smith.name). An example of this could be the email services offered by the .name registry which may cause it to partition off certain parts of its system to handle such larger levels (e.g., mx[1:100].smith.name and ns[1:100].smith.name). In short, the names selected for reservation were chosen through considered deliberation aimed at identifying names that may lend themselves to abuse and/or public confusion as well as functional needs of each registry.

As to IDNs, the opinion among the registries and the working group is that the approach adopted as to second level IDNs (e.g., if local equivalents are reserved) should likewise apply to the third level – particularly given that through certain mechanics of Registry Agreements some second level name reservations are applied to the third level (i.e., the names reserved pursuant to Appendix K of the agreements apply to both the second and third levels).

It is the working group's opinion that no expert consultation is required beyond what has already been obtained from the .pro and .name registry experts given that this category is very unique to the business model, and the reserved names are, on their face, sufficiently reasonable as to warrant acceptance without significant expert involvement.

#### **5. Summary of Information Sources**

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- A. ICANN Accra Meeting Topic: Approval of Registry Agreement for .pro. Discussion of proposal for .pro. (posted 7 March 2002, available at: <http://www.icann.org/accra/pro-agmt-topic.htm>)
- B. Website for Registry Pro, the exclusive Operator of .pro domains ([http://nic.pro/products\\_overview.htm](http://nic.pro/products_overview.htm))
- C. .pro Registry Agreement (<http://www.icann.org/tlds/agreements/pro/>)
- D. .name Registry Agreement (<http://www.icann.org/tlds/agreements/name/>)
- E. Appendix L to Registry Agreements: Prohibited Names.

Appendix L to the Registry Agreements for .Pro and .Name specify “labels” that are not available for registrations.  
(<http://www.icann.org/tlds/agreements/pro/registry-agmt-appl-30sep04.htm>)  
(<http://www.icann.org/tlds/agreements/name/registry-agmt-appl-8aug03.htm>)

- F. Appendix K to Registry Agreements: Reserved Names.

Appendix K to both Registry Agreements includes a list of “Names Reserved at All Levels”; these are the “ICANN and IANA Reserved Names.”  
(<http://www.icann.org/tlds/agreements/pro/registry-agmt-appk-21may04.htm>)  
(<http://www.icann.org/tlds/agreements/name/registry-agmt-appk-8aug03.htm>).

- G. Appendix X to Registry Agreement: Names Registered to Registry Operator.

Appendix X lists certain strings that are registered to the Registry Operator at the third level – specifically “www” and “directory.”

(<http://www.icann.org/tlds/agreements/pro/registry-agmt-appx-21may04.htm>)  
(<http://www.icann.org/tlds/agreements/name/registry-agmt-appx-8aug03.htm>).

## APPENDIX J -- OTHER SECOND-LEVEL RESERVED NAMES

Prepared C Greer, T Reznik, M Rodenbaugh

### A. gTLD Strings

#### 1. Background

Registry Agreements for .asia, .biz, .cat, .com, .info, .jobs, .mobi, .net, .org, .travel and .tel (the latter modified slightly) state that:

*“Registry Operator shall reserve, and not register any TLD strings appearing on the list of reserved TLD strings attached as Appendix 6 hereto or located at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt> for initial (i.e., other than renewal) registration at the second level within the TLD<sup>35</sup>.”*

That particular language is not included in older TLD Agreements: .aero (2001), .coop (2001), .museum (2001), .name (2001) and .pro (2002) – those TLDs reserve the following names either as per Appendix 11 or Appendix K of their contracts in addition to two letter labels:

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<sup>35</sup> *The listing shown at this URL is provided in the ‘Rainbow Document’ as circulated to the WG on 8<sup>th</sup> February, 2007.*

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- aero
- arpa
- biz
- com
- coop
- edu
- gov
- info
- int
- mil
- museum
- name
- net
- org
- pro

## 2. Role of the name reservation requirement

There is no documentary evidence regarding the origin of this reservation requirement but it would appear that this measure was put in place by ICANN in order to avoid consumer confusion in relation to TLD.TLD addresses.

As new TLDs came on board in 2005, the hyperlink to the IANA list was referenced so that there would not be a static list of TLDs, rather a dynamic list. Registries should consult this list on an ongoing basis.

## 3. Recommendations

**Table 4.10 Recommendations regarding gTLD strings**

Description of Current Reserved Name Requirement			
gTLD names at the 2 <sup>nd</sup> level			
Level	Type	More Work?	Recommendations
Top	ASCII	No	N/A
Top	IDN	Yes	More work is recommended. (See guidelines below.)
2 <sup>nd</sup>	ASCII	Yes	More work is recommended. (See guidelines below.)
2 <sup>nd</sup>	IDN	Yes	More work is recommended. (See guidelines below.)
3 <sup>rd</sup>	ASCII	Yes	Recommendations for the 2 <sup>nd</sup> level, if any, could likely be applied at the third level for gTLDs registering names at the 3 <sup>rd</sup> level.
3 <sup>rd</sup>	IDN	Yes	Recommendations for the 2 <sup>nd</sup> level, if any, could likely be applied at the third level for gTLDs registering names at the 3 <sup>rd</sup> level.

### Guidelines for Additional Work

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Three alternative recommendations were considered by the subgroup:

[ALT1] The provision be retained in order to avoid consumer confusion.

[ALT2] The reservation requirement is overly restrictive and seems to create an unfair advantage for some existing registries over new registries. Thus, the reservation requirement should be removed.

[ALT3] The reservation requirement should be retained unless the two Registries in question come to agreement between themselves to release the names.

Section 4 (Consultation with Experts) summarizes the feedback received from about half of the existing gTLD registries. The opinions expressed are mixed so it might be helpful to solicit responses from the remaining gTLD registries.

It might also be helpful to attempt to collect data regarding ccTLD practices regarding use of gTLD strings at the second level.

Finally, there are at least three considerations regarding IDNs that need to be investigated: 1) should Unicode versions of existing ASCII strings be reserved in any scripts at the top level; 2) should ASCII and/or Unicode strings of future gTLDs be reserved; and 3) if it is decided that ASCII gTLD strings should be reserved at the second level, should corresponding Unicode strings be reserved in any scripts? Much of this work possibly should be done by the GNSO IDN working group or similar groups with IDN expertise.

#### **4. Consultation with experts**

The gTLD Registry Constituency was consulted as well as ICANN staff.

- ICANN staff (informal consultation) – favoured a removal of the reservation clause since it is likely to become unmanageable in the future with new TLDs coming on board.
- SITA (.aero) recommended removing the reservation requirement since the current system is favoring incumbents i.e. aero.com exists but com.aero (the airport code for Coleman airport in the US) is not available for registration
- PIR (.org) voted to retain the reservation requirement for future TLDs.
- Verisign (.com) believed that there should be no restrictions on unsponsored TLDs. As regards sponsored TLDs, a reserved list should be completely up to that sponsored TLDs, but should be in line with the mission of the TLD.
- GNR (.name) would rather that the reservation requirement be retained unless two Registries in question come to an agreement between themselves as regards the name release.
- NeuStar (.biz) supported a recommendation that the reservation requirement be removed from future TLD contracts.

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- dotAsia supported the view that relevant Registries could come to agreement between themselves to release the names, provided that such agreement not be unreasonably withheld.

The group also consulted the recently issued RSTEP Report on Internet Security and Stability Implications of the GNR proposal. A conclusion was reached that there were no technical issues as regards TLD.TLD combinations and the review team was aware of no significant impact on the security or stability of the Internet as a result (page 18).

## **5. Summary of Relevant Information Sources**

The Registry Agreements as posted on the ICANN web-site:

<http://www.icann.org/registries/agreements.htm>

RSTEP Report on GNR Proposal: <http://www.icann.org/registries/rsep/RSTEP-GNR-proposal-review-team-report.pdf>

## **B. Registry Specific Names**

### **1. Background**

Dot biz and dot info reserve a number of Registry-specific names as listed in Appendix 6 of their Agreements.

### **2. Role of the name reservation requirement**

The name reservations include Registry-related names (words and phrases associated with the day-to-day operations of a Registry) and reservations relating to the actual entity's name. The reservations came about during contract negotiations and are in place in order to protect the Registries and their successors and to avoid consumer confusion.

### **3. Recommendations**

Further consideration of this particular reservation requirement is advised. It does not appear that this issue clearly fits within the remit of the PRO WG and so future work is required by an alternative working group.

#### Guidelines for Further Work

The subgroup considered the following alternative recommendations:

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[ALT1] Registries may propose such reservations during contract negotiations with the standard comment period to apply, allowing for input from all interests.

[ALT2] Registries should be allowed to reserve *and register* such names.

[ALT3] Referral to the Protecting Rights of Others (PRO) Working Group for further consideration in light of potential infringement of rights issues.

Other alternatives are likely possible and should be further investigated along with the above. For example, this type of reservation requirement could be handled strictly via the new gTLD application process with opportunity for public comments in that process.

Finally, if further work is done for this category of names, it would be helpful to obtain input from NeuStar regarding the .biz list of reserved names in this category.

#### **4. Consultation with experts**

The .info Registry (Afilias) was consulted and its statement is provided below.

*.info statement (S Hemphill):*

The list of names in Appendix 6 of the Afilias Registry Agreement is carried over from the original .INFO Agreement which was signed in 2001.

At the time, Afilias negotiated two lists of names that the Registry could register for its own use. One list contained names that ICANN wished to see transferred to any successor Registry Operator (these were names tied to specific use by the Operator of .info [e.g., registrars.info]), and the other list could be retained by Afilias in the event that a successor .INFO Registry Operator was named (these names were more specific to the business entity [e.g., afilias.info]). The fact that there are a number of misspellings included on the latter list was simply a matter of choice by the original Afilias negotiating team.

Afilias does not actually use many of these reserved names and has no immediate plans on releasing them for registration.

#### **5. Summary of Relevant Information Sources**

- The .info Registry Agreement as posted on the ICANN web-site:  
<http://www.icann.org/registries/agreements.htm>

- PRO Working Group Statement of Work

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ip-rights.doc

## **C. Other Names Reserved at the Second Level (ie, those names not appearing in the Reserved Names Appendix of Registry contracts: non-ICANN names).**

### **1. Background**

These names differ from ICANN reserved names in that the names are actually intended to be allocated by the Registries. Therefore, the names fall outside the remit of this particular Working Group.

- .name reserves 'common names', 'community reservations', 'Registry common names' and 'post-fix reservations' as listed in Appendix K of its Agreement.
- .mobi reserves Premium Names as referenced in Appendix S of its Agreement and as listed at: [http://pc.mtld.mobi/documents/Premium\\_Name\\_List\\_16Jan07.pdf](http://pc.mtld.mobi/documents/Premium_Name_List_16Jan07.pdf)
- .coop reserves Non-ICANN names as referenced at and <http://www.coop/information.asp>
- travel and .jobs reserve Non-ICANN names as per Schedule S of their Agreements.

Allocation plans for these Registries are in some cases uncertain and have no timing requirements. At least one registry indicated it has no current plans to allocate these names, although it has recently come to our attention that that registry has begun to explore an allocation process. Thus, it is possible that these names could remain unallocated for extremely long periods of time and become *de facto* reserved names.

### **2. Role of the Name Reservation Requirement**

For the .name, .mobi, .coop, .travel and .job Registries, these non-ICANN reserved names directly benefit the communities that they represent and / or the reserved names are an integral part of the Registry's business model.

### **3. Recommendation**

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It is recommended that more work be done on this subcategory of names. With regard to that work, the following recommendation was supported by several people in the working group and should be further considered in any follow-on work:

It was the group's observation that each gTLD's list of reserved names and its business model may be unique. There may not be any one-size-fits-all approach for all gTLDs. For new gTLDs, applicant's approach to this category of reserved names (if applicable) must continue to be set during contract process and must include an opportunity for public comment by all interested parties.

The following information must be included in new gTLD applications that involve names in this category:

5. A proposed list of reserved names from the registry, and a proposed procedure for opposing any names on such list, including a proposed administrator of such dispute resolution service (e.g., dotMobi's Premium Name Application Process for Trademark Holders which was administered by WIPO)
6. An overview as to why the various groups of names are being reserved and how this serves the community or forms part of the Registry's business model
7. An outer time limit, five years or less, as to how long the names will be reserved
8. A proposed procedure for releasing the names (e.g., an allocation method).

It is important to note that innovation should not be stifled and Registries should be allowed a degree of flexibility - provision should be allowed for Registry learning over time (e.g., as per the .name example). Therefore, the Registry Service Approval Process must be capable of handling such change requests or appropriate guidelines should be in place as regards notice given on any upcoming public comment period.

#### Minority Statement by Victoria McEvedy

I refer to my minority report in relation to Controversial Names and the comments of that Subgroup. For many of the same reasons I do not support any proposal that allows Registries to unilaterally deny applications at their discretion, without transparent and objective criteria, and without allowing for a proper external legal remedy by which the applicant can challenge the decision. Obviously there are concerns as to Freedom of Expression issues here. I support further work being undertaken on this issue.

#### Minority Statement by Marilyn Cade

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This will be short. I think Greg/others identified an area that this group can make rapid progress on but which needs more work to determine how names are reserved, and then released by the registry.

I understand it may be a unique category but for now, addressing it will be most efficient by the present group who has some expertise.

#### Minority Statement from Caroline Greer

If Registries submit a list of reserved names for public comment during contract negotiations they should not also be *required* to provide for an opposition procedure administered by a third party. Such an opposition procedure may not be necessary or appropriate depending on the gTLD / names proposed and any opposition could be voiced during the public comment period. dotMobi's Premium Name Application Process for Trademark Holders was a unique process appropriate for that Registry (and developed after contract execution).

#### **4. Consultation with experts**

The following Registry representatives were contacted and asked to illustrate how the reservation of non-ICANN names served their community or formed an integral part of the Registry's business model.

.name – Simon Sheard  
.mobi – Caroline Greer  
.coop – Michael Palage  
.jobs – Ray Fassett  
.travel – Cherian Mathai

The representatives' statements are set out below:

##### .name statement (Simon Sheard):

The rationale for reserving names in the categories identified is to allow as many people as possible to have a domain name that is their name. When GNR originally applied for the contract to operate .name, it only applied to register third level products and thus, by definition, reserved all second level strings. In that way GNR could share common last names amongst many people who shared the same name but who were not necessarily from the same family.

When this did not take off as hoped, GNR applied to ICANN to amend the contract to allow for the sale of second level .names as well. However, in doing so, GNR

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wanted to complement the third level products and not extinguish them nor the concept that many people could share the same (second level) domain if they shared the same last name. So GNR trawled various sources - ICANN community; national & international statistics etc - and came up with a list of about 2,900 surnames which they believe covers the majority of the common last names on the globe (excluding 1 and 2 character last names which were excluded from all/most agreements). These were then reserved on the second level to preserve the potential reach of .name.

The post-fix reservations relate to second level strings ending "-family" and it's various language equivalents. This was done to avoid potential confusion and ensure the availability of third level registrations.

.mobi statement (C Greer):

dotMobi makes a distinction between ICANN reserved names and its 'Premium Names' list. Premium Names are defined by dotMobi as 'commonly used words and phrases' and dotMobi has reserved approximately 5,000 such names.

DotMobi negotiated this product with ICANN and the objective of the Premium Name list is to (1) create a more level playing field in the allocation of these names (the high value names are not 'grabbed' by speculators at landrush) (2) increase the likelihood that these domain names will more promptly provide the mobile community with new features and services (RFP process) (3) preserve the stability and security of Registry operations (system is not put under pressure at landrush) . The list was created primarily using third party search criteria and was translated into a core set of languages.

dotMobi put in place a specific process, administered by WIPO, for trademark holders to apply to have their names removed from the Premium Name list in line with certain criteria. In agreement with ICANN, all remaining names will be allocated either via auction or a Request for Proposals process, the latter of which centers on content applications from the market. The successful RFP bidder in each case will enter into a contract with dotMobi to operate the second level domain in the interests of the sponsored community. dotMobi may also attach content obligations to auction names.

With auction names, revenue is used to help fund ongoing dotMobi initiatives for the web development and content provider communities.

.coop statement (M Palage):

DotCoop's reservation of community names was not specifically enumerated in its original contract with ICANN, but was undertaken by the DotCoop board in

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consultation with the cooperative community under the authority delegated in the Sponsor's Charter. Originally, the Sponsor reserved a large number of names that related to many cooperative business sectors.

But it soon became clear that it would be difficult to define the appropriate "community" that should be allowed to register a particular sector name. Upon making this determination, the Sponsor decided to release the majority of names for general registration and only reserved those names that were connected with clearly defined organizations that would be able to help verify the appropriate registrant or to register the domain directly themselves. The currently reserved sector names are part of the .coop Community Name program that directly reflect the sector organizations that are part of the International Co-operative Alliance structure, see:

<http://www.ica.coop/ica/structure.html#sectoral>.

These names were reserved in the three primary languages of the ICA - English, French and Spanish.

In addition to these sector names, DotCoop also voluntarily reserved a list of country and geographic indicators in which there were strong ties to the cooperative community. To date various names have been registered including australia.coop, france.coop, newzealand.coop, unitedkingdom.coop, and usa.coop. In addition, uk.coop and nz.coop were registered in cooperation with the relevant ccTLD and government agencies.

Successful adoption and utilization of key domain names are the building blocks upon which the long term success/branding of any registry is based. Outside those domain names that are explicitly reserved from allocation by ICANN, DotCoop strongly believes it is important that each registry be provided the flexibility to make business decisions in connection with Registry/Sponsor reserved domain names, provided that any such processes are fair and equitable.

### *.jobs (Ray Fassett)*

.Jobs reserves all domain names at the second level to ensure fair and equitable treatment for all employers to acquire their legal or commonly known trade name at the point in time they desire to do so.

All second level domain names in .jobs are allocated on a first come, first serve basis at its discretion serving the best interests of the HR community and ICANN contractual obligations where applicable.

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An employer organization applies to acquire their legal or commonly known trade name. .jobs then validates that this is what the applicant is seeking to acquire before allowing the domain request to become active in the zone.

### .travel (Cherian Mathai)

The non-ICANN reserved names for .travel TLD can be broadly categorized into two:

1. Country and Place Names, and
2. Industry Names.

#### Country and Place Names

Following the recommendations of The Travel Partnership Corporation (TTPC), the sponsor of .travel, as well as contractual requirements with ICANN, the registry has reserved country names and certain place names under the following guidelines.

ISO 3166-1 Country Names are reserved pursuant to Schedule E of Appendix 6 of the .travel registry agreement. A list of place names such as city names and heritage sites was initially defined in 2005 for priority registration by the appropriate government body or government tourism bodies until December 2006, at which time the general priority was removed for all place names. A reduced list of place names continues to be subject to a 30-day "option" that gives the appropriate government entity a 30-day notice that a listed place name has been requested by another eligible entity. The government authority is permitted 30 days to register their name. If they do not take up their option the name is available for registration to any other eligible entity.

The travel community strongly feels that many place names are of particular value to the people of that area and their representative government should be given the first priority in registering that name.

#### Industry Names

The registry, following the recommendation of TTPC (the .travel sponsor), has reserved industry names such as adventure, cruise, hotels, airlines, restaurant, ticket etc., subject to development of policies at a later time. The travel community through TTPC feels that such industry names have value for the community as a whole and should not be registered by one particular travel service provider.

The .Travel registry has not yet released any of its reserved names and has no immediate plans to do so.

## **5. Summary of Relevant Information Sources**

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- The .name, .mobi, .coop, .jobs and .travel Registry Agreements as posted on the ICANN web-site:

<http://www.icann.org/registries/agreements.htm>

- .coop's list of reserved names - <http://www.coop/information.asp>

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# APPENDIX K -- CONTROVERSIAL RESERVED NAMES

Prepared by Avri Doria, Marilyn Cade, Tim Ruiz, and Victoria McEvedy

## 1. BACKGROUND

The concept of a category of 'controversial names/disputed names' developed for the first time in discussion among the members of the PDP-Dec05 in their face to face meeting in Amsterdam. While there is not a specific reserved name category in any gTLD registry agreement that is called "controversial names", several ccTLD's registration policies prohibit 'controversial names at the second level' (or third level) in some manner.

### 1.1 Recommendations in the Current Report

The current draft recommendations state:

Term of Reference Two: 2.v. Strings should not be contrary to public policy principles {The GAC liaison is invited to provide information regarding when GAC public policy principles may be available and discussed with the GNSO council and working group members. }

### 1.2 Basis for Term of Reference 2.v. in the Current Report

The PDP-Dec05 draft final report <sup>5.5</sup> states as follows, in support of the recommendation:

*"20. There was detailed discussion about a general category of potential strings which may have public policy impacts of interest to national governments. In response to correspondence from the GNSO Council Chair, the Governmental Advisory Committee [20] have responded to a request to provide guidance on public policy issues. It is expected that these principles will be finalised at the ICANN meeting in March 2007. After those guidelines are formalised, the ICANN staff proposed implementation plan may be modified to take into account ways to address the public policy concerns of governments in relation to the introduction of new top level domains.*

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21. *The Committee discussed proposed text to address the concerns of governments that was based on existing international law with respect to strings that may be contrary to public policy or accepted principles of morality or be of such a nature to deceive the public.*

22. *The Committee spent considerable time considering the public policy aspects of new top-level domains [21]. In particular, concerns about “public policy and morality” were raised. This phrasing is consistent with international laws including Article 3 (1) (f) of the 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regulation 40/94. In addition, the phrasing “contrary to morality or public order and in particular of such a nature as to deceive the public” comes from Article 6quinques (B)(3) of the 1883 Paris Convention. The reference to the Paris Convention remains relevant to domain names even though, when it was drafted, domain names were completely unheard of.*

23. *The concept of “morality” is captured in Article 19 United Nations Convention on Human Rights (<http://www.unhcr.ch/udhr/lang/eng.htm>) says “...Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 29 continues by saying that “...In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.*

24. *The EU Trade Mark Office’s Examiner’s guidelines provides assistance on how to interpret morality and deceit. “...Contrary to morality or public order. Words or images which are offensive, such as swear words or racially derogatory images, or which are blasphemous are not acceptable. There is a dividing line between this and words which might be considered in poor taste. The latter do not offend against this provision.” The further element is deception of the public which is treated in the following way. “...Deceive the public. To deceive the public, is for instance as to the nature, quality or geographical origin. For example, a word may give rise to a real expectation of a particular locality which is untrue.” For more information, see Sections 8.7 and 8.8 at <http://oami.europa.eu/en/mark/marque/direc.htm>*

25. *The UK Trade Mark office provides similar guidance in its Examiner’s Guidance Manual. “Marks which offend fall broadly into three types: those with criminal connotations, those with religious connotations and explicit/taboo signs. Marks offending public policy are likely to offend accepted principles of morality, e.g. illegal*

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*drug terminology, although the question of public policy may not arise against marks offending accepted principles of morality, for example, taboo swear words. If a mark is merely distasteful, an objection is unlikely to be justified, whereas if it would cause outrage or would be likely significantly to undermine religious, family or social values, then an objection will be appropriate. Offence may be caused on matters of race, sex, religious belief or general matters of taste and decency. Care should be taken when words have a religious significance and which may provoke greater offence than mere distaste, or even outrage, if used to parody a religion or its values. Where a sign has a very sacred status to members of a religion, mere use may be enough to cause outrage.” For more information, see <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)*

### **1.3 Controversial Names in ccTLDs**

- a) This report will address examples of the concept of controversial names where examples exist, largely in the country code TLDs.
- b) Although there is no specific prohibition in an RFC that governs the issue or topic of controversial names, some ccTLDs’ registration policies prohibit controversial names at the second level (or third level) in some manner although many do not. Examples of some of the more extreme policies are included below, but are by no means exhaustive. The sub group will undertake to quickly review a limited number of ccTLD policies including .us, .im, and .cn, and .se.
- c) There does not appear to be any such rule within any sponsored or unsponsored gTLD but review of relevant rules is not yet complete; the sub group will also email the gTLD Registry Constituency Chair to invite comments from all existing gTLD Registry representatives on current practice within their gTLD registry.
- d) “Controversy” has developed in the consideration of a few of the allocated gTLDs, but has generally been related to whether a string had support from a sponsoring community. One string applicant proposed a name that has been deemed to be very controversial largely with governments, and according to the review of the public forum lists, to some members of the community. .XXX TLD could also be discussed merely as an example of a string that has been found to be controversial and how the process followed by ICANN to address the questions and issues raised by various parties. If addressed by the WG, we

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would propose to review the history of events around its approval and subsequent agreement negotiations..

e) Controversial Second Level Names – Example Practices/Rules of Various ccTLDs:

1. usTLD <sup>5.1</sup> - Policy Statement by usTLD Administrator

The usTLD Administrator will follow a policy to preserve and enhance the value of the .US Internet address to all users, including, in particular, state and local governments, libraries and K-12 schools. Given the importance of .US as a national public resource, certain guidelines must apply. Therefore, the usTLD Administrator will review, for possible deletion by the Registry, all registered second-level and locality domain names that contain, within the characters of the domain name registration, any of the seven words identified in *Federal Communications Commission v. Pacifica Foundation*, 438 U.S. 726, 98 S. Ct. 3026, 57 L.Ed.2d 1073 (1978), the “Seven Words”.

2. imTLD 5.2 - The following is taken verbatim from IM Rules of Registration and Use of Domain Names.

“5. Content restrictions on Domain Names and maintenance of the restricted word lists.

1 An application for a domain name may be rejected for one of the following reasons:

- It is included on the .im Black List;
- Is on the Reserved Domain List and is unavailable for registration;
- Upon review by the Designated Official if the domain name is deemed to be profane or otherwise undesirable it may be withdrawn and added to the Black List retrospectively.

.2 An application for a domain may be referred for approval if it includes words or terms which are in the list for referral. This includes words which are connected to regulated activities on the Isle of Man.

.3 The lists of undesirable words and words for referral are maintained by us in consultation with the Isle of Man Government and are not in the public domain.

.4 The lists are subject to change without notice.

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.5 An application sent for referral does not mean that the application will be rejected or is likely to be rejected. It is however likely that additional information will be requested to support the application.

#### 11. Suspension of a .im Domain

11.2 The Designated Official may request suspension or withdrawal of a domain name should it consider for any reason the domain name is being used for an improper purpose to include anything illegal, considered defamatory or detrimental to the good name of the Isle of Man.”

### 3. cnTLD 5.3 - China Internet Domain Name Regulations

#### Chapter III Domain Name Registration

##### Article 25

In order to maintain the interests of the nation and the civil society, the Domain Name Registry may take necessary measures to protect certain words, and put it on record to MII before implementation.

##### Article 27

Any of the following contents shall not be included in any domain name registered and used by any organization or individual:

- 1) Those that are against the basic principles prescribed in the Constitution;
- 2) Those jeopardize national security, leak state secrets, intend to overturn the government, or disrupt of state integrity;
- 3) Those harm national honor and national interests;
- 4) Those instigate hostility or discrimination between different nationalities, or disrupt the national solidarity;
- 5) Those violate the state religion policies or propagate cult and feudal superstition;
- 6) Those spread rumors, disturb public order or disrupt social stability;

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- 7) Those spread pornography, obscenity, gambling, violence, homicide, terror or instigate crimes;
- 8) Those insult, libel against others and infringe other people's legal rights and interests; or
- 9) Other contents prohibited in laws, rules and administrative regulations.

#### 4. .seTLD<sup>5.4</sup> - Regulations | Blocked/Reserved domains

There are a number of categories of domain names that are barred or reserved by .SE.

Some domain names are completely barred for registration while other are reserved for the rightful applicant. As an example, counties can register the reserved geographical names. Barred and reserved domains have been divided into the two categories.

Barred domain names:

- SE Blocked, Country codes
- SE Blocked, Example and test domains
- SE Blocked, Misleading
- SE Blocked, Second level domains
- SE Blocked, Sub-domains
- SE Blocked, Swedish law

Reserved domain names:

- SE Reserved, Countries
- SE Reserved, Geographical words
- SE Reserved, Numerical domains
- SE Reserved, The court

The following combinations are also barred:

All number combinations in the format xxxxxx-xxxx which constitutes or could in the future constitute social security number

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The number series 900 000 - 909 000 with the format 90xxxx-x and 90x-xxxx respectively

90 000 for emergency calls

For technical reasons domain names beginning with two characters followed by two dashes are also barred.

Here you can download a text file with all barred and reserved domains. The data file is created once every 24 hours (at night):

[http://www.iis.se/external\\_pages/datafiles/barred\\_domains.txt](http://www.iis.se/external_pages/datafiles/barred_domains.txt)

### ROLE OF CONTROVERSIAL RESERVED NAMES

There is no apparent role for controversial names among the existing categories of names reserved at the second level within gTLDs. The role of controversial second level names within several ccTLDs varies and includes an array of concepts such as the protection of national interests, illegal activities, obscenity, and social disorder.

### 3. Recommendations

Definition of Controversial Names used in this report			
1. Qualifies as a TLD under the then prevailing String Criteria 2. Does not fall under any other Reserved Name category 3. Is disputed for reasons other than: i) It falls under any other Reserved Name category; ii) It infringes on the prior legal rights of others			
Level	Type	More Work?	Recommendations
Top	ASCII	Yes	1. Propose creating a category called Controversial Names for use at the top level only. A label that is applied for would be considered Controversial if during the Public Comment phase of the new gTLD application process the label becomes disputed by a formal notice of a consensus position from an ICANN Advisory Committee or ICANN Supporting Organization, and otherwise meets the definition of Controversial Names as defined above. 2. a. In the event of such dispute, applications for

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<b>Definition of Controversial Names used in this report</b>			
<ol style="list-style-type: none"> <li>1. Qualifies as a TLD under the then prevailing String Criteria</li> <li>2. Does not fall under any other Reserved Name category</li> <li>3. Is disputed for reasons other than: i) It falls under any other Reserved Name category; ii) It infringes on the prior legal rights of others</li> </ol>			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
			<p>that label would be placed in a HOLD status that would allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications would reenter the processing queue. The period of time allowed for dispute should be finite and should be relegated to a, yet to be defined, external dispute resolution process. The external dispute process should be defined to be objective, neutral, and transparent. The outcome of any dispute should not result in the development of new categories of Reserved Names.</p> <p>b. Notwithstanding the outcome of any such dispute, National law must apply to any applicants within its jurisdiction and in cases where the processes of International law allow enforcement of one nation's law on applicants from a different jurisdiction, those processes should apply.</p> <ol style="list-style-type: none"> <li>3. It is recommended that more work needs to be done in regards to dispute resolution processes, including minimizing the opportunity for such processes to be gamed or abused.</li> <li>4. The process [or lack thereof] described in 2 above could also be applied to new or existing strings that fall under other reserved name categories, for example, geographic and geopolitical names. The process may apply equally well to names at the second level.</li> </ol>
Top	IDN	Yes	These recommendations may apply equally well to IDNs at the top level, but more work needs to be done.
2 <sup>nd</sup>	ASCII	No	Processes, if any, to deal with controversial names

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<b>Definition of Controversial Names used in this report</b>			
1. Qualifies as a TLD under the then prevailing String Criteria 2. Does not fall under any other Reserved Name category 3. Is disputed for reasons other than: i) It falls under any other Reserved Name category; ii) It infringes on the prior legal rights of others			
<b>Level</b>	<b>Type</b>	<b>More Work?</b>	<b>Recommendations</b>
			at the second level should be left to the discretion of the gTLD Registry Operator with the exception that Registry Operators must comply with applicable local laws and regulations.
2 <sup>nd</sup>	IDN	No	Processes, if any, to deal with controversial IDN names at the second level should be left to the discretion of the gTLD Registry Operator with the exception that Registry Operators must comply with applicable local laws and regulations.
3 <sup>rd</sup>	ASCII	No	Same as for the 2nd-level for any gTLDs for which registrations occur at the 3rd-level.
3 <sup>rd</sup>	IDN	No	Same as for the 2nd-level for any gTLDs for which registrations occur at the 3rd-level.

**Comments of Avri Doria (In consultation with Victoria McEvedy, Solicitor, International Dispute Resolution Practice Consultant.):**

This report is concerned to identify comprehensively the issues raised by the principles and to examine them.

**Trade Mark Laws and ccTLDs as models**

It should be noted that both Nation States' trade mark laws, which are territorially limited and ccTLDs are premised on the assumption that a Nation is monocultural with a unitary legal system and a generally accepted standard of morality and taste often with only one or two dominant religions. Issues arise from attempts to extrapolate standards globally in a multicultural context is clearly problematic. These analogies must be considered with this limit in mind.

Trade mark laws also give inadequate weight to Freedom of Expression concerns which are relevant in an internet context given that much of the use is non-

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commercial. Consideration must also be given to the special considerations arising from the government sanction and exclusivity involved in trade marks which may not be applicable to the internet.

## **International Law**

. . . Arts 19 and 29 of the UN Convention on Human Rights . . . together subject Freedom of Expression to only such limitations as are determined by law. The ECHR provides similarly at Art. 10. Considerations arise as to the desirability of improving on such standards and questions as to the availability of other options.

Most nations have some restrictions on speech and inciting racial hatred or discrimination and crime tend to be included. It may be that common standards can be extracted after a review. Criticism of other religions is a tenant of Freedom of Expression in the West but prohibited in the Middle East. A full and proper study of the appropriateness of imposing the Eastern standards on the West should be considered.

## **Content v Strings**

Another issue that arises is the possibility that no action should be taken as to the strings on the basis that content is regulated by all nations so that for example, while .Nazi itself would not infringe French or German laws against glorification of the Nazi – the issue would be content related and depend on the content. See for example the Yahoo litigation.

## **The Veto**

The ability of any one nation to block an application requires serious consideration.

### **Comments of Marilyn Cade:**

While the GAC is developing public policy principles, these are presently not available in final version to the Working Group, or GNSO Council. It is therefore not possible to fully consider the GAC's principles, although earlier draft versions are being discussed. Indications are that there will be some guidance from the GAC regarding criteria. Ideally, in the future, ongoing discussion and dialogue about draft

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principles will be undertaken in a 'multi stakeholder' discussion, before principles are finalized. Changes and improvements in sharing of information by the GNSO with the GAC should be considered as work in progress and undertaken during the GNSO improvements process. All such changes should accommodate the interests and perspectives of the GAC.

The GAC's advisory role to the ICANN processes is based on consensus of the GAC members. The Working Group should provide its best judgment, and provide for consultation and dialogue with the GAC, in conjunction with the GNSO Council, once the GAC principles are available for discussion. Ideally, the GAC will engage in dialogue with the GNSO Council, its Task Forces/Working Groups, and other ICANN expert bodies, before finalizing principles.

In my view, the establishment of the controversial/disputed names category is largely as a placeholder, where a name can be parked, and the disputed or controversial issues be addressed, in an established time frame. It is not my view that all strings that are proposed will be ultimately approved. Some will be denied for technical or political reasons, e.g. the name of a country proposed as a string by someone other than the country itself. While some believe that a TLD should be a matter of freedom of speech, I am not inclined to expect such lofty goals of a simple TLD. It is important to remember that second level registrations remain available to registrants, and the operating a registry is an obligation, not a right. The availability of second, third level registrations, and the ability to register for access to the Internet via ISPs for web pages and email addresses remains a core mechanism for users. Of today's 1 billion users, the vast majority use email addresses, web pages from ISPs, for their access and identity on the Internet.

**Comments of Tim Ruiz:**

The basis for my support of the straw recommendation is the desire that all applications for a new gTLD registry should be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process, and that it is impossible for ICANN to pre-determine all terms that may be morally offensive or of national, cultural or religious significance for all of the world's cultures and create predictable criteria for applicants.

It is my view that 2.v. of TOR two in the draft final report should be applied more as a warning to applicants, not as a criteria that ICANN can actually proactively apply when considering applications. The warning is that any string applied for may be contested as something contrary to public policy. If contested, the application will be

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moved to a holding status as 'controversial' until the public policy claims can be further investigated.

The only exception might be the seven words banned by the US Federal Communication Commission. While I have not asked that this be added to the straw recommendation, it is my belief that the US Department of Commerce, who has ultimate approval of all additions to the root, would never allow a gTLD string that exactly matches one of the seven banned words into the root.

### Minority Statement by Victoria McEvedy

I wish to supplement the work of the Committee by adding these comments.

It is my view that any general Principle which seeks to prohibit any gTLD promoting hatred, racism, discrimination, crime or any abuse of religions or cultures is fundamentally flawed insofar as it fails to include any reference to Freedom of Expression.

GACs own Operating Principles, as amended at Mar del Plata, April 2005, provide at §6.3 that ICANN's decision making should take into account public policy objectives including, among other things:

- secure, reliable and affordable functioning of the Internet, including uninterrupted service and universal connectivity;
- the robust development of the Internet, in the interest of the public good, for government, private, educational, and commercial purposes, world wide;
- *transparency and non-discriminatory practices in ICANN's role in the allocation of Internet names and address;*
- effective competition at all appropriate levels of activity and conditions for fair competition, which will bring benefits to all categories of users including, greater choice, lower prices, and better services;
- fair information practices, including respect for personal privacy and issues of consumer concern; and
- *freedom of expression.*

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Given that one of GACs overall policy objectives is Freedom of Expression, it is critical that it be referred to in any statement the GAC may make on the new gTLDs. It is more significant than the concerns of Rights' claimants.

The internet is not solely concerned with commercial use and speech and it is critical that proper consideration be given to Freedom of Expression. This is a consumer concern and is why trade mark law is so often an inadequate analogy.<sup>36</sup>

It is now well established in international jurisprudence that Freedom of Expression should only be subject to limits prescribed by law. A classic example is the balance in Article 10 of the European Convention on Human Rights. E.g.:

“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...(2) The exercise of these freedoms, since it carries with it duties and responsibilities, *may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society*, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Freedom of Expression is therefore predominant and subject only to those limits both prescribed by law *and* necessary in a democratic society for one of the enumerated purposes.

I propose that any GAC policy statement or Principles reflect a similar balance. The predominant concern should be Freedom of Expression, subject only to those limits supplied by law and in the interests of preventing the promotion of hatred, racism, discrimination etc. Most nations do have laws preventing this type of speech so this should not be problematic.

In relation to “abuse of specific religions or cultures,” unless that abuse would fall within one of the laws aforementioned, then presumably in the delicate balancing act between Freedom of Expression and limits prescribed, this conduct is deemed by a given society to fall within the right to Freedom of Expression.

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<sup>36</sup> Not only does trade mark law contain many compromises in its complex defences which are not reflected in the Domain System, but entry on the register, for registered marks, was at the government's discretion and thus contained an element of state sanction –allowing it to impose a Victorian “taste and decency” approach.

Different societies have reached different answers to these difficult questions. Whose should prevail? The danger is that the nation with the most restrictive approach would drag the rest down to its standards.

Certainly in democratic traditions, it has never been acceptable to have secret closed committees, accountable to no-one, decide what can be said or published based on criteria known only to them and not subject to law or of law –this is censorship. This is the problem with the first stage of the “disputed application” approach as recommended. Arguably pre-determined criteria or restricted lists are more transparent.

ICANN should defer to the law but whose law? The choices are broadly Country of Origin or Countries of Destination. Destination is not feasible ---unless, if the proposed name would infringe a law in a nation state which objects to the application—the application could be granted with conditions restricting or preventing its use in the objecting state(s). I understand however that this may not be technically possible. It would however prevent one State imposing its laws on others. The technical issues should be investigated.

An alternative might be agreed rules for jurisdiction and choice of law. Experts should be consulted.

This applies similarly to names at the second level, and other levels, where it should not be left to the discretion of the Registrars.

#### **4. Recommendation for Experts**

Questions will be developed only if the RN-WG decides that consultation with experts is needed.

Experts may include relevant contacts at various ccTLD registries. It is recommended that experts on processes in International law be consulted on how similar issues regarding controversial terms are treated, e.g., the French government’s issues on the use of the word ‘Nazi’.

#### **5. Summary of Relevant Documents**

5.1 Policy Statement by usTLD Administrator:

[http://www.neustar.us/policies/docs/Policy\\_Statement\\_usTLD\\_Admin.pdf](http://www.neustar.us/policies/docs/Policy_Statement_usTLD_Admin.pdf)

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<sup>5.2</sup> IM Rules of Registration and Use of Domain Names:

<https://www.nic.im/pdfs/IMRules.pdf>

<sup>5.3</sup> China Internet Domain Name Regulations:

<http://www.cnnic.net.cn/html/Dir/2005/03/24/2861.htm>

<sup>5.4</sup> SE Regulations – Blocked/Reserved Domains

[http://www.iis.se/english/nydoman/barred\\_domains.shtml?lang=en](http://www.iis.se/english/nydoman/barred_domains.shtml?lang=en)

<sup>5.5</sup> New gTLDs (PDP-Dec05) DRAFT GNSO Recommendation Summary:

<http://gns0.icann.org/issues/new-gtlds/recom-summary-14sep06.htm>

<sup>5.6</sup> GAC Principles and Guidelines on Public Policy Issues - Implementation of New gTLDs.

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## APPENDIX L -- COMPARISON OF gTLD REGISTRY RESERVED NAMES, V.3

Prepared by Chuck Gomes for the Reserved Names Working Group, 29 Jan 2007 (additional information added by Patrick Jones, 27 Jan 2007)

The following information is intended to provide a comparison of the reserved name requirements contained in gTLD registry agreements as currently posted on ICANN's website at:

<http://www.icann.org/registries/agreements.htm>

As of 27 January 2007 there are a total of 16 agreements posted.

Notes:

It is hoped that there are minimal errors in this information but there was not time to have it verified by others so users of the information are encouraged to validate it on their own by checking each of the agreements directly.

Please be aware, as noted below, that the latest approved amendments regarding 2-character second-level domain reservations for the .name gTLD have not yet been posted so they are not included in this document.

A. Labels Reserved at All Levels. The following names shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations:

ICANN-related names:

- Included in ALL 16 agreements except as noted below for 5 gTLDs: .aero, .asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel

aso

gnso 'dnso' for .aero, .coop, .museum, .name, .pro

icann

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internic

ccnso 'ps0' for .aero, .coop, .museum, .name, .pro

IANA-related names:

- Included in ALL 16 agreements: .aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel

afrinic	ietf
apnic	irtf
arin	istf
example	lacnic
gtld-servers	latnic
iab	rfc-editor
iana	ripe
iana-servers	root-servers
iesg	

**B. Additional Second-Level Reservations.** In addition, the following names shall be reserved at the second level:

All single-character labels.

- Included in ALL 16 agreements: .aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel

All two-character labels shall be initially reserved.

Included in the following 15 agreements: .aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .net, .org, .pro, .tel and .travel

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\* The posted agreement for .name does not include the latest amendment that modifies the reserved name requirement for two-character labels.

- Amendments have been approved for the .name gTLD that modify this reservation requirement, see the ICANN Board minutes at <http://www.icann.org/minutes/prelim-report-16jan07.htm>. The Board authorized staff to enter into negotiations with GNR to implement the registry service request that can be found at [http://www.icann.org/registries/rsep/GNR\\_Proposal.pdf](http://www.icann.org/registries/rsep/GNR_Proposal.pdf). Here is a quote from the proposed registry service document that summarizes the service: *"In pure technical terms, Global Name Registry proposes to simply add and reserve for third level registrations, all two-character strings according to the current rules in the .NAME registry., The strings will be added to the already existing shared third-level namespace on the .name gTLD available to people worldwide through ICANN Accredited Registrars, and made available for registration on the third level on a first-come, first-served basis. All two-character names will be shared and not released directly on the second level."* Here are two examples from the GNR proposal: *"e.g. Yin@Li.name or yin.wu.name."*

The reservation of a two-character label string shall be released to the extent that the Registry Operator reaches agreement with the government, country-code manager, or the ISO 3166 maintenance agency, whichever appropriate. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.

- Included in the following 14 agreements: .aero, asia, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .pro, .tel and .travel  
- Not included in: .biz, .org

**C. Tagged Domain Names.** All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n").

- Included in ALL 16 agreements: .aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel

**D. Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the Registry TLD.

- Included in ALL 16 agreements: .aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel

Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD they shall be transferred as specified by ICANN:

Included in the following 14 agreements: .aero, asia, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .pro, .tel and .travel

Not included in: .biz, .org  
nic

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whois

www

- Included in ALL 16 agreements: .aero, asia, .biz, .cat, com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel

**E.Geographic and Geopolitical Names.** All geographic and geopolitical names contained in the ISO 3166-1 list from time to time shall initially be reserved at both the second level and at all other levels within the TLD at which the Registry Operator provides for registrations. All names shall be reserved both in English and in all related official languages as may be directed by ICANN or the GAC.

- Included for: .asia

- Included for .cat, .jobs, .mobi, .tel and .travel with the following excluded: “as may be directed by ICANN or the GAC”

- Not included for: .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, .pro

In addition, Registry Operator shall reserve names of territories, distinct geographic locations, and other geographic and geopolitical names as ICANN may direct from time to time. Such names shall be reserved from registration during any sunrise period, and shall be registered in ICANN's name prior to start-up and open registration in the TLD. Registry Operator shall post and maintain an updated listing of all such names on its website, which list shall be subject to change at ICANN's direction. Upon determination by ICANN of appropriate standards and qualifications for registration following input from interested parties in the Internet community, such names may be approved for registration to the appropriate authoritative body.

- Included for: .asia

- Included for .cat, .jobs, .mobi, .tel and .travel but “geographic locations” is replaced by “economies”

- Not included for: .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, .pro

Language is included within the Registry Agreements listed below stating that “3.1 (d)(i)(A) Registry Operator shall reserve, and not register any TLD strings (i) appearing on the list of reserved TLD strings attached as Appendix 6 hereto or (ii) located at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt> for initial (i.e., other than renewal) registration at the second level within the TLD.” [Note: 1) The listing shown at this URL as of 29 January 2007 is provided at the end of this document; 2) the .tel agreement refers to two URLs, the first one as listed here and a second one that lists all country code TLDs, which appear to be included in the list provided at the first URL.]

- Included for: .asia, .biz, .cat, .com, .info, .jobs, .mobi, .net, .org, .tel (modified slightly), and .travel

- Not included in: .aero, .coop, .museum, .name and .pro

### **Names reserved at the 3<sup>rd</sup> level**

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All three-character labels shall be initially reserved by the Registry Operator. The reservation of a three-character label string shall be released to the Registry Operator in conjunction with the introduction of corresponding PS-SLDs and pursuant to the procedures outlined in Appendix K, Section 4.

**Included for .pro only**

Not included for: .aero, .asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .tel and .travel

**Other names reserved at the 2<sup>nd</sup> level**

.aero, .coop, .museum, .name and .pro also reserve the following:

- aero
- arpa
- biz
- com
- coop
- edu
- gov
- info
- int
- mil
- museum
- name
- net
- org
- pro

.biz also reserves the following:

**Part A: Names staying with the Registry in the event of reassignment**

- |                         |                             |
|-------------------------|-----------------------------|
| 1. advisory.biz         | 18. cctld.biz               |
| 2. api.biz              | 19. claims.biz              |
| 3. autorenew.biz        | 20. customercare.biz        |
| 4. billing.biz          | 21. customersupport.biz     |
| 5. bizdomain.biz        | 22. digitalcertificates.biz |
| 6. bizinfo.biz          | 23. directory.biz           |
| 7. bizlogin.biz         | 24. dns.biz                 |
| 8. bizlock.biz          | 25. domain.biz              |
| 9. bizname.biz          | 26. domainname.biz          |
| 10. business.biz        | 27. domainnames.biz         |
| 11. biznotification.biz | 28. domains.biz             |
| 12. bizregistrar.biz    | 29. dotbizpromotions.biz    |
| 13. bizregistrars.biz   | 30. dotbiz.biz              |
| 14. bizwebaddress.biz   | 31. dotbizaccounting.biz    |
| 15. bulkrenew.biz       | 32. dotbizbilling.biz       |
| 16. business.biz        | 33. dotbizcallcenter.biz    |
| 17. callcenter.biz      | 34. dotbizcards.biz         |

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- |                                |                          |
|--------------------------------|--------------------------|
| 35. dotbizcustomercare.biz     | 72. register.biz         |
| 36. dotbizcustomersupport.biz  | 73. registry.biz         |
| 37. dotbizhelp.biz             | 74. registryour.biz      |
| 38. dotbizhelpdesk.biz         | 75. registryourbiz.biz   |
| 39. dotbizinfo.biz             | 76. registrant.biz       |
| 40. dotbizmail.biz             | 77. registrar.biz        |
| 41. dotbizorder.biz            | 78. registrarreports.biz |
| 42. dotbizregistrar.biz        | 79. registrars.biz       |
| 43. dotbizregistrarsupport.biz | 80. registrarsupport.biz |
| 44. dotbizsecurity.biz         | 81. registrylock.biz     |
| 45. dotbizsite.biz             | 82. renew.biz            |
| 46. dotbiztechnicalsupport.biz | 83. renewnames.biz       |
| 47. dotbiztroubledesk.biz      | 84. root.biz             |
| 48. dotbizwebmaster.biz        | 85. rootserver.biz       |
| 49. ebiz.biz                   | 86. securedomain.biz     |
| 50. ebizness.biz               | 87. securename.biz       |
| 51. findyour.biz               | 88. security.biz         |
| 52. ftp.biz                    | 89. servicemark.biz      |
| 53. getyour.biz                | 90. services.biz         |
| 54. gopher.biz                 | 91. smtp.biz             |
| 55. gtld.biz                   | 92. snmp.biz             |
| 56. helpdesk.biz               | 93. technicalsupport.biz |
| 57. hostmaster.biz             | 94. telnet.biz           |
| 58. identify.biz               | 95. thebizdomain.biz     |
| 59. imap.biz                   | 96. thebizregistry.biz   |
| 60. info.biz                   | 97. theregistry.biz      |
| 61. ldap.biz                   | 98. troubledesk.biz      |
| 62. multilingual.biz           | 99. usergroup.biz        |
| 63. mybiz.biz                  | 100. webmaster.biz       |
| 64. network.biz                | 101. whatbiz.biz         |
| 65. nntp.biz                   | 102. whois.biz           |
| 66. ntp.biz                    | 103. whoisbiz.biz        |
| 67. order.biz                  | 104. www.biz             |
| 68. pop.biz                    | 105. xrpEPP.biz          |
| 69. pop3.biz                   | 106. yourbiz.biz         |
| 70. questions.biz              | 107. zone.biz            |
| 71. questionsdotbiz.biz        | 108. zonefile.biz        |

Part B: Names staying with Registry Operator in the event of reassignment:

1. melbourneit.biz
2. neulevel.biz
3. neu-level.biz
4. neulevelinc.biz
5. neulevelbiz.biz
6. neulevelllc.biz

.info also reserves the following:

Part A: Names to be transferred with the Registry Database in the event of reassignment

- |                             |                          |
|-----------------------------|--------------------------|
| 1. about.info               | 19. phone.info           |
| 2. address.info             | 20. register.info        |
| 3. buydotinfo.info          | 21. registerdotinfo.info |
| 4. directory.info           | 22. registerinfo.info    |
| 5. dot.info                 | 23. registrar.info       |
| 6. dotinfo.info             | 24. registrars.info      |
| 7. dotinfodomain.info       | 25. registry.info        |
| 8. dotinfodomainname.info   | 26. search.info          |
| 9. dotinformation.info      | 27. searchdotinfo.info   |
| 10. email.info              | 28. selldotinfo.info     |
| 11. http.info               | 29. site.info            |
| 12. infodomain.info         | 30. tld.info             |
| 13. infodomainname.info     | 31. tlddotinfo.info      |
| 14. information.info        | 32. topleveldomain.info  |
| 15. informationdotinfo.info | 33. url.info             |
| 16. list.info               | 34. web.info             |
| 17. mail.info               | 35. website.info         |
| 18. owndotinfo.info         |                          |

Part B: Names staying with Afalias in the event of registry reassignment:

- |                             |                             |
|-----------------------------|-----------------------------|
| 1. 1866.info                | 19. afalaismember.info      |
| 2. 1-866.info               | 20. afalaismembers.info     |
| 3. 1866dotinfo.info         | 21. afalaisplc.info         |
| 4. 1-866-dotinfo.info       | 22. afalias.info            |
| 5. 1-866-dot-info.info      | 23. afaliasco.info          |
| 6. 866.info                 | 24. afaliascompany.info     |
| 7. afalais.info             | 25. afaliascorp.info        |
| 8. afalaisco.info           | 26. afaliascorporation.info |
| 9. afalaiscompany.info      | 27. afaliasdomains.info     |
| 10. afalaiscorp.info        | 28. afaliasdotinfo.info     |
| 11. afalaiscorporation.info | 29. afaliasinc.info         |
| 12. afalaisdomains.info     | 30. afaliasinfo.info        |
| 13. afalaisdotinfo.info     | 31. afaliasinformation.info |
| 14. afalaisinc.info         | 32. afaliasllc.info         |
| 15. afalaisinfo.info        | 33. afaliasllp.info         |
| 16. afalaisinformation.info | 34. afaliasmember.info      |
| 17. afalaisllc.info         | 35. afaliasmembers.info     |
| 18. afalaisllp.info         | 36. afaliasplc.info         |

- |                              |                                  |
|------------------------------|----------------------------------|
| 37.affilias.info             | 77.afilaisinformation.info       |
| 38.affiliasco.info           | 78.afilaisllc.info               |
| 39.affiliascompany.info      | 79.afilaisllp.info               |
| 40.affiliascorp.info         | 80.afilaismember.info            |
| 41.affiliascorporation.info  | 81.afilaismembers.info           |
| 42.affiliasdomains.info      | 82.afilaisplc.info               |
| 43.affiliasdotinfo.info      | 83.afilias.info                  |
| 44.affiliasinc.info          | 84.afiliasco.info                |
| 45.affiliasinfo.info         | 85.afiliascompany.info           |
| 46.affiliasinformation.info  | 86.afiliascorp.info              |
| 47.affiliasllc.info          | 87.afiliascorporation.info       |
| 48.affiliasllp.info          | 88.afiliasdomains.info           |
| 49.affiliasmember.info       | 89.afiliasdotinfo.info           |
| 50.affiliasmembers.info      | 90.afiliasinc.info               |
| 51.affiliasplc.info          | 91.afiliasinfo.info              |
| 52.affillias.info            | 92.afiliasinformation.info       |
| 53.affilliasco.info          | 93.afiliasllc.info               |
| 54.affilliascompany.info     | 94.afiliasllp.info               |
| 55.affilliascorp.info        | 95.afiliasmember.info            |
| 56.affilliascorporation.info | 96.afiliasmembers.info           |
| 57.affilliasdomains.info     | 97.afiliasplc.info               |
| 58.affilliasdotinfo.info     | 98.afillias.info                 |
| 59.affilliasinc.info         | 99.afilliasco.info               |
| 60.affilliasinfo.info        | 100.    afilliascompany.info     |
| 61.affilliasinformation.info | 101.    afilliascorp.info        |
| 62.affilliasllc.info         | 102.    afilliascorporation.info |
| 63.affilliasllp.info         | 103.    afilliasdomains.info     |
| 64.affilliasmember.info      | 104.    afilliasdotinfo.info     |
| 65.affilliasmembers.info     | 105.    afilliasinc.info         |
| 66.affilliasplc.info         | 106.    afilliasinfo.info        |
| 67.afil.info                 | 107.    afilliasinformation.info |
| 68.afilais.info              | 108.    afilliasllc.info         |
| 69.afilaisco.info            | 109.    afilliasllp.info         |
| 70.afilaiscompany.info       | 110.    afilliasmember.info      |
| 71.afilaiscorp.info          | 111.    afilliasmembers.info     |
| 72.afilaiscorporation.info   | 112.    afilliasplc.info         |
| 73.afilaisdomains.info       | 113.    afls.info                |
| 74.afilaisdotinfo.info       | 114.    member.info              |
| 75.afilaisinc.info           | 115.    members.info             |
| 76.afilaisinfo.info          |                                  |

.name also reserves the following:

In addition, the Registry will reserve a set of names (“Common Names”) that are shared by a very substantial number of people.

For a number of reasons, it is difficult to identify a specific number of names that should be reserved, or a specific percentage of the populations with names that should be reserved in any particular region or country. In some countries (such as China) reserving a very small number of names would protect a very large percentage of the population. In countries that have an extensive immigrant population or history of immigration (such as the United States), a much larger number of names is needed to cover the same portion of the population. At the same time, surnames popular in countries with very high Internet penetration are more likely to be already protected by existing third level registrations. In most cases, it will be most important to reserve names popular in developing countries. On the other hand, this will not always be the case: a name that is very popular in a small developing country may also be registered, and thus protected, as a result of a history of emigration from that country to developing nations (e.g., Vietnamese names in the U.S.).

For this reason, the GNR Registry will need to make judgments, based on research and input from the ICANN community and from appropriate national and regional governments, to identify appropriate names for reservation. There are many sources of information about popular surnames. In developed nations, census data is generally available for this purpose. In other countries, this information may be available only through universities or other institutions. There is also a wealth of information available on the Internet, of various degrees of credibility that the GNR Registry will consult as appropriate.

The following approaches will be used in parallel to identify appropriate names to be reserved at the second level for the operation of the registry for registrations of third level domain names and SLD Email Forwarding. While there is no perfect methodology, these approaches should produce, overall, an appropriate level of protection of popular surnames.

### **D.1 Community reservations**

The GNR Registry intends to get input from the ICANN community to learn which names may be important to reserve on the 2nd level. Governments may volunteer information on common names in their respective countries. This would be particularly useful for regions where extensive knowledge about Common Names is not currently readily available.

The Registry will evaluate names gathered from the Internet community, especially from government representatives participating in the Government Advisory Committee, and, after validation, may reserve common names on the 2nd level to help ensure that 3rd level registrations are available for such names.

The period for receiving input will be from August 18, 2003 to September 18, 2003, and during this period the Registry would collect submissions by email for review and reservation. Only strings that are names should be submitted, for the purpose of reserving them for registration on the third level at some time in the future. There will be an expiration date on this reservation, and if no third level is registered on a given 2nd level one year from the reservation date, the reservation will expire.

The Registry will publish its solicitation for input on the Registry website (<http://www.nic.name>), as well as ask ICANN to publish a link to the solicitation during the same timeframe.

## **D.2 Registry Common Name reservations**

The Registry will use names gathered from name statistics in a series of countries around the world to reserve names on the 2nd level. Names from these lists will be reserved on the 2nd level and made available only for 3rd level registrations.

The Registry will use statistics gathered for last names for the following countries/regions:

### **1. African Names**

(The GNR Registry will seek information on name distribution in a variety of African countries, with the intent of touching on the major language groups and cultures. Target countries will include, without limitation, Nigeria, Kenya, Ghana, Tanzania, Cote d'Ivoire, Ethiopia, Uganda, etc.)

### **2. Arabic Names**

(The GNR Registry will seek information on name distribution in a variety of Middle Eastern countries with the intent of touching on the major language groups and cultures.)

### **3. Belgium**

### **4. China**

### **5. Denmark**

### **6. Estonia**

### **7. Finland**

### **8. France**

### **9. Germany**

### **10. India**

### **11. Italy**

### **12. Japan**

### **13. Korea**

### **14. Malaysia**

### **15. Netherlands**

### **16. Norway**

### **17. Russia**

### **18. Singapore**

- 19. Spain
- 20. Sweden
- 21. Taiwan
- 22. United Kingdom
- 23. United States
- 24. Vietnam

### D.3 Post-fix Reservations

The Registry is reserving all 2nd level names ending in a particular set of strings. Such names are reserved on the second level by default, and only 3rd level registrations are allowed on such 2nd levels. The following post-fix strings are reserved:

Post-fix (English version)	Post-fix (Translated version)	Language
Family	-familie	Dutch
Family	-family	English
Family	-perhe	Finnish
Family	-famille	French
Family	-familie	German
Family	-parivaar	Hindi
Family	-keluarga	Indonesian
Family	-famiglia	Italian
Family	-angkan	Philippino
Family	-rodzina	Polish
Family	-familia	Portugués
Family	-familie	Scandinavian
Family	-familia	Spanish
Family	-mischpoche	Yiddish
Family	-umdeni	Zulu

As an example, the reservation of these post-fix strings means that all second level names ending in e.g. “-parivaar”, for example “patel-parivaar” are reserved on the second level for third level registrations only.

<http://data.iana.org/TLD/tlds-alpha-by-domain.txt>

# Version 2007012401, Last Updated Thu Jan 25 09:07:01 2007 UTC

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UZ  
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WS  
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YU  
ZA  
ZM  
ZW

**EXHIBIT JJN-40**

**Reserved Names Working Group - Final Report**

Last Updated:04 September 2009

**Date:**

23 May 2007

GNSO New TLDs Committee

**Reserved Names Working Group**

**Final Report**

**23 May 2007**

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[name="\\_Toc167705583">DEFINITIONS](#)

[name="\\_Toc25123613">](#)

style='border-collapse:collapse;border:none;mso-border-alt:solid black .75pt;mso-yfti-tbllook:191;mso-padding-alt:0pt 5.4pt 0pt 5.4pt;mso-border-insideh:.75pt solid black;mso-border-insidev:.75pt solid black'>

A Label

ASCII-compatible

(ACE) form of an IDNA-valid string. See <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt>><http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt>. An example is xn--1lq90i.

Character

A character may be a letter, digit, hyphen or symbol.

For the purposes of discussing

IDNs, a "character" can best be seen as the basic graphic unit of a writing system, which is a script plus a set of rules determining how it is used for representing a specific language.

However, domain labels do not convey any intrinsic information about the language with which they are intended to be associated, although they do reveal the script on which they are based. This language dependency can unfortunately not be eliminated by restricting the definition to script because in several cases (see examples below) languages that share the same script differ in the way they regard its individual elements. The term character can therefore not be defined independently of the context in which it is used.

In phonetically based writing systems, a character is typically a letter or represents a syllable, and in ideographic systems (or alternatively, pictographic or logographic systems) a character may represent a concept or word.

The following examples are

intended to illustrate that the definition of a character is at least two-fold, one being a linguistic base unit and the other is the associated code point.

U-label 酒 : Jiu; the Chinese word for 'alcoholic beverage'; Unicode code point is U+9152 (also referred to as: CJK UNIFIED IDEOGRAPH-9152); A-label is xn-jj4

U-label 北京 : the Chinese word for 'Beijing', Unicode code points are U+5300 U+4EAC; A-label is xn-1lq90i

U-label 東京 : Japanese word for 'Tokyo', the Unicode code points are U+6771 U+4EAC; A-label is xn-1lqs71d

U-label ايكوم; Farsi acronym for ICOM, Unicode code points are U+0627 U+06CC U+0643 U+0648 U+0645; A-label is xn-mgb0dgl27d.

Controversial  
Names

A name is designated as a controversial name if it qualifies as a TLD under the then prevailing String Criteria, does not fall under any other Reserved Name category and is disputed for reasons other than that it either falls under any other Reserved Name category or that it infringes on the prior legal rights of others.

Controversial  
Names - Dispute Resolution Panel

CN-DRP

Geographical  
Names

Geographical names refer to those names in the ISO 3166-1 list (e.g., Portugal, India, Brazil, China, Canada) & names of territories, distinct geographic locations (or economies), and other geographic names as ICANN may direct from time to time.

Geopolitical  
Names

The reserved name category titled 'Geographic and Geopolitical Names' is contained in a subset of existing ICANN registry agreements. Geopolitical names is a term that has not been widely used within the broader geographical identifier discussion. In fact, the term is only used once in a parenthetical in the entire WIPO II Process final report. See <http://www.wipo.int/amc/en/processes/process2/report/html/report.html> > <http://www.wipo.int/amc/en/processes/process2/report/html/report.html> Paragraph 55.

gTLD strings

gTLD strings refer to gTLDs (i.e., .com, .net, .org, .mobi) that are reserved from registration at the second level and third level where applicable as a contractual condition (e.g., .net, .travel, .org, .jobs, .mobi, .asia). Reservation is based upon the list

contained at href="<http://data.iana.org/TLD/tlds-alpha-by-domain.txt>"><http://data.iana.org/TLD/tlds-alpha-by-domain.txt>

Reserved  
Names

For the purpose of developing recommendations that are readily usable in the GNSO New gTLD PDP report and in response to direction received from the GNSO Council in Lisbon, the Reserved Name Working Group (RN-WG) focused attention in its final recommendations only on reserved name requirements that apply to all new gTLDs for which clear requirements could be defined. Depending on the specific reserved name category as well as the type (ASCII or IDN), the reserved name requirements recommended may apply in any one or more of the following levels as indicated:

1. At the top level regarding gTLD string restrictions
2. At the second-level as contractual conditions
3. At the third-level as contractual conditions for any new gTLDs that offer domain name registrations at the third-level.

Therefore, the final RN-WG reserved name recommendations fall into the following categories:

1. ICANN/IANA names
2. Single & two-character names, including the use of symbols
3. Tagged names
4. NIC, Whois and www
5. gTLD names at the second level (or third level if applicable).

In its work, the RN-WG also focused on the following categories of names:

Geographical and geopolitical  
names

Specific names reserved by particular gTLD registries at the second and third level

Controversial names.

In the case of the second category, the lists of registry specific names were unique to particular gTLD registries rather than to all gTLDs and thus did not fit the focus of the group. In the case of geographical/geopolitical names and controversial names, it was very difficult if not impossible to define clear reservation requirements that could be applied for all new gTLDs; at the same time, the work completed by the group seemed to be very applicable to the processes developed as part of the New gTLD PDP, so recommendations are included in this report for consideration as part of those processes.

#### Single & Two Character Labels

Prior to the release of IDNA, the characters available for inclusion in domain names consisted of a limited number of alphanumeric elements (a,...z; 0,..., 9; "-"), and policies could easily be based on the number of characters any label contained. There is no similar generally applicable way to compare the length of, for example, an ideographic and an alphabetic string, or even a sequence of characters taken from the basic Latin alphabet with a decorated version of the same sequence.

In Czech, <ch> is a single letter (or character -- the concepts do not differ in this regard) whereas in English it is two. In Danish, <æ> is the 27th letter of the alphabet. It is a single character and does not decompose to <a e>. Depending on who you ask and their linguistic background, there are either 12 or 13 characters in the English word <encyclopædia>. If written as <encyclopaedia>, all would agree on 13. Differentiation by considering semantic value does not help. In Turkish, there is a difference between a dotted <i> and a dotless <ı>. In English, there is no such distinction. Whether the dot is to be counted as a character in its own right or not will again depend on who you ask and what language they view the word as being written in.

#### Symbol

While the DNS supports all of the printable characters in the US-ASCII character table not all such characters are made available in domain names. Symbols, such as #, \$, &, !, \*, -, \_, +, =, are not available for registration in domain names because the top-level domain registries decided (before internationalization) to adopt the hostname rule for registration of

domain names. The hostname rule, defined in RFC 952 style='mso-footnote-id:ftn1' href="#\_ftn1" name="\_ftnref1" title="">[1] and updated in RFC 1123 style='mso-footnote-id:ftn2' href="#\_ftn2" name="\_ftnref2" title="">[2], specifies that only letters, digits and hyphens (a-z, 0-9, -) are valid characters in hostnames.

#### Tagged Names

##### All labels

with hyphens in both the third and fourth character positions (e.g., "bq-1k2n4h4b" or "xn-ndk061n")

##### U-Label

An IDNA-valid string of Unicode-coded characters; the representation of the Internationalised Domain Name (IDN) in Unicode. See href="http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt">http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt. An example is 北京, the U-Label for the Chinese word "Beijing".

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#### name="\_Toc167705584">BACKGROUND

##### 1.

This Report is an additional input from the GNSO's Committee on the Introduction of New Top-Level Domains Reserved Names Working Group (RN-WG). The Report builds upon the 16 March 2007 Reserved Names Working Group Reportstyle='mso-footnote-id:ftn3' href="#\_ftn3" name="\_ftnref3" title="">[3]. There are four sections to this Report that map directly to the Statement of Work released by the RN-WG Chair on 10 April 2007style='mso-footnote-id:ftn4' href="#\_ftn4" name="\_ftnref4" title="">[4] for consideration by the GNSO Council at its 12 April 2007 meetingstyle='mso-footnote-id:ftn5' href="#\_ftn5" name="\_ftnref5" title="">[5]. This Report will be used as further input into the style='mso-bidi-font-style:normal'>new TLDs Final Report which is due to be released in early June 2007.

##### 2.

The first section of the Report sets out the procedural elements of the Working Group's remit and, in table form, provides the Group's full set of recommendations.

##### 3.

The second section discusses the RN-WG work.

##### 4.

The third

section of the report identifies areas that have been determined to be out of scope for the Working Group.

5.

The fourth

section includes recommendations for the GNSO Council to consider as new work for a later date.

6.

The fifth

section contains a full set of annexures and additional references which has informed the Working Group's deliberations.

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**name="\_Toc167705585">SECTION  
ONE - PROCEDURAL BACKGROUND AND RECOMMENDATIONS TABLE**

1.

The work

discussed in this report is a continuation of the original work of the Reserved Names Working Group as found in the report<sup>[6]</sup> posted 19 March 2007 and from which the extended work program was devised. On 12 April 2007 the GNSO Council extended the RN-WG by 30 days.

Statement  
of Work for the additional 30-days

General Tasks

1.
  - Define reserved names per direction provided during meetings in Lisbon*
2.
  - Reorganize the RN-WG report so that recommendations are grouped in the following categories:*
    - a.
      - Reserved name recommendations ready for input into the New gTLD PDP report*
    - b.
      - Recommendations for possible use in the New gTLD evaluation process, not as reserved names*
        - i.
          - Geographical and geopolitical names*

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ii.  
*Controversial  
names*

c.

*Categories of  
names deemed to be out of scope for the RN-WG*

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i.  
*Three  
character names at the third level*

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ii.  
*Registry  
specific names at the second level*

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iii.  
*Other reserved  
names at the second level*

3.

*Review GAC  
Principles for New gTLDs*

4.

*Review IDN-WG  
Report*

5.

*Add the GAC  
Principles for New gTLDs to the RN-WG report and reference them in applicable  
name categories*

6.

*Request that  
the SSAC identify any possible security or stability issues with regard to  
RN-WG recommendations as well as suggestions as to how any such issues  
might be  
mitigated*

7.

*Create an  
annex as feasible (with no explanations) which is simply the full  
proposed list of reserved names listed alphanumerically*

8.

*Use format  
specifications to be provided by Liz Williams*

-

Tasks  
regarding Recommendations

1.

*ICANN/IANA  
reserved names*

a.

*Restate  
recommendations in the RN-WG report so that they can be readily  
transferred  
into the New gTLD PDP report*

style='mso-bidi-font-style:normal'>

i.

*Maintain  
status quo for now regarding ASCII names*

style='mso-bidi-font-style:normal'>

ii.

*Confirm that  
these names are already reserved at the third level for .name  
and .pro and edit  
the document accordingly*

style='mso-bidi-font-style:normal'>

iii.

*Reword  
recommendation for "example" at all levels for ASCII and IDN  
names*

1.

*Provide  
examples*

2.

*Incorporate  
any relevant comments from the IDN-WG report*

style='mso-bidi-font-style:normal'>

iv.

*Provide a  
brief rationale in support of the recommendations, referring to  
the role of the  
category as applicable*

b.

*Finalize  
guidelines for additional work*

2.

*Use of symbols  
in Reserved Names*

- a.  
*Restate  
recommendations in RN-WG report so that they can be readily  
transferred into  
the New gTLD PDP, including fine-tuning of language*

style='mso-bidi-font-style:normal'>

- i.  
*Provide  
examples as possible*

style='mso-bidi-font-style:normal'>

- ii.  
*Maintain  
status quo for now regarding ASCII names*

- b.  
*Provide a brief  
rationale in support of the recommendations, referring to the role of the  
category as applicable*

3.  
*Single &  
two-character reserved names*

- a.  
*Consult  
further with IDN experts regarding single and two-character IDN names  
including  
definition of the term 'character' as it relates to non-roman scripts*

- b.  
*Consult  
further with experts in the technical community regarding single letter  
ASCII  
names, single-number ASCII names and two-character ASCII names  
involving at  
least one number.*

- c.  
*Consult with  
the GAC as possible regarding single and two-character IDN names*

- d.  
*Restate  
recommendations in RN-WG report so that they can be readily  
transferred into  
the New gTLD PDP report*

style='mso-bidi-font-style:normal'>

- i.  
*Provide  
examples as possible for both the top and second levels, ASCII*

*and IDN, single  
and two-character*

style='mso-bidi-font-style:normal'>

ii.  
*Incorporate  
any relevant comments from the IDN-WG report*

e.  
*Provide a  
brief rationale in support of the recommendations, referring to the role of  
the  
category as applicable*

f.  
*Finalize  
guidelines for additional work for ASCII single character names at all  
levels*

g.  
*As necessary,  
finalize guidelines for additional work for IDN single and two-character  
names  
at all levels*

4.  
*Tagged names*

a.  
*Restate  
recommendations in RN-WG report so that they can be readily  
transferred into  
the New gTLD PDP report*

style='mso-bidi-font-style:normal'>

i.  
*To ensure  
clarity, change all occurrences of 'in the third and fourth  
character  
positions' to 'in both the third and fourth character positions'*

style='mso-bidi-font-style:normal'>

ii.  
*Move  
recommendation 2 for IDN gTLDs from ASCII, top level to IDN  
top level*

style='mso-bidi-font-style:normal'>

iii.  
*In  
recommendation 2 for IDN gTLDs, change wording  
to use the terms 'ASCII compatible encoding' and 'Unicode  
display form'*

style='mso-bidi-font-style:normal'>

- iv.  
*Provide examples, including an example of what new applicants for an IDN gTLD would have to provide*

style='mso-bidi-font-style:normal'>

- v.  
*Incorporate any relevant comments from the IDN-WG report*

- b.  
*Provide a brief rationale in support of the recommendations, referring to the role of the category as applicable*

5.  
*NIC, Whois and www*

- a.  
*Restate recommendations in RN-WG report so that they can be readily transferred into the New gTLD PDP report*

style='mso-bidi-font-style:normal'>

- i.  
*Provide examples*

style='mso-bidi-font-style:normal'>

- ii.  
*Incorporate any relevant comments from the IDN-WG report*

- b.  
*Provide a brief rationale in support of the recommendations, referring to the role of the category as applicable*

6.  
*Geographical & geopolitical names*

- a.  
*Review the GAC Principles for New gTLDs with regard to geographical and geopolitical names*

- b.  
*Consult with  
WIPO experts regarding geographical and geopolitical names and IGO  
names*
- c.  
*Consult with  
the GAC as possible*
- d.  
*Reference the  
treaty instead of the Guidelines and identify underlying laws if different  
than  
a treaty*
- e.  
*Consider  
restricting the second and third level recommendations to unsponsored  
gTLDs  
only*
- f.  
*Restate  
recommendations in RN-WG report for possible use in the New gTLD  
evaluation  
process, not as reserved names*

style='mso-bidi-font-style:normal'>

- i.  
*Describe  
process flow*

style='mso-bidi-font-style:normal'>

- ii.  
*Provide  
examples as possible*

style='mso-bidi-font-style:normal'>

- iii.  
*Incorporate  
any relevant comments from the IDN-WG report*

- g.  
*Provide a  
brief rationale in support of the recommendations, referring to the role of  
the  
category as applicable*
- h.  
*Edit other  
text of the individual subgroup report as applicable to conform with the  
fact*

*that geographical and geopolitical names will not be considered reserved names*

*i.*

*Finalize  
guidelines for additional work as necessary*

*7.*

*Third level  
names*

*a.*

*Replace  
recommendations with a statement about the direction by the Council  
that this  
category is not in the scope of the RN-WG*

*b.*

*Edit other  
text of the individual subgroup report as applicable with the statement  
regarding scope*

*8.*

*gTLD names at  
the 2<sup>nd</sup> (or 3<sup>rd</sup> level if applicable)*

*a.*

*Complete  
consultation with gTLD registries and incorporate final results in the RN-  
WG  
report*

*b.*

*Determine  
whether final recommendations can be made*

*c.*

*State  
recommendations in RN-WG report so that they can be readily  
transferred into  
the New gTLD PDP report*

*style='mso-bidi-font-style:normal'>*

*i.*

*Provide  
examples*

*style='mso-bidi-font-style:normal'>*

*ii.*

*Incorporate  
any relevant comments from the IDN-WG report*

*d.*

*Provide a*

*brief rationale in support of the recommendations, referring to the role of the category as applicable*

- e. *If additional work is needed, finalize guidelines for that work*

9. *Other names at the second level*

- a. *Replace recommendations with a statement about the direction by the Council that this category is not in the scope of the RN-WG*
- b. *Edit other text of the individual subgroup report as applicable with the statement regarding scope*

10. style='mso-bidi-font-style:normal'>Controversial names

- a. *Review the GAC Principles for New gTLDs with regard to controversial names*
- b. *Consult with the GAC as possible*
- c. *Consider the possibility of creating a disputed name list (not a reserved name list) that would be updated whenever controversial names are rejected and would be used for guideline purposes only*
- d. *Restate recommendations in RN-WG report for possible use in the New gTLD evaluation process, not as reserved names*

style='mso-bidi-font-style:normal'>

- i. *Describe process flow*

style='mso-bidi-font-style:normal'>

- ii.

*Provide  
examples as possible*

style='mso-bidi-font-style:normal'>

iii.  
*Incorporate  
any relevant comments from the IDN-WG report*

e.  
*Provide a  
brief rationale in support of the recommendations, referring to the role of  
the  
category as applicable*

f.  
*Edit other  
text of the individual subgroup report as applicable to conform with the  
fact  
that controversial names will not be considered reserved names*

g.  
*Finalize  
guidelines for additional work as necessary*

2.

In response to the above statement of work, the Working Group met weekly by teleconference from 11 April through 10 May. The calls were recorded and the MP3 versions of the calls are available on the GNSO website at <http://gns0.icann.org/calendar/#May>. The Working Group was chaired by Chuck Gomes and the full participation records can be found in Annex Nine.

3.

The Working Group set out, in its initial report, the categories (p8 of previous report) and the roles of reserved names (p10 of previous report). Those tables are repeated here for clarity.

**clear=all style='page-break-before:always;mso-break-type:section-break'>**

## **Summary of Existing Reserved Name Requirements**

style='width:662.4pt;border-collapse:collapse;border:none;mso-border-alt:solid windowtext .5pt;mso-yfti-tbllook:480;mso-padding-alt:0pt 5.4pt 0pt 5.4pt;mso-border-insideh:.5pt solid windowtext;mso-border-insidev:.5pt solid windowtext'>

### **Category of Names**

#### **TLD Level(s)**

#### **Reserved Names**

**Applicable gTLDs**

ICANN & IANA related

2<sup>nd</sup> (and 3<sup>rd</sup>  
if applicable)

ICANN: aso, gnso, icann, internic, ccNSO

IANA: afrinic, apnic, arin,  
example, gTLD-servers, iab, iana, iana-servers, iesg, ietf, irtf, istf,  
lacnic, latnic, rfc-editor, ripe, root-servers

All 16 gTLDs

Single Character

2<sup>nd</sup> level

All 36 alphanumeric ASCII  
characters (e.g., a.biz, b.aero)

All 16 gTLDs (some of these were  
registered prior to the requirement)

Two Character

2<sup>nd</sup> level

1296 combinations of ASCII letters  
and digits (e.g., xy.org, b2.info)

All 16 gTLDs (with some exceptions  
for certain gTLDs)

Tagged

2<sup>nd</sup> (and 3<sup>rd</sup>  
if applicable)

All labels with hyphens in the  
third and fourth character positions (e.g.,

"bq--1k2n4h4b" or

"xn--ndk061n")

All 16 gTLDs

NIC, Whois, www

2<sup>nd</sup> level

NIC, Whois, www (reserved for  
registry operations only)

All 16 gTLDs

**Geographic & Geopolitical**

2<sup>nd</sup> (and 3<sup>rd</sup>  
if applicable)

All geographic & geopolitical names in the ISO 3166-1 list (e.g., Portugal, India, Brazil, China, Canada) & names of territories, distinct geographic locations (or economies), and other geographic and geopolitical names as ICANN may direct from time to time

.asia, .cat, .jobs, .mobi, .tel  
& .travel

**Third Level**

3<sup>rd</sup> level

See Section 1.B of the subgroup report in Appendix H.

.pro and .name

**Other 2<sup>nd</sup> Level**

2<sup>nd</sup> level

See the section titled 'Other names reserved at the 2<sup>nd</sup> level' in Appendix I

Varying lists for .aero, .biz, .coop, .info, .museum, .name and .pro

**Controversial**

No current requirement

N/A

None

## **Roles of Reserved Names**

style='width:662.4pt;border-collapse:collapse;border:none;mso-border-alt:solid windowtext .5pt;mso-yfti-tbllook:480;mso-padding-alt:0pt 5.4pt 0pt 5.4pt;mso-border-insideh:.5pt solid windowtext;mso-border-insidev:.5pt solid windowtext'>

**Category of Names****Reserved Names****Role**

ICANN & IANA related

**ICANN:** aso, gnso, icann, internic, ccNSO

**IANA:**

afrinic, apnic, arin, example, gtld-servers, iab, iana, iana-servers, iesg, ietf, irtf, istf, lacnic, latnic, rfc-editor, ripe, root-servers

The role of the reserved names held by IANA and ICANN has been to maintain for those organizations the exclusive rights to the names of ICANN (icann), its bodies (aso, ccnso, pso, etc.) or essential related functions (internic) of the two organizations.

**Single Character**

All 36 alphanumeric ASCII characters (e.g., a.biz, b.aero)

It appears that the original purpose for reserving the single characters was driven by technical concerns.

**Two Character**

1296 combinations of ASCII letters and digits (e.g., xy.org, b2.info)

Two letter reservations appear to have been based on concerns about confusion with two letter country codes.

**Tagged**

All labels with hyphens in the third and fourth character positions (e.g.,

"bq--1k2n4h4b" or

"xn--ndk061n")

The role of the tagged name reservation requirement is to be able to provide a way to easily identify an IDN label in the DNS and to avoid confusion of non-IDN ASCII labels. Implicit in this role is the need to reserve tagged names for future use in case the ASCII IDN prefix is changed.

**NIC, Whois, www**

NIC, Whois, www (reserved for registry operations only)

The rationale for the reservation of these names for use by registry operators is based upon long standing and well established use of these strings by registry operators (both gTLD and ccTLDs) in connection with normal registry operations.

**Geographic & Geopolitical**

All geographic & geopolitical names in the ISO 3166-1 list (e.g., Portugal, India, Brazil, China, Canada) & names of territories,

distinct geographic locations (or economies), and other geographic and geopolitical names as ICANN may direct from time to time

Protection afforded to Geographic

indicators is an evolving area of international law in which a one-size fits all approach is not currently viable. The proposed recommendations in this report are designed to ensure that registry operators comply with the national laws for which they are legally incorporated/organized.

Third Level

See Section 1.B of the subgroup report in Appendix H.

The role of the names specifically reserved at the third level is primarily to combat security concerns (e.g., a party registering [www.med.pro](http://www.med.pro) could pose as the registrar for that domain). As a secondary matter, they may be needed to overcome technical challenges presented by 'double' addresses (e.g., [www.www.med.pro](http://www.www.med.pro)) and, to a lesser extent, consumer confusion.

Other 2<sup>nd</sup> Level

See the section titled 'Other names reserved at the 2<sup>nd</sup> level' in Appendix I.

1) reservation of gTLD strings at the second level was put in place by ICANN in order to avoid consumer confusion in relation to TLD.TLD addresses; 2) the reservation of registry-related names came about during contract negotiations and are in place in order to protect the Registries and their successors and to avoid consumer confusion; 3) for the .name, .mobi, .coop, .travel and .job Registries, certain non-ICANN reserved names directly benefit the communities that they represent and / or the reserved names are an integral part of the Registry's business model.

Controversial

N/A

There is no apparent role for controversial names among the existing categories of names reserved at the second level within gTLDs. The role of controversial second level names within several ccTLDs varies and includes an array of concepts such as the protection of national interests, illegal activities, obscenity, and social disorder.

4.

The input from the Working Group will now be included, where applicable, in the style='mso-bidi-font-style:normal'>Final Report on the *Introduction of New Top-Level Domains*.

## **name="\_Toc167705588">FULL RECOMMENDATION TABLE**

Detailed information for each of the recommendations in this table can be found in the applicable report annex shown in the last column.

style='width:708.5pt;border-collapse:collapse;border:none;mso-border-alt:solid windowtext .5pt;mso-yfti-tbllook:480;mso-padding-alt:0pt 5.4pt 0pt 5.4pt;mso-border-insideh:.5pt solid windowtext;mso-border-insidev:.5pt solid windowtext'>

### **Reserved Name Category**

#### **Domain Name Level(s)**

#### **Recommendation**

##### **Annex**

1

ICANN & IANA

All ASCII

Maintain the existing reservation requirement and extend it to the top level until further work is completed. Further work is recommended to send questions, receive and compile responses from organizations with related reserved names, and draft a report to the GNSO Council. Examples are icann.net, or admin.iana.

One

2

ICANN & IANA

Top level, IDN

For all but "example", reservations are not required for Unicode versions in various scripts, or ACE versions of such translations or transliterations if they exist.

All possible Unicode versions of the name "example" must be reserved

The New gTLD Committee should validate this recommendation with IDN experts.

One

3

ICANN & IANA

2<sup>nd</sup> & 3<sup>rd</sup> levels, IDN

For all but "example", reservations are not required for Unicode versions in various scripts, or ACE versions of such translations or transliterations if they exist.

Do not try to translate 'example' into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries.

The New gTLD Committee should validate this recommendation with IDN experts.

One

4

Symbols

ALL

We recommend that current practice be maintained, so that no symbols other than the '-' [hyphen] be considered for use at any level, unless technology at some time permits the use of symbols. style='mso-footnote-id:ftn7' href="#\_ftn7" name="\_ftnref7" title="">>[7]

Two

5

Single and Two Character IDNs

IDNA-valid strings at all levels

Single and two-character U-labels

on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case by case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS. Single and two character labels at the second level and the third level if applicable should be available for registration, provided they are consistent with the IDN Guidelines. style='mso-footnote-id:ftn8' href="#\_ftn8" name="\_ftnref8" title="">>[8]

Examples of IDNs include .酒, 東京.com, تونس.icom.museum.

Two

6

Single Letters

Top Level

We recommend reservation of single letters at the top level based on technical questions raised. If sufficient research at a later date

demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered.

Examples of names that would not be allowed include .a, .z.

Two

7

Single Letters and Digits

2<sup>nd</sup> Level

We recommend that single letters and digits be released at the second level in future gTLDs, and that those currently reserved in existing gTLDs should be released. This release should be contingent upon the use of appropriate allocation frameworks.

More work may be needed.

Examples include a.com, i.info.

Two

8

Single and Two Digits

Top Level

We recommend digits be reserved at the top level, in order to avoid potential confusion with IP addresses within software applications. Examples include .3, .99.

Two

9

Single Letter, Single Digit Combinations

Top Level

Applications may be considered for single letter, single digit combinations at the top level in accordance with the terms set forth in the new gTLD process. Examples include .3F, .A1, .u7.

Two

10

Two Letters

Top Level

We recommend that the current practice of allowing two letter names at the top level, only for ccTLDs, remain at this time. [\[9\]](#)

Examples include .AU, .DE, .UK.

Two

11

Any combination of Two Letters,  
Digits

2<sup>nd</sup> Level

Registries may propose release provided that measures to avoid confusion with any corresponding country codes are implemented. style='mso-footnote-id:ftn10' href="#\_ftn10" name="\_ftnref10" title="">[10] Examples include ba.aero, ub.cat, 53.com, 3M.com, e8.org.

Two

12

Tagged Names

Top Level ASCII

In

the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the top level. style='mso-footnote-id:ftn11' href="#\_ftn11" name="\_ftnref11" title="">[11]

Three

13

N/A

Top Level IDN

For each IDN gTLD

proposed, applicant must provide both the "ASCII compatible encoding" ("A-label") and the "Unicode display form" ("U-label") style='mso-footnote-id:ftn12' href="#\_ftn12" name="\_ftnref12" title="">[12] For example:

- If the Chinese word for 'Beijing' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lq90i) and the U-label (北京).

If the Japanese word

for 'Tokyo' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lqs71d) and the U-label (東京).

Three

14

Tagged Names

2<sup>nd</sup> Level ASCII

The current reservation requirement be reworded to say, " style='mso-bidi-font-style:normal'>In the absence of standardization activity and *appropriate IANA registration*, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the second (2<sup>nd</sup>) level. style='mso-footnote-id:ftn13' href="#\_ftn13" name="\_ftnref13" title="">[13] - added words in style='mso-bidi-font-style:normal'>italics. (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)

Three

15

Tagged Names

3<sup>rd</sup> Level ASCII

All labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the third (3<sup>rd</sup> level) for gTLD registries that register names at the third level." style='mso-footnote-id:ftn14' href="#\_ftn14" name="\_ftnref14" title="">[14] - added words in style='mso-bidi-font-style:normal'>italics. (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)

Three

16

NIC/WHOIS/WWW

Top ASCII

The following names must be reserved: NIC, Whois, www.

Four

17

NIC/WHOIS/WWW

Top IDN

Do not try to translate NIC, Whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.

Four

18

NIC/WHOIS/WWW

Second and Third\* ASCII

The following names must be reserved for use in connection with the operation of the registry for the Registry TLD: NIC, Whois, www. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN. (\*Third level only applies in cases where a registry offers registrations at the third level.)

Four

19

NIC/WHOIS/WWW

Second and Third\* IDN

Do not try to translate NIC, Whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries. (\*Third level only applies in cases where a registry offers registrations at the third level.)

Four

20

Geographic and geopolitical

Top Level ASCII and IDN

There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated.

However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC principles, and the advisory role vested to it under the ICANN bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN bylaws.

Five

21

Geographic and geopolitical

All Levels ASCII and IDN

The term 'geopolitical names' should be avoided until such time that a useful definition can be adopted. The basis for this recommendation is founded on the potential ambiguity regarding the definition of the term, and the lack of any specific definition of it in the WIPO Second Report on Domain Names or GAC recommendations.

Five

22

Geographic and geopolitical

Second Level &amp; Third Level if applicable, ASCII &amp; IDN

The consensus view of the working group is given the lack of any established international law on the subject, conflicting legal opinions, and conflicting recommendations emerging from various governmental fora, the current geographical reservation provision contained in the sTLD contracts during the 2004 Round should be removed, and harmonized with the more recently executed .COM, .NET, .ORG, .BIZ and .INFO registry contracts. The only exception to this consensus recommendation is those registries incorporated/organized under countries that require additional protection for geographical identifiers. In this instance, the registry would have to incorporate appropriate mechanisms to comply with their national/local laws.

For those registries incorporated/organized under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly, it is strongly recommended (but not mandated) that these registries take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.

Five

23

gTLD Reserved Names

Second &amp;

Third Level ASCII and

IDN (when applicable)

Absent

justification for user confusion style='mso-footnote-id:ftn15' href="#"\_ftn15" name="\_ftnref15" title="">[15], the recommendation is that gTLD strings should no longer be reserved from registration for new gTLDs at the second or when applicable at the third level. Applicants for new gTLDs should take into consideration possible abusive or confusing uses of existing gTLD strings at the second level of their corresponding gTLD, based on the nature of their gTLD, when developing the startup process for their gTLD.

Six

24

Controversial Names

All Levels, ASCII & IDN

There should not be a new reserved names category for Controversial Names.

Seven

25

Controversial Names

Top Level, ASCII & IDN

There should be a list of disputed names created as a result of the dispute process to be created by the new gTLD process.

Seven

26

Controversial Names

Top Level, ASCII & IDN

In the event of the initiation of a CN-DRP process, applications for that label will be placed in a HOLD status that would allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications will reenter the processing queue. The period of time allowed for dispute should be finite and should be relegated to the CN-DRP process. The external dispute process should be defined to be objective, neutral, and transparent.

The outcome of any dispute shall not result in the development of new categories of Reserved Names. style='mso-footnote-id:ftn16' href="#"\_ftn16" name="\_ftnref16" title="">[16]

Seven

27

Controversial Names

## Top Level, ASCII &amp; IDN

The new GTLD Controversial Names Dispute Resolution Panel should be established as a standing mechanism that is convened at the time a dispute is initiated. Preliminary elements of that process are provided in this report but further work is needed in this area.

Seven

28

## Controversial Names

## Top Level, ASCII &amp; IDN

Within the dispute process, disputes would be initiated by the ICANN Advisory Committees (e.g., ALAC or GAC) or supporting organizations (e.g., GNSO or ccNSO). As these organizations do not currently have formal processes for receiving, and deciding on such activities, these processes would need to be defined:

o

The Advisory Groups and the Supporting Organizations, using their own processes and consistent with their organizational structure, will need to define procedures for deciding on any requests for dispute initiation.

- o Any consensus or other formally supported position from an ICANN Advisory Committee or ICANN Supporting Organization must document the position of each member within that committee or organization (i.e., support, opposition, abstention) in compliance with both the spirit and letter of the ICANN bylaws regarding openness and transparency.

Seven

29

## Controversial Names

## Top Level, ASCII &amp; IDN

Further work is needed to develop predictable and transparent criteria that can be used by the Controversial Resolution Panel. These criteria must take into account the need to:

- § Protect freedom of expression
- § Affirm the fundamental human rights, in the dignity and worth of the human person

and the equal rights of men and women

Take into account sensitivities regarding terms with cultural and religious significance.

Seven

30

Controversial Names

Top Level, ASCII & IDN

In any dispute resolution process, or sequence of issue resolution processes, the Controversial name category should be the last category considered.

Seven

Annex Eight contains an alphabetical listing of all recommended reserved names as possible.

## name="\_Toc167705589">SECTION TWO - OVERVIEW OF RN-WG PROCESS

1.

This section provides a brief overview of the extended phase Statement of Work by name category: ICANN/IANA names; single and two character names (including symbols); tagged names; nic/whois/www; geographic and geopolitical names; gTLD names at the second and third level; and controversial names.

2.

The final subgroup reports are found, in full, in Annexes One through Seven. The Supporting Information section in each of the subgroup reports contains the following detailed information: background information; discussion of recommendations, rationale for the recommendations, description of consultations with experts and a summary of relevant information sources used.

3.

ICANN/IANA  
Names

- 3.1. The subgroup report for this category contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding ICANN and IANA reserved names.
- 3.2. The subgroup consisted of Mike Rodenbaugh (chair) and Edmon Chung.
- 3.3. The subgroup recommends that the existing reservations be maintained until further work to evaluate the reservation of these names is

completed.

3.4. There was no disagreement in the WG regarding the recommendations.

3.5. For detailed information, see Annex One.

4.

#### Single and Two Character Names (including symbols)

4.1. The subgroup report

for this category contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding single and two character labels.

4.2. The subgroup members included: Greg Shatan (chair); Neal Blair; Marilyn Cade; Alistair Dixon; Avri Doria; Patrick Jones; Jonathan Nevett; Mike Rodenbaugh; Victoria McEvedy (Resigned from RN-WG on 24 April 2004).

4.3. The original recommendations that formed the basis of this report were approved by the RN WG for inclusion in the 19 March 2007 RN-WG report. Following the ICANN meeting in Lisbon, Portugal, and throughout the 30-day extension period, the subgroup refined the recommendations and incorporated additional information. The recommendations represent the consensus of the full WG.

4.4. The minority statement below was submitted for the following subcategory: two letters at the top level.

4.4.1.

Author: Mike Rodenbaugh

4.4.2.

Statement: "I recommend that two letter ASCII gTLDs be allowed. A standardized approach should be used which ensures consultation with appropriate parties, including the ccNSO and ISO 3166 Maintenance Agency, and where security and stability issues are identified, SSAC. While there may be political reasons, there appears no strong policy reason to withhold every possible two-letter TLD from use, on the assumption that some of them may be desired by countries that may be created in the future. The GAC principle assumes there will be 'user confusion' if two letter codes are allowed other than for ccTLDs, but this is not substantiated -- and there are many ccTLDs that are visually very similar to other ccTLDs (including .ch and .cn which are two of the larger ccTLDs). In addition, this concern would diminish if countries were able to use their own name as a TLD, including in its IDN form, or in an IDN two letter ccTLD."

4.5. For detailed information, see Annex Two.

5.

#### Tagged Names

## 5.1.

The subgroup report for this category contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding tagged names.

## 5.2.

Chuck Gomes and Patrick Jones served as the subgroup for this report.

## 5.3.

The recommendations of this report were approved by the full RN-WG.

## 5.4.

There was no disagreement in the WG with the recommendations and hence no minority positions.

## 5.5. For detailed information, see Annex Three.

## 6.

NIC, Whois and  
www

## 6.1.

The subgroup report for this category contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding Names Reserved for Registry Operations, NIC, Whois and www.

## 6.2.

Tim Denton served as a one-person subgroup for this category with support from Chuck Gomes and ICANN staff in the preparation of the final subgroup report.

## 6.3.

The recommendations of this report were approved by the full RN-WG.

## 6.4.

There was no disagreement with the recommendations and hence no minority positions.

## 6.5. For detailed information, see Annex Four.

## 7. Geographic and Geopolitical Names

## 7.1. The subgroup

report for this category contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding Geographical and Geopolitical Names.

## 7.2. The Reserved Names

subgroup on Geographical and Geopolitical Names was composed of Alistair Dixon, Caroline

Greer, Michael Palage  
(chair), and Tim Ruiz.

- 7.3. The full RN-WG supported the recommendations in this report.
- 7.4. There was no disagreement with the recommendations and hence no minority positions.
- 7.5. For detailed information, see Annex Five.

## 8. gTLD Names at the Second and Third Levels

### 8.1.

The subgroup report for this category contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding gTLD reserved names at the second and third level.

### 8.2.

Ray Fassett  
(chair), Edmon Chung, and Patrick Jones served as the subgroup for this report.

- 8.3. The recommendations of this report were approved by the full RN-WG.

### 8.4.

There were no minority statements from the RN-WG members. Minority opinions from individuals from various GNSO constituencies who were not part of the RN-WG are included in Section 3 of the subgroup report in the section titled Consultation with Experts.

- 8.5. For detailed information, see Annex Six.

## 9. Controversial Names

- 9.1. The subgroup report for this category contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding Controversial Names.
- 9.2. The members of the subgroup were: Marilyn Cade; Avri Doria (chair); Victoria McEvedy; Michael Palage; and Tamara Reznik.
- 9.3. The RN-WG reached consensus on the recommendations.
- 9.4. There was no disagreement in the WG regarding the recommendations.
- 9.5. For detailed information, see Annex Six.

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## SECTION THREE - OUT OF SCOPE AREAS

1.

This section sets out the work that was determined to be out of scope for the Working Group.

2.

In its original work, the RN-WG focused on three categories of names that are reserved by certain gTLD registries but are not reserved name requirements for all gTLD registries [17]. These are third level reserved names; registry specific names reserved at the second level and other names reserved at the second level.

3.

The original RN-WG report (sent to the GNSO Council on 16 March 2007) contains subgroup reports that address these categories [18]. In sessions held during the ICANN meetings in Lisbon in March 2007, the GNSO Council concluded that the names in these categories were out of scope for the RN-WG. Therefore, no further work on these three categories of names was done by the RN-WG and no recommendations are included for them in this report.

4.

For information purposes, a brief overview of these two categories of names is provided below.

5.

Third-Level  
Reserved Names

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There are currently two gTLDs that expressly reserve names at the third level, .pro and .name. Appendix L to the registry agreements for .pro (<http://www.icann.org/tlds/agreements/pro/registry-agmt-appl-30sep04.htm>) and .name (<http://www.icann.org/tlds/agreements/name/registry-agmt-appl-8aug03.htm>) specify certain strings (or "labels") that are not available for registration. Both .pro and .name prohibit the following labels at the third-level: dir, directory, email, http, mail, mx, mx [followed by a number from 0 to 100], ns, ns [followed by a number from 0 to 100], wap, www and www [followed by a number from 0 to 100]. In addition, each TLD

prohibits certain additional labels.  
Specifically, .Pro prohibits av, ca, cca, cert, certificate, grpa, pro, RegistryPro, verify, and verification, while .Name prohibits genealogy.  
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The full subgroup report for this category of names can be found in Appendix H of the above referenced RN-WG Report.

## 6. Registry Specific Names Reserved at the Second-Level

The gTLD registry agreements for .biz and .org each contain a category of reserved names that are unique to these gTLDs. The List of Reserved TLD Strings in Appendix 6 of the .biz agreement (<http://www.icann.org/tlds/agreements/biz/appendix-06-08dec06.htm>) contains a category of names called Additional Reservations by Registry Operator. The Schedule of Reserved Names in Appendix 6 of the .info agreement (<http://www.icann.org/tlds/agreements/info/appendix-06-08dec06.htm>) contains a category of names called Registry and Registry Operator Reserved Names. The name reservations include Registry-related names (words and phrases associated with the day-to-day operations of a Registry) and reservations relating to the actual entity's name. The reservations came about during contract negotiations between ICANN and the respective registry.

The subgroup report for this category of names is contained in Part B of Appendix I of the above referenced first RN-WG Report.

7.

Other Names

Reserved at the Second-Level

These names differ from other reserved names in that the names are actually intended to be allocated by the Registries. For example, .coop reserves non-ICANN names as referenced in Attachment 13 of its agreement at <http://www.icann.org/tlds/agreements/coop/sponsorship-agmt-att13-28oct0...> .jobs reserves non-ICANN names per Schedule S of its agreement at <http://www.icann.org/tlds/agreements/jobs/appendix-S-05may05.htm> .mobi reserves Premium Names as referenced in Appendix S of its Agreement at [http://pc.mtld.mobi/documen](http://pc.mtld.mobi/documents/Premium_Name_List_16Jan07.pdf) and .name reserves 'common names', 'community reservations', 'registry common names' and 'post-fix reservations' as listed in Section D of Appendix K in its Agreement at <http://www.icann.org/tlds/agreements/name/registry-agmt-appk-8aug03.htm> . The .travel agreement reserves non-ICANN names per Schedule S of its agreement at <http://www.icann.org/tlds/agreements/travel/>.  
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The subgroup report for this category of names is contained in Part C of Appendix I of the above referenced RN-WG Report.

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## SECTION FOUR -- RECOMMENDATIONS FOR NEW WORK

1.

The RN-WG

recommends that the new work described in this section be undertaken at the direction of the GNSO Council. The work is organized according to reserved name category. Tasks that must be done before completion of the New gTLD Report is completed are shown in **bold** font.

2.

ICANN and IANA

## Names

### 2.1.

Proposed work tasks

#### 2.1.1.

**Validate the two IDN recommendations in this report (recommendations 2 & 3) with IDN experts**

#### 2.1.2.

Evaluate whether there is justification to continue reserving ICANN and IANA ASCII names at all levels as recommended in this report

### 2.2.

Guidelines for work

#### 2.2.1.

There are lots of IDN experts who could be consulted regarding work task 2.1.1 but it is recommended that the experts already used by the RN-WG be used because they already have a good frame of reference for the work: Tina Dam, Cary Karp, and Ram Mohan.

#### 2.2.2.

Regarding task 2.1.2, it is suggested that Mike Rodenbaugh, chair of the ICANN/IANA names subgroup and ICANN staff be consulted regarding ways to proceed.

### 3.

Single Letter Names at the Second and Third Level (recommendation 7)

#### 3.1.

Proposed work tasks<sup>19</sup>

##### 3.1.1.

**Determine whether an allocation method is needed before release of single letter names at the second level**

##### 3.1.2.

**If it is decided that an allocation method is needed, implement a process for developing an allocation method**

##### 3.1.3.

**Regardless of whether an allocation method is needed or not, coordinate with ICANN staff to modify contractual terms of registry agreements regarding reservation of single**

**letter names at the second and (if applicable) the third level.**

3.2.

Guidelines for work

3.2.1.

It may be helpful to consult with the ICANN General Counsel's office as a first step regarding task 3.1.1.

3.2.2.

The members of the Single-Character/Two-Character Name subgroup did considerable work on this topic and as such could serve as helpful resources in any additional work that is authorized.

4.

Geographic and

Geopolitical Names (recommendations 20 - 22)

4.1.

Proposed work

**task: It is recommended that the New gTLD Committee (Dec05 PDP) consider whether and how recommendations 20 to 22 can be incorporated into the selection process for the introduction of new gTLDs.**

4.2.

Guidelines for

work: The subgroup did not propose any specific guidelines but did provide extensive rationale for the recommendations; that rationale may prove useful in evaluating the recommendations for inclusion in the selection process.

5.

Controversial

Names (recommendations 23 -30)

5.1.

Proposed work

**task: It is recommended that the New gTLD Committee (Dec05 PDP) consider whether and how recommendations 23 to 30 can be incorporated into the selection process for the introduction of new gTLDs.**

5.2.

Guidelines for

work:

5.2.1.

Recommendations

25 - 28 provide specific ideas that can be developed further by the New gTLD Committee.

5.2.2.

Recommendation 29 provides the following guidelines for additional work:

## 5.2.2.1.

Further work is needed to develop predictable and transparent criteria that can be used by the Controversial Resolution Panel. These criteria must take into account the need to:

Protect  
freedom of expression

Affirm  
the fundamental human rights, in the dignity and worth of the human person and  
the equal rights of men and women

## 5.2.2.2.

Take into account sensitivities regarding terms with cultural and religious significance.

## 5.2.3.

Recommendation

30 suggests the following for consideration by the New gTLD Committee: In any dispute resolution process, or sequence of issue resolution processes, the Controversial name category should be the last category considered.

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## **SECTION FIVE - REFERENCE MATERIAL**

GNSO

Working Group Original Report:

<http://gns0.icann.org/drafts/rn-wg-fr19mar07.pdf>

Previous

subgroup reports:

<http://gns0.icann.org/drafts/>

IDN Guidelines:

<http://www.icann.org/announcements/announcement-2-11may07.htm>

GAC Public Policy Principles:

[http://gac.icann.org/web/home/gTLD\\_principles.pdf](http://gac.icann.org/web/home/gTLD_principles.pdf)

Each subgroup report in annexes one through seven contains additional reference material used by the subgroup.

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## **ANNEX ONE - ICANN/IANA SUB GROUP REPORT**

**GNSO new TLDs Committee**

**Reserved Names Working Group**

**Sub-Group Report**

**ICANN & IANA Reserved Names**

**10 May 2007**

### **DEFINITIONS**

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ICANN & IANA names

ICANN: aso, gnsso, icann, internic, ccNSO

IANA: afrinic, apnic,  
arin, example, gtld-servers, iab, iana, iana-servers, iesg, ietf, irtf, istf,  
lacnic, latnic, rfc-editor, ripe, root-servers

### **EXECUTIVE SUMMARY**

1. This Report contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding ICANN and IANA reserved names.
2. The subgroup consists of Mike Rodenbaugh, BCUC, and Edmon Chung, RyC.
3. The subgroup recommends that the existing reservations be maintained, until further work to evaluate the reservation of these names is completed.
4. There was no disagreement in the subgroup regarding the below recommendations.

5.

The table below contains the recommendations for ICANN/IANA names.

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**SoW**

**number**

(RN-WG 30-day extension SoW)

**Reserved**

**Name Category**

**Domain**

**Name Level(s)**

**Recommendation**

Recommendation task 1

ICANN & IANA

All ASCII

Maintain the existing reservation requirement and extend it to the top level until further work is completed. Further work is recommended to send questions, receive and compile responses from organizations with related reserved names, and draft a report to the GNSO Council. Examples are icann.net, or admin.iana.

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Recommendation task 1

ICANN & IANA

Top level, IDN

For all but "example", reservations are not required for Unicode versions in various scripts, or ACE versions of such translations or transliterations if they exist.

All possible Unicode versions of the name "example" must be reserved

The New gTLD Committee should validate this recommendation with IDN experts.

Recommendation task 1

ICANN & IANA

2<sup>nd</sup> & 3<sup>rd</sup> levels, IDN

For all but "example", reservations are not required for Unicode versions in various scripts, or ACE versions of such translations or transliterations if they exist.

Do

not try to translate 'example' into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries.

The New gTLD Committee should validate this recommendation with IDN experts.

#### Minority

##### Position from Mike Palage

(Originally

submitted as part of the original RN-WG Report dated, 16-March-2007.)

In

accordance with Article I, Section 2 subparagraph 8 of the ICANN bylaws it states that in performing its mission, the following core values should guide the decisions and actions of ICANN "[m]aking decisions by applying documented policies neutrally and objectively, with integrity and fairness." Unlike other reservations that are based upon long standing and well established principles, ICANN/IANA staff has sought to continue reservation of a compilation of strings in which they have been unable to provide any documentation regarding the legal authority for such reservation. For ICANN/IANA to continue to reserve these names while similarly situated parties, in this case sovereign national governments (country names), IGOs and nationally recognized trademark holders, are not provided equal protection appear to be a clear violation of the bylaw provision cited above. More detailed discussion regarding the legal concerns regarding these reservations has been documented on the working group's mailing list, see

title="<http://forum.icann.org/lists/gnso-rn-wg/msg00169.html>"><http://forum.icann.org/lists/gnso-rn-wg/msg00169.html>.

In

order for this or any other working group to make a determination based upon documented fact, the following inquiries should be explored:

- ICANN should make available to the group all written and historical references to the original basis of these reservations;
- ICANN should contact all organizations that have had their name reserved, and ask for documentation in connection with any actual confusion or security/stability concerns that have arisen in connection with the use of these strings in legacy gTLD (.com, .net and .org);

- ICANN should ask these organizations if they would prefer to have ICANN continue to reserve these names in existing and future TLDs, and the basis of this reservation request; and

- ICANN should undertake an analysis to determine any third parties that may have rights in the reserved strings (i.e. nationally registered trademarks, etc) and how this reservation potentially negatively impacts those rights."

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## Supporting Information

### 1. Background

This report provides an overview and assesses the current status of the category of reserved names related to ICANN and IANA. As such, the reserved names are not available for registration by members of the public.

More specifically, the Registry Agreements negotiated by ICANN state that "the following names shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations".

The two tables below present the set of reserved names for two organizations: ICANN and IANA. In the case of ICANN, there are five reserved names for each registry. In the case of the IANA, there are seventeen (17) for each registry.

**Table 1: ICANN-related names,  
in order of year of ICANN-Registry agreement**

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### GTLD

#### Reserved Names

#### Date of Agreement

.aero

aso

dns0

icann

internic

pso

2001

.coop

aso

dnso

icann

internic

pso

2001

.museum

aso

dnso

icann

internic

pso

2001

.name

aso

dnso

icann

internic

pso

2001

.pro

aso

dnso

icann

internic

pso

2002

.jobs

aso

gnso

icann

internic

ccnso

2005

.mobi

aso

gnso

icann

internic

ccnso

2005

.net

aso

gnso

icann

internic

ccnso

2005

.travel

aso

gnso

icann

internic

ccnso

2005

.cat

aso

gnso

icann

internic

ccnso

2005

.tel

aso

gnso

icann

internic

ccnso

2006

.asia

aso

gnso

icann

internic

ccnso

2006

.biz

aso

gnso

icann

internic

ccnso

2006

.com

aso

gnso

icann

internic

ccnso

2006

.info

aso

gnso

icann

internic

ccnso

2006

.org

aso

gnso

icann

internic

ccnso

2006

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**Table 2:  
IANA-Related Names**

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**TLD**

**Reserved  
Names**

.aero

.asia

.biz

.cat

.com

.coop

.info

.jobs

.mobi

.museum

.name

.net

.org

.pro

.tel

.travel

All

names in Reserved Names column at right are reserved in each TLD at left.

afrinic

apnic

arin

example

gtld-servers

iab

iana

iana-servers

iesg

ietf

irtf

istf

lacnic

latnic

rfc-editor

ripe

root-servers

### **Justification for ICANN**

#### **reserved names**

The

words reserved by ICANN are mostly acronyms that basically relate to the organization structures (bodies) and functions, as it has evolved, and the justification for reservation was deemed by the original RN-WG subgroup as "obvious." The current subgroup believes further work should be done to justify these reservations, and/or to consider their release.

The

"schedule of reserved names" was born with the new TLD registry agreements in early 2001. A consultation with ICANN officials resulted in the following: no one recalls any record of any public or private document that describes the rationale for having a scheduled names list, or that describes the reasons why particular strings were included (or excluded).

Some

members of the Working Group on Reserved Names believe that ICANN and IANA should not be able to reserve names corresponding to those entities, since all other entities must register names in order to keep them from public use.

A further point was made by

Patrick Jones of ICANN, in relation to ICANN- and IANA-reserved names.

"...

just to clarify that IANA/ICANN names are reserved, provided that if ICANN/IANA or the related entities whose names are on reserve wanted to use one of the names, those names could be registered by the requesting entity. For example, ICANN registered and paid for the registration costs to un-reserve ICANN.jobs. If ICANN wanted to use ICANN.info in the future, it should be able to un-reserve the name."

### **Justification for IANA's**

#### **reserved names**

There

has been little need in the past to justify decisions about some reserved names, some of which must date from the days of John Postel. A search by ICANN Staff has revealed only a few paragraphs here and there of justification.

The current subgroup believes further work should be done to justify these reservations, and/or to consider their release.

The IANA-reserved names relate to functions and institutions within the purview of IANA: subordinate name servers, IANA's regional nodes, the request for comment editor, and so forth.

The standard explanation offered to those seeking to register such names is basically given by IANA along the following lines.

General responses to other reserved domains:

Thank you for your enquiry.

Domain names reserved by the Internet Assigned Numbers Authority are not available for sale, registration or transfer. These have been reserved on policy grounds, and include single letter domains, domains with hyphens in the third and fourth positions, and other reserved words.

Should the policies regarding these rules change, they will be released from IANA's registration according to revised policy.

#### **A note on http, https, and html**

In the course of the work of the Working Group, the question of whether the following names should also be reserved has come up. They are:

*http, https and html.*

A review of the *Whois* sites showed that, as of March 5, http.org had been registered. All three names are currently registered in .com and there appear to be no issues with them:

https.com since 1999 (monetized)

http.com since 1995 (not currently resolving)

html.com since 1993 (hosting company)

## **2. Rationale for the recommendations**

The original WG report found no historical support for the reservations, stating that 'the justification for the reservation is ... obvious.' The further work recommended by the subgroup is designed to justify the reservation, or consider release of these names.

Process description

## **3. Expert Consultation**

Affected organizations with related names on the ICANN and IANA reserved name lists and other ICANN stakeholder groups should be consulted as follows.

The subgroup has requested ICANN Staff to send the following request to all such organizations, with responses requested by a specific date that allows reasonable time for responses:

As part of the input into its Policy Development Process regarding new gTLDs, the GNSO formed a Working Group to examine current name reservations in registry operator agreements and to recommend whether those reservations should be continued, modified or discontinued. The Registry Agreements negotiated by ICANN state that "the following names shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations".

The Working Group has stated thus far: The role of the reserved names held by IANA and ICANN has been to maintain for those organizations the exclusive rights to the names of ICANN (icann), its bodies (aso, ccnso, pso, etc.) or essential related functions (internic) of the two organizations.

Do you believe that names on the attached table -- which correspond or relate to your organization -- should continue to be reserved, at all levels, in all current and future gTLDs?

If yes, please state the reasons why you believe such exclusive rights should be reserved in all gTLDs, and describe how you have used or may intend to use these domains in the 16 existing gTLDs, any existing ccTLDs, and in any other TLDs that may be added in the future.

If no, please state which name reservations need not continue, or if you believe the reservation should be modified (i.e., reservations only needed at top level) then please state this.

Please provide the name of the person completing this questionnaire, and any additional comments or questions that you or your organization may have for the WG. Your response is requested not later than 30 May 2007.

#### **4. Summary of Relevant Information Sources**

The original RN-WG ICANN/IANA subgroup report can be found at:

<http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf>

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## **ANNEX TWO -- SINGLE AND TWO CHARACTER RESERVED NAMES SUB GROUP REPORT**

**(Including  
Symbols)**

**GNSO new gTLDs Committee**

**Reserved Names Working Group**

**Sub-Group Report - Single and Two Character Labels**

**10 May 2007**

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**DEFINITIONS**

*style='border-collapse:collapse;border:none;mso-yfti-tbllook:191;mso-padding-alt:0pt 5.4pt 0pt 5.4pt;mso-border-insideh:.75pt solid black;mso-border-insidev:.75pt solid black'>*

A-Label

ASCII-compatible (ACE) form of an IDNA-valid string.

See <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt>.

An example is xn--1lq90i.

Character

A

character may be a letter, digit, hyphen or symbol.

For the purposes of discussing IDNs, a "character" can best be seen as the basic graphic unit of a writing system, which is a script plus a set of rules determining how it is used for representing a specific language. However, domain labels do not convey any intrinsic information about the language with which they are intended to be associated, although they do reveal the script on which they are based. This language dependency can unfortunately not be eliminated by restricting the definition to script because in several cases (see examples below) languages that share the same script differ in the way they regard its individual elements. The term character can therefore not be defined independently of the context in which it is used.

In phonetically based

writing systems, a character is typically a letter or represents a syllable, and in ideographic systems (or alternatively, pictographic or logographic systems) a character may represent a concept or word.

The

following examples are intended to illustrate that the definition of a character is at least two-fold, one being a linguistic base unit and the other is the associated code point.

U-label 酒 : Jiu; the Chinese word for 'alcoholic beverage'; Unicode code point is U+9152 (also referred to as: CJK UNIFIED IDEOGRAPH-9152); A-label is xn-jj4

U-label 北京 : the Chinese word for 'Beijing', Unicode code points are U+5300 U+4EAC; A-label is xn-1lq90i

U-label 東京 : Japanese word for 'Tokyo', the Unicode code points are U+6771 U+4EAC; A-label is xn-1lqs71d

U-label ايكوم; Farsi acronym for ICOM, Unicode code points are U+0627 U+06CC U+0643 U+0648 U+0645; A-label is xn-mgb0dgl27d.

### Single and Two Character Labels

Prior to

the release of IDNA, the characters available for inclusion in domain names consisted of a limited number of alphanumeric elements (a, . . . , z; 0, . . . , 9; "-"), and policies could easily be based on the number of characters any label contained. There is no similar generally applicable way to compare the length of, for example, an ideographic and an alphabetic string, or even a sequence of characters taken from the basic Latin alphabet with a decorated version of the same sequence.

In Czech, <ch> is a

single letter (or character -- the concepts do not differ in this regard) whereas in English it is two. In Danish, <æ> is the 27th letter of the alphabet. It is a single character and does not decompose to <a e>.

Depending on who you ask and their linguistic background, there are either 12 or 13 characters in the English word <encyclopædia>. If written as <encyclopaedia>, all would agree on 13. Differentiation by considering semantic value does not help. In Turkish, there is a difference between a dotted <i> and a dotless <ı>. In English, there is no such distinction. Whether the dot is to be counted as a character in its own right or not will again depend on who you ask and what language they view the word as being written in.

### Symbols

While the DNS supports

all of the printable characters in the US-ASCII character table not all such characters are made available in domain names. Symbols, such as #, \$, &, !, \*, -, \_, +, =, are not available for registration in domain names because the top-level domain registries decided (before internationalization) to adopt the hostname rule for registration of domain names. The hostname rule, defined in RFC 952 and updated in RFC 1123, specifies that only letters, digits and hyphens (a-z, 0-9, -) are valid characters in hostnames.

### Tagged Names

All labels with hyphens in both the third and fourth character positions (e.g., "bq-1k2n4h4b" or "xn-ndk061n").

U-Label

An IDNA-valid string of Unicode-coded characters; the representation of the Internationalised Domain Name (IDN) in Unicode. See <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt>. An example is 北京, the U-Label for the Chinese word "Beijing".

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## **EXECUTIVE SUMMARY**

1.

This Report contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding single and two character labels.

2.

The subgroup members included:

Greg Shatan (IPC - Subgroup Chair)

Neal Blair (BC)

Marilyn Cade (BC)

Alistair Dixon (BC)

Avri Doria (Nom Com appointee)

Patrick Jones (ICANN Staff)

Jonathan Nevett (Registrars)

Mike Rodenbaugh (BC)

Victoria McEvedy (NCUC) (Resigned from RN-WG on 24 April 2004)

3.

The original recommendations that formed the basis of this report were approved by the RN WG for inclusion in the 19 March 2007 RN-WG report. Following the ICANN meeting in Lisbon, Portugal, and throughout the 30-day extension period, the subgroup refined the recommendations and incorporated additional information. These recommendations represent the consensus of the subgroup.

4.

A minority

position has been inserted in the explanation for the following subcategory:  
two letters at the top level.

5.

The table below

contains the recommendations for single and two character labels (for letters,  
digits, symbols and IDNs).

style='width:419.4pt;border-collapse:collapse;border:none;mso-border-alt:solid windowtext .5pt;  
mso-yfti-tbllook:480;mso-padding-alt:0pt 5.4pt 0pt 5.4pt;mso-border-insideh:  
.5pt solid windowtext;mso-border-insidev:.5pt solid windowtext'>

**SoW number**

(RN-WG

30-day extension SoW)

**Reserved Name Category**

**Domain Name Level(s)**

**Recommendation**

Recommendation task 2

Symbols

ALL

We recommend that current practice be maintained, so that no  
symbols other than the '-' [hyphen] be considered for use at any level,  
unless technology at some time permits the use of symbols. style='mso-footnote-id:ftn20' href="#\_ftn20"  
name="\_ftnref20" title="">[20]

Recommendation task 3(a)

Single and Two Character

IDNs

IDNA-valid strings at all

levels

Single

and two-character U-labels on the top level and second level of a domain name  
should not be restricted in general. At the top level, requested strings  
should be analyzed on a case by case basis in the new gTLD process depending  
on the script and language used in order to determine whether the string  
should be granted for allocation in the DNS. Single and two character labels  
at the second level and the third level if applicable should be available for  
registration, provided they are consistent with the IDN Guidelines. style='mso-footnote-id:ftn21'  
href="#\_ftn21" name="\_ftnref21" title="">[21]

Examples of IDNs include .酒, 東京.com, تونس.icom.museum.

Recommendation task 3(b)

Single Letters

Top Level

We recommend reservation of single letters at the top level based on technical questions raised. If sufficient research at a later date demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered.

Examples of names that would not be allowed include .a, .z.

Recommendation task 3(b)

Single Letters and Digits

2<sup>nd</sup> Level

We recommend that single letters and digits be released at the second level in future gTLDs, and that those currently reserved in existing gTLDs should be released. This release should be contingent upon the use of appropriate allocation frameworks. More work may be needed.

Examples include a.com, i.info.

Recommendation task 3(b)

Single and Two Digits

Top Level

We recommend digits be reserved at the top level, in order to avoid potential confusion with IP addresses within software applications. Examples include .3, .99.

Recommendation task 3(b)

Single Letter, Single Digit Combinations

Top Level

Applications may be considered for single letter, single digit combinations at the top level in accordance with the terms set forth in the new gTLD process. Examples include .3F, .A1, .u7.

Recommendation task 3

Two Letters

Top Level

We recommend that the current practice of allowing two letter names at the top level, only for ccTLDs, remain at this time. [\[22\]](#)

Examples include .AU, .DE, and .UK.

Recommendation task 3(b)

Any combination of  
Two Letters, Digits

2<sup>nd</sup> Level

Registries may propose release provided that measures to avoid confusion with any corresponding country codes are implemented. [\[23\]](#)

Examples include ba.aero, ub.cat, 53.com, 3M.com, e8.org.

-  
-  
-

#### Minority Statement

-

Mike Rodenbaugh  
on two letters at the top level:

I recommend that two letter ASCII gTLDs be allowed. A standardized approach should be used which ensures consultation with appropriate parties, including the ccNSO and ISO 3166 Maintenance Agency, and where security and stability issues are identified, SSAC. While there may be political reasons, there appears no strong policy reason to withhold every possible two-letter TLD from use, on the assumption that some of them may be desired by countries that may be created in the future. The GAC principle assumes there will be 'user confusion' if two letter codes are allowed other than for ccTLDs, but this is not substantiated -- and there are many ccTLDs that are visually very similar to other ccTLDs (including .ch and .cn which are two of the larger ccTLDs). In addition, this concern would diminish if countries were able to use their own name as a TLD, including in its IDN form, or in an IDN two letter ccTLD.

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## Supporting Information

### Background

Recommendations are provided for each of the following eight subcategories:

- Symbols
- Single and two-character IDNs
- Single letters at the top level
- Single letters and digits at the second level
- Digits at the top level
- Single letter, single digit combinations at the top level
- Two letters at the top level
- Any combination of two letters and digits at the second level

This report will examine the above subcategories, recognizing that the technical and policy issues may differ across each of the subcategories.

The purpose of this report is to examine whether there are any technical, policy or practical concerns about releasing these names. Domain names are defined in RFC 1034 (published in November 1987 and recognized as an Internet Standard, <ftp://ftp.rfc-editor.org/in-notes/rfc1034.txt>).

The initial treatment of using a 'reservation' developed with Jon Postel and involved both single and two character strings. Some discussion about reserved names can be traced back to specific RFCs, while the 'reservation category' has also evolved via gTLD registry agreements. The reserved names list was created during the proof-of-concept round of new gTLDs in 2001. The reserved names list was a topic of discussion during the ICANN Meeting in Melbourne, Australia in March 2001. An information page on the registry agreement appendices was first posted in February 2001 (<http://www.icann.org/melbourne/new-tld-agreements-topic.htm>). Subsequently, the category of Geographical and Geopolitical names was added to some of the Reserved Names appendices.

In all gTLD registry agreements as of 1 May 2007, single-character labels are reserved at the second-level and two-character labels are initially reserved.<sup>[24]</sup>

It appears that the original purpose for reserving the single characters was driven by technical concerns. Two letter reservations appear to have been based on concerns about confusion with two letter country codes.

The work of the Single and Dual Character Reserved Names Subgroup (now Single and Two Character Labels Subgroup) was originally included as Appendix E in the GNSO Reserved Names Working Group Report dated 19 March 2007, [href="http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf">http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf](http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf). This update incorporates inputs received during the ICANN meeting in Lisbon, Portugal, references the GAC Principles on New gTLDs, [href="http://gac.icann.org/web/home/gTLD\\_principles.pdf">http://gac.icann.org/web/home/gTLD\\_principles.pdf](http://gac.icann.org/web/home/gTLD_principles.pdf), the GNSO IDN Working Group Outcomes Report, [href="http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm">http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm](http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm), and inputs received during the 30 day extension of the Reserved Names Working Group.

### **RECOMMENDATION ONE: SYMBOLS**

We recommend that current practice be maintained, so that no symbols other than the '-' [hyphen] be considered for use at any level, unless technology at some time permits the use of symbols.

#### **Rationale**

The hostname convention defined in RFC 952[25] (later modified by RFC 1123) states that domain names must consist of the letters a-z; the numbers 0-9, and the hyphen-dash (-). "." has a special status: it is permitted by the DNS but used as a "separator" for labels. Only letters, digits and hyphens are permitted at present in the DNS, to the left of the TLD.

#### **Consultation with experts**

Discussions with technology experts indicate that there would not be support for making any changes to allow the release of symbols in one or two character domain names, at any level.

### **RECOMMENDATION TWO: SINGLE AND TWO CHARACTER IDNs**

Single and two-character U-labels on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case by case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be available for allocation in the DNS. This is notwithstanding the rule that the ISO-3166 list will continue to be reserved and as such all two character ASCII strings (i.e., LDH-labels) will remain reserved at the top level and second level of a domain name, although registries may propose release of two character strings at the second level provided that measures to avoid confusion with any corresponding country codes are implemented. Single and two character labels at the second level should be available for registration, provided they are consistent with the IDN Guidelines.

## Rationale

In a resolution approved by the ICANN Board on 25 September 2000, the Board recognized "it is important that the Internet evolve to be more

accessible to those who do not use the ASCII character set" but stressed that "the internationalization of the Internet's domain name system must be accomplished through standards that are open, non-proprietary, and fully compatible with the Internet's existing end-to-end model and that preserve globally unique naming in a universally resolvable public name space."<sup>[26]</sup>

Once ICANN opens the process for new TLD applications, it is expected that many of those applications may be for IDNs. In some scripts, such as Chinese, Japanese and Korean, single and two characters frequently translate into words, concepts or phrases. Because of this, it is not advisable to maintain the existing reservation against single and two-character U-Label strings for IDNs. Applications should be reviewed on a script by script basis.

As examples, single and two character IDNs currently exist as second and third level domain names in both ccTLDs and gTLDs.

<sup>[26]</sup> <http://中国.icom.museum/> directs visitors to <http://china.icom.museum/>.

<sup>[27]</sup> <http://한국.icom.museum/> directs visitors to <http://www.icomkorea.org/board/index2.php>.

The GAC Communique released in Lisbon, Portugal acknowledged the joint GAC-ccNSO-GNSO IDN Working Group, and noted a draft issue paper on the selection of IDN ccTLDs associated with the ISO-3166 list. The GAC is continuing to work with the ccNSO on this issue, because in many languages and scripts country names cannot be abbreviated, and it may be difficult to assign internationalized versions of the ISO-3166 list. The GAC is continuing to develop guidance on IDN TLDs that will be incorporated into the new gTLD process.

While not specifically written for IDNs, the GAC Principles regarding New gTLDs released in Lisbon contain a number of recommendations relevant to single and two character IDNs:<sup>[27]</sup>

1.3 A gTLD is a top level domain which is not based on the ISO 3166 two-letter country code list. For the purposes and scope of this document, new gTLDs are defined as any gTLDs added to the Top Level Domain space after the date of the adoption of these principles by the GAC.

2.4 In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing gTLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced.

The GAC Principles do not address single and two character labels in IDNs.

The GNSO IDN Working Group (IDN WG) Report (<http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>) provides some guidance on single and two character IDNs. The IDN WG found broad agreement in:

4.1.3,  
Language Community Input for Evaluation of New gTLD Strings

4.1.5,  
Limit Variant Confusion and Collision

4.1.6,  
Limit Confusingly Similar Strings

The IDN WG found support in:

4.2.9, Support for a country's rights to define/reserve IDN strings for the country name

4.2.22, Support for regarding "confusingly similar" as "visually confusingly similar" or "typographically confusingly similar"

4.2.23, Support for IDN considerations for extension of reserved names list, possibly by introducing the notion of "reserved concepts" (for example; the concept of "example" as expressed in other languages/scripts)

The IDN WG and GAC Principles recognize that there may be issues of user confusion related to the introduction of IDNs at the top level. ICANN should be concerned about the potential for user confusion in scripts that share similarities, such as confusion between single and two character labels in Cyrillic, Greek and Latin scripts, or confusion between Chinese, Japanese and Korean scripts that share characters, or Farsi and Arabic, etc.

Previous ICANN Board resolutions on IDNs also provide guidance to the Reserved Names Working Group on single and two character labels in IDNs. On 27 March 2003, the ICANN Board endorsed the IDN Implementation approach in the Guidelines for the Implementation of Internationalized Domain Names (<http://www.icann.org/minutes/minutes-27mar03.htm>).

On 18 February 2004, the Board adopted a resolution to permit VeriSign and Public Interest Registry to begin test bed registration of IDNs in the .COM, .NET and .ORG gTLDs.

On 8 December 2006, the ICANN Board issued a detailed resolution on IDNs (<http://www.icann.org/minutes/minutes-08dec06.htm>).

The Board requested "the ccNSO and the GAC, through a joint collaborative effort, in consultation as needed with the relevant technical community, to produce an issues paper relating to the selection of IDN ccTLDs associated with the ISO 3166-1 two-letter codes."

Additional examples of existing registrations of single and two character IDNs at the second level include:

U-label: 円.biz

A-label:

xn--w6q.biz

Translation:

Japanese Yen

Pronunciation

(Romanji): en

Script:

Han

U-label:

龍.biz

A-label:

xn--yi7a.biz

Translation:

Dragon

Pronunciation

(Mandarin): long2

Script:

Han

U-label:

信息.biz

A-label:

xn--vuq861b.biz

Translation:

information

Pronunciation

(Mandarin): xin4 xi2

Script:

Han

U-label:

ラブ.biz

A-label:

xn--tdkub.biz

Translation:

"love" transliterated into Japanese Pronunciation (Romanji): rabu

Script: Katakana

U-label: すし.biz

A-label:

xn--68jd.biz

Translation:

sushi

Pronunciation:

sushi

Script:

Hiragana

U-label:

寿司.biz

A-label:

xn--sprr0q.biz

Translation:

sushi

Pronunciation:

sushi

Script:

Han

[Examples provided by

William Tan at NeuStar, href="<http://forum.icann.org/lists/gnso-sl-wg/msg00019.html>"><http://forum.icann.org/lists/gnso-sl-wg/msg00019.html>.]

On 28 March 2007, during the

ICANN meeting in Lisbon, Portugal, the GAC-ccNSO-GNSO joint working group on IDNs held a workshop focusing on policy issues related to the introduction of IDNs at the top level (href="<http://www.icann.org/meetings/lisbon/agenda-idn-wg-28mar07.htm>"><http://www.icann.org/meetings/lisbon/agenda-idn-wg-28mar07.htm>).

A transcript from the workshop is available at href="<http://www.icann.org/meetings/lisbon/transcript-idn-wg-28mar07.htm>"><http://www.icann.org/meetings/lisbon/transcript-idn-wg-28mar07.htm>.

This session generated good discussion on issues related to implementation of IDNs, including single and two character labels in IDNs.

On 16 April 2007, the GAC

and GNSO had a telephone conference to discuss IDN issues within the context of the GAC Principles on New gTLDs.name="\_ftnref28" title="">[28]

As part of this discussion, GAC members were asked about single and two character IDNs. Cary Karp asked a question "about scripts where the concept of letter is irrelevant, such as two Chinese ideograms." Bill Dee, the EU representative on the GAC, stated "I think that is something we need to cover when we come with our IDN Principles, but we need to discuss it within the GAC first. So this is really useful that you have raised this. You have started a train of thought that we are going to have to pursue, obviously."

Based on the 16 April 2007 conference call, the GAC is likely to provide further guidance to ICANN on single and two character labels in IDNs as part of the GAC Principles on IDNs. The GAC may benefit from the consideration of single and two character labels by the Reserved Names Working Group.

### **Consultations with experts**

A number of consultations have occurred with IDN experts, linguistic experts, and members of the Subgroup, the full RN Working Group and with members of the GNSO IDN Working Group. The full RN Working Group had a conference call with [href="http://en.wikipedia.org/wiki/Cary\\_Karp">Cary Karp](http://en.wikipedia.org/wiki/Cary_Karp) and [href="http://en.wikipedia.org/wiki/Ram\\_Mohan">Ram Mohan](http://en.wikipedia.org/wiki/Ram_Mohan) on 1 March 2007. Several discussions occurred on IDN implications for Reserved Names during the ICANN meeting in Lisbon, Portugal. The GAC and GNSO discussed IDN issues as part of the discussion of the GAC Principles regarding New gTLDs on 16 April 2007.

Extensive consultation has occurred with Cary Karp and Tina Dam in the consideration of single and two character labels in IDNs.

### **Consultations on definition of character**

Consultations occurred with [href="http://www.evertype.com/misc/bio.html">Michael Everson](http://www.evertype.com/misc/bio.html), Tina Dam, Cary Karp, and Chuck Gomes. Cary Karp and Tina Dam provided extensive analysis of the draft definition and examples.

According to a 26 April 2006 email from Cary Karp, "Digits are also characters, but the status of what an Anglophone would regard as diacritical marks, is far less clear in other contexts where what is sometimes term[ed] 'decoration' is added to 'base' characters. Graphic symbols such as punctuation marks may also be termed characters, and the status of other graphic devices such as dingbats and smiley faces can also be argued."

## **RECOMMENDATION THREE: SINGLE LETTERS AT THE TOP LEVEL**

We recommend reservation of single letters at the top level, based on technical questions raised. If sufficient research at a later date demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered. Examples of names that would not be allowed include .a, .z.

### **Rationale**

Single letter gTLDs have never been released by ICANN. In 2000, ICANN received an application for .i. This application was not approved (see <http://www.icann.org/tlds/i1/>).

RFC 1035 (see <http://www.ietf.org/rfc/rfc1035.txt>) states that domain names "must start with a letter, end with a letter or digit, and have as interior characters only letters, digits, and hyphen. There are also some restrictions on the length. Labels must be 63 characters or less." "name=" \_ftnref29" title="">[29]  
RFC 1035 was updated by RFC 1123 (<ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1123.txt.pdf>), so that domain names may start with either a letter or a digit.

There may be potential user confusion from mistaking certain single letters and digits (i.e., .l versus .1, .m versus .n, .q versus .g) due to visual similarity.

Some businesses own trademarks in single letters, such as Overstock, Nissan Motors, T-Mobile and Yahoo! [Examples are provided merely for illustration and discussion.] Such trademark owners may be interested in registering a corresponding gTLD.

According to research conducted by IANA, out of 9540 possible combinations of single-character LDH names at the second level (containing 26 letters, 10 numbers, but not symbols, across 265 TLDs), 1225 delegations of single-character LDH names exist in the zone. 63 TLDs have at least one single-character LDH delegation (see <http://forum.icann.org/lists/gnso-rn-wg/msg00039.html>).

During the discussions, consideration was given to releasing single letters at the top level. The Sub Group considered that that single letter and digit domains are widely in use at the second level in country codes and as IDNs, and initially thought it would be feasible to examine how to release and allocate single letter top level names. Members of the Sub Group were aware from RFC reviews and other sources that there could be technical concerns and potential 'resolution' issues regarding the use of single letter and digit domains at the second level in a single letter TLD (e.g., 1.a or a.a), and undertook outreach to two technical experts to learn more about the technical issues.

The release and allocation of single letters at the second level has been subject of some discussion during the PDP regarding contractual terms for TLD registries; this is addressed as a separate recommendation.

### **Consultation with experts**

In addition to reviewing relevant RFCs, an interactive consultation was held on 23 April 2007 by the Subgroup with two technical experts, Steve Bellovin (<http://www.cs.columbia.edu/~smb/>) and Mark McFadden (<http://www3.uwm.edu/sce/instructor.cfm?id=249>). Both experts discussed the concern with interaction with letters at both the top and the

second level as a problem. The transcript for that discussion can be found in the subgroup archive at (<http://forum.icann.org/lists/gnso-sl-wg/>).

RFC 1535 points out that there can be search order issues where an application attempts to resolve a domain name string.

On May 8, a follow up email was received from Steven Bellovin and is provided below, describing in more detail the technical issues associated with letters at the top level.

Sent: Tuesday, May 08, 2007 9:51 PM

"I read just the portions you cited.

Mostly ok, but...

1.5:

This is wrong:

However, due to technical concerns, we recommend that single character (LDH) names be reserved at the second level in any single letter TLD.

Single-letter TLDs are bad if there are single-letter second level names anywhere, and vice-versa. The problem is not restricted to direct descendants. For example, suppose that .a and .foo are TLDs. If I'm on host xyzy.foo and ask for 'a', do I get a -- the TLD? -- or a.foo? This is the problem described in RFC 1535. (Yes, it can happen with longer names; it was a real incident that inspired that RFC.)

The same concerns apply to this text:

*However, there may be technical concerns regarding the use of single letter and digit domains at the second level in a single letter TLD (e.g., 1.a or a.a). Allocation of single letters at both the top level and second level in combination may [will??] cause certain older DNS software applications to incorrectly resolve.*

and

If single letter TLDs are unreserved, single letters at the second level would need to be reserved in these domains.

and

*Single letters at the second level would need to be reserved in single letter TLDs until this problem has been eliminated."*

[email snipped. Relevant section provided under recommendation 5].

## References

RFC 1535

23 April 2007 RN WG - Subgroup

Teleconference with Technical Experts

(<http://forum.icann.org/lists/gnso-sl-wg/msg00006.html>).

GAC Principle 1.4: referencing ICANN core values/bylaw:

"preserving operational stability, reliability, security and global interoperability of the Internet."

GAC Principle 2.6: "It is

important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service provider diversity".

### **RECOMMENDATION FOUR: SINGLE LETTERS AND DIGITS AT THE SECOND LEVEL**

We recommend that single letters and digits be released at the second level in future gTLDs, and that those currently reserved in existing gTLDs should be released. This release should be contingent upon the development of an appropriate allocation framework.

#### **Rationale**

Currently, all 16 gTLD

registry agreements (.aero, .asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel) provide for the reservation of single-character names at the second level.

ICANN's gTLD registry agreements contain the following provision on single-character names. See Appendix 6

of the .TEL Registry Agreement, <http://www.icann.org/tlds/agreements/tel/appendix-6-07apr06.htm> ("the following names shall be reserved at the second-level: All single-character labels.").

Letters, numbers and the

hyphen symbol are allowed within second level names in both top level and country code TLDs. Single letters and

numbers also are allowed as IDNs -- as single-character Unicode renderings of ASCII compatible (ACE) forms of IDNA valid strings.

Before the current reserved

name policy was imposed in 1993, Jon Postel took steps to register all available single character letters and numbers at the second level, purportedly to reserve them for future extensibility of the Internet (see 20 May 1994 email from Jon Postel, <http://ops.ietf.org/lists/namedroppers/namedroppers.199x/msg01156.html>).

All but six (q.com, x.com, z.com, i.net, q.net, and x.org) of the possible 144 single letters or numbers at the second-level in .COM, .EDU, .NET and .ORG were registered and remain reserved by IANA. Those six registrations have been grandfathered, and several have been used for various purposes and/or transferred amongst different registrants.

Under current policy, these names would be placed on reserve if the registrations were allowed to expire.

Since the initial registration of single-letter names by IANA, IANA has uniformly turned down all offers by third parties to purchase the right to register these names, and has advised these parties that the names are reserved for infrastructure purposes to help ensure stable operation of the Internet.

An email of 27 May 2000 to the then DNSO-GA list provides further background on single-letter names (see <http://www.dnso.org/clubpublic/ga/Arc04/msg00442.html>).

According to research conducted by IANA, out of 9540 possible combinations of single-character ASCII names (containing 26 letters, 10 numbers, but not symbols, across 265 TLDs), 1225 delegations of single-character LDH names exist in the zone. 63 TLDs have at least one single-character LDH delegation (see <http://forum.icann.org/lists/gnso-rn-wg/msg00039.html>).

We understand that some businesses may own trademarks in single letters, such as Overstock, Nissan Motors, T-Mobile and Yahoo! [Examples have been provided merely for illustration and discussion.] These trademark owners, if they have not already registered their single-character trademarks as domain names, may be interested in doing so across a number of TLDs.

There may be potential user confusion from mistaking certain single letters and digits at the top level due to visual similarity (i.e., 1.com versus l.com, m.com versus n.com, q.com versus g.com).

Given that single letter and number second level domains are widely used in country codes and as IDNs, and six letters are used in the existing legacy generic top level domains at the second level, it seems feasible to examine how to release and allocate single letter and number second level names.

The release and allocation of single letters has been subject of some discussion during the PDP regarding contractual terms for TLD registries.

### **Consultation with experts**

Single letters and numbers are widely delegated at the second level, in 63 TLDs and as IDN (U-label) versions. Therefore, we presume there is no technical reason why remaining letters, at least, should remain reserved.

While it appears that single letters and digits at the second level can be released, further examination of allocation options is needed.

In relation to the special case of single letter second level names in single letter TLDs, consultation with technical experts identified the problem that RFC 1535 discusses as likely

to be experienced with combinations of single letters at the top and second level. (RFC1535 discusses security problems posed by some resolvers that attempt to resolve a partial name by processing a search list of partial domains to be added to portions of the specified host name until a DNS record is found.) .

#### RECOMMENDATION FIVE: DIGITS AT THE TOP LEVEL

We recommend continuation of the reserved status for digits at the top level, in order to avoid potential confusion with IP addresses, within software applications. Examples include .3, .99. Note: see later recommendation which proposes to continue to allow allocation of digits at the second and third levels, including single digits.

#### Rationale

Allocation of numbers at **both** the top level and second level in combination may cause DNS software applications to incorrectly deem a URL composed only of numbers as an IP address.

In addition to the DNS software issue, there are also legacy software applications that will interpret if certain numbers, such as "00", are omitted, and, if they are, insert numbers into a string, thus causing misdirection.

#### Consultation with experts

Single numbers have been denied in previous gTLD rounds. Discussions among the full RN WG have identified the concern about conflict with IP addresses, when numbers appear at both the second and top levels.

In addition to reviewing relevant RFCs, an interactive consultation was held on 23 April 2007 by the Subgroup with two technical experts, Steve Bellovin and Mark McFadden. Both experts discussed the concern with interaction with numbers at both the top and the second level as a problem. The transcript for that discussion can be found in the subgroup archive at (<http://forum.icann.org/lists/gnso-sl-wg/>).

On May 8 and 9, two emails were received from Steven Bellovin and relevant sections are provided below, describing in more detail the technical issues associated with digits.

Sent: Tuesday, May 08, 2007 9:51 PM

"I read just the portions you cited.

Mostly ok, but...

*Section*

*of email produced in 1.4 is not reproduced here. .*

1.6:

Numbers at the top and second level

\*will\* cause problems. Here's some text from RFC 3493 -- not an IETF standard, but I think it is a Posix standard, and it is present on all modern UNIX systems, i.e., it's not just legacy software.

If the nodename argument is not null, it can be a descriptive name or can be an address string. If the specified address family is AF\_INET, AF\_INET6, or AF\_UNSPEC, valid descriptive names include host names. If the specified address family is AF\_INET or AF\_UNSPEC, address strings using Internet standard dot notation as specified in inet\_addr() are valid.

This RFC doesn't define the behavior of inet\_addr(), but Solaris and Linux specify that it accepts ddd.ddd. I think (but haven't verified) that Posix requires that."

Sent: Wednesday, May 9, 2007

"I confirmed that UNIX standards \*require\* that ddd.ddd be interpreted as described; see <http://www.opengroup.org/onlinepubs/000095399/functions/getaddrinfo.html>

and

[http://www.opengroup.org/onlinepubs/000095399/functions/inet\\_addr.html](http://www.opengroup.org/onlinepubs/000095399/functions/inet_addr.html)

To be quite explicit: any program that uses IEEE standard 1003.1 \*will\* be confused by ddd.ddd." end of email.

References related to digits at the top level

RFC 1535

GAC Principle 1.4: referencing ICANN core values/bylaw: "preserving operational stability, reliability, security and global interoperability of the Internet."

GAC Principle 2.6: "It is important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service provider diversity".

#### **RECOMMENDATION SIX: SINGLE LETTER, SINGLE DIGIT COMBINATIONS AT THE TOP LEVEL**

Applications

may be considered for two character names combining a single letter and single digit, in either order at

the top level in accordance with the terms set forth in the new gTLD process. Release of combinations of one letter and one digit at the top level can be allowed. Examples may be L0, or 2K.

#### **Rationale**

Combinations of numbers and letters exist at the second level, and there appears to be no technical prohibition to a single letter and a single number

combination at the top level.

There may be further considerations regarding how numbers and letters may be mistaken for each other by the user, due to visual similarity, such as '10', versus 'IO' (lower case 'l' and upper case 'O', where a user searching for a domain name, where numbers are allowed at the second level, and a user is searching for a 333.10, but types '333.10.

Numbers at the top level are not recommended - see recommendation five.)

### **Consultation with experts**

In addition to reviewing RFC 1535, an interactive consultation was held with Steve Bellovin and Mark McFadden. A transcript is available in the subgroup archive at (<http://forum.icann.org/lists/gnso-sl-wg/>). Except for user confusion in mistaking a letter for a number and then mistyping certain combinations, there does not appear to be a technical issue with a combination of number and letter at the top level.

### References

RFCs 952, 1123, 1535

Expert discussion with Steve Bellovin and Mark McFadden was held on 23 April 2007. They did not suggest that there are likely to be problems per se.

### **RECOMMENDATION SEVEN: TWO LETTERS AT THE TOP LEVEL**

We recommend

that the current practice of allowing two letter names at the top level, only for ccTLDs, remain at this time. The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter names at the top level.

IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk of collisions between any interim allocations, and ISO 3166 assignments which may be desired in the future.

### Minority

Statement by Mike Rodenbaugh

I recommend that two letter ASCII gTLDs be allowed. A standardized approach should be used which

ensures consultation with appropriate parties, including the ccNSO and ISO 3166 Maintenance Agency, and where security and stability issues are identified, SSAC. While there may be political reasons, there appears no strong policy reason to withhold every possible two-letter TLD from use, on the assumption that some of them may be desired by countries that may be created in the future.

The GAC principle assumes there will be 'user confusion' if two letter codes are allowed other than for ccTLDs, but this is not substantiated -- and there are many ccTLDs that are visually very similar to other ccTLDs (including .ch and .cn which are two of the larger TLDs).

In addition, this concern would diminish if countries were able to use their own name as a TLD, including in its IDN form, or in an IDN two letter ccTLD.

## Rationale

To date, two-character TLDs have been released only as two letter ccTLDs. No combinations of letters and numbers, and no two-number strings have been allocated at the top level. The subgroup conducted expert outreach to examine any implications of release of such combination or two-digit TLDs.

An early RFC issued in October 1984 (RFC 920) defined country codes as the "The English two letter code (alpha-2) identifying a country according the ISO Standard for 'Codes for the Representation of Names of Countries'". This RFC was issued before ccTLDs had been established (see <ftp://ftp.rfc-editor.org/in-notes/rfc920.txt>, page 7).

RFC 1032, issued in November 1987, states that "countries that wish to be registered as top-level domains are required to name themselves after the two-letter country code listed in the international standard ISO-3166."

Two character/letter strings at the top level are now identified with the ISO 3166 list, which has a two letter code associated with all of the over 200 countries and recognized economies. Country code or ccTLDs correspond directly to the two character letters on the ISO 3166 list. The ISO 3166 Maintenance Agency governs the list of country codes. Further information on the ISO 3166 list is available at <http://www.iso.org/iso/en/prods-services/iso3166ma/index.html>. According to RFC 1591, "IANA is not in the business of deciding what is and is not a country" (<http://www.rfc-editor.org/rfc/rfc1591.txt>). "The selection of the ISO 3166 list as a basis for country code top-level domain names was made with the knowledge that ISO has a procedure for determining which entities should be and should not be on that list."

Further, RFC 1591 defines a country code as "a domain in the top level of the global domain name system assigned according to a two-letter code based on the ISO 3166-1 standard 'Codes for the Representation of Names of Countries and Their Subdivisions.'"

In the 2000 round, ICANN received an application for .GO. This string was not allocated on the ISO 3166 list to a country. This application was rejected.

The GAC Principles and Guidelines for the Delegation and Administration of Country-Code Top Level Domains (5 April 2005) contains a statement on ccTLDs:

## 4.1.2.

Every country or distinct economy with a government or public authority recognized in accordance with article 3.8 above should be able to ask for its appropriate country code to be represented as a ccTLD in the DNS and to designate the Registry for the ccTLD concerned.

A 27 February 2007 email from IANA Technical Liaison Kim Davies provides context to support the reservation of two-letter strings at the top level for use as future ccTLDs (see <http://forum.icann.org/lists/gnso-rn-wg/msg00163.html>).

A 4 March 2007 email from ccNSO Council Chair Chris Disspain states in part:

"gTLDs in ASCII - there is, if I understand it correctly, a current prohibition on issuing new gTLDs with 2 characters. I imagine the vast majority of the ccTLD community would be in favour of this prohibition being retained. Apart from anything else, reservation of 2 characters at the top level is the only way of ensuring that a new ccTLD code will be available for new territories."

There may be potential user confusion from mistyping combinations of letters and numbers (e.g., .c0 versus .co, .t0 versus .to, .1l versus .li, m0 versus .mo), with two-number strings (.00 versus .oo, .11 versus .ll, .l0 versus .lo), and with two-letter strings (ll versus li, .vy versus .yv, .pq vs. .pg).

The GAC Principles regarding New gTLDs, released on 28 March 2007, state:

## 1.3

A gTLD is a top level domain which is not based on the ISO 3166 two-letter country-code list.

## 2.4

In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced.

### Consultation with experts

Two letter strings at the top level have only been allowed for country codes as defined by the ISO 3166 list. Chris Disspain, Chair of the ccNSO, believes the vast majority of the ccTLD community would be in favour of this practice being retained. Kim Davies, IANA Technical Liaison believes the current practice should be continued, as a policy matter, due to potential need for some two-letter strings by future countries.

### **RECOMMENDATION EIGHT: ANY COMBINATION OF TWO LETTERS, DIGITS AT THE SECOND LEVEL**

We recommend that registries may propose release of two letter and/or digit

strings at the second level, provided that measures to avoid confusion with any corresponding country codes are implemented.

A standardized approach should be used which ensures consultation with appropriate parties, including the ccNSO and ISO-3166 Maintenance Agency, and where security and stability issues are identified, RSTEP.

The

existing gTLD registry agreements provide for a method of potential release of two-character LDH names at the second level. In addition, two character LDH strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimizes the potential for confusion with the ccTLDs."

### Rationale

In 2001, in considering a proposal from .AERO for the limited release of two-letter airline codes, a GAC Communique (<http://www.icann.org/committees/gac/communique-09sep01.htm>) noted that the WIPO II report addressed this category of names and recommended that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimizes the potential for confusion with the ccTLDs." This recommendation has been incorporated into the reserved names appendix of 14 of ICANN's current, gTLD registry agreements.

The WIPO II Report is available at

<http://www.wipo.int/amc/en/processes/process2/report/html/report.html> and included in this report under Section 5(k).

Fourteen out of sixteen of the present gTLD registry agreements (.aero, asia, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .pro, .tel and .travel) provide for the reservation of two-character names at the second level, via the following provision. (See, e.g., Appendix 6 of the .TEL Registry Agreement, <http://www.icann.org/tlds/agreements/tel/appendix-6-07apr06.htm>.)

Except to the extent that

ICANN otherwise expressly authorizes in writing, the Registry Operator shall reserve names formed with the following labels from initial (i.e. other than renewal) registration within the TLD: ... All two-character labels shall be initially reserved. The reservation of a two-character label string shall be released to the extent that the Registry Operator reaches agreement with the government and country-code manager, or the

ISO 3166 maintenance agency, whichever appropriate. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.

Two of the sixteen present gTLD strings, .BIZ and .ORG registry agreements say only "Registry Operator shall reserve names formed with the following labels from initial (i.e. other than renewal) registration within the TLD: ... All two-character labels shall be initially reserved." See <http://www.icann.org/tlds/agreements/biz/appendix-06-08dec06.htm> and <http://www.icann.org/tlds/agreements/org/appendix-06-08dec06.htm>.

There may be potential user confusion between the combination of letters and numbers (e.g., c0.com versus co.com; t0.com versus to.com; 1l.com versus li.com, m0.com versus mo.com), with two-number strings (00.com versus oo.com, 11.com versus ll.com), and with two-letter strings (ll.com versus li.com, vy.com versus yv.com).

At the second level, two-character names have been registered, re-sold directly or via auction, and/or transferred by a wide variety of parties for many years. The GNR RSTEP report noted that there have been 18 UDRP cases involving two-character names at the second level.

Some businesses use two letter identifiers or two-character abbreviations, such as FT for Financial Times, GM for General Motors, DT for Deutsche Telecom, BT for British Telecom, HP for Hewlett-Packard, or have corporate names of characters and number, such as 3M. [Examples are provided merely for illustration and discussion.] These trademark owners, if they have not already registered their two-character trademarks as domain names, may be interested in doing so across a number of TLDs.

In the past, ICANN has approved the release of certain two-character names from the reserved names lists through one-on-one communication with the requesting registry operator. There are no public information sources on the release of these names, but in the past ICANN has agreed to the release of e8.org, a2.coop, nz.coop and uk.coop. NZ.coop and UK.coop were released with the approval of the UK and NZ government representatives and ccTLD managers. A2.coop and e8.org were released without objection from the ISO 3166-Maintenance Agency. On 25 May 2004, the ICANN Board approved the limited release of two-character airline codes in .AERO (<http://www.icann.org/minutes/resolutions-25may04.htm>).

On 16 January 2007, the ICANN Board approved the limited use of two-character names in .NAME (<http://www.icann.org/minutes/prelim-report-16jan07.htm>) (see summary of relevant information sources below for further information on the GNR proposal).

On 21 February 2007, Fundació puntCAT proposed release of three two-character names from the .CAT Sponsorship Agreement (UB.cat, UV.cat and UA.cat). Only

UA.cat corresponds to a country code TLD (Ukraine). ICANN approved this release on 7 March 2007, subject to certain conditions.

On

13 March 2007, EmployMedia proposed release of two-character names from the .JOBS Sponsorship Agreement. On 28 March 2007, ICANN approved this release, subject to certain conditions.

The

existing registry agreement provisions provide a mechanism for the release of two-character names at the second level, as set forth above. In addition, registries may submit a proposal for the release of two-character names through the process for new registry services (also known as the "Funnel"), which was approved as a GNSO Consensus Policy on 8 November 2005 (<http://www.icann.org/minutes/resolutions-08nov05.htm>) and implemented 25 July 2006 (<http://www.icann.org/announcements/rsep-advisory-25jul06.htm> and <http://www.icann.org/registries/rsep/rsep.html>).

### **Consultation with experts**

Second level strings with

two letters and/or digits have been widely used for a long time. Therefore we presume there is no technical reason why remaining strings should remain reserved. There may be other policy or political reasons to maintain the present reservation process, unless registries follow the previously given GAC advice and propose release of two-character names using methods to avoid confusion with any corresponding country codes.

In 2001 the GAC addressed

potential release of two-character names at the second level as part of its consideration of a request from .AERO for the limited release of two-letter airline codes. This issue has been addressed in 14 registry agreements as set forth above. Two-digit or letter-digit combinations, and two-letter combinations that are not likely to correspond to country codes, should be possible at the second level.

### **SUMMARY OF RELEVANT INFORMATION SOURCES**

1.

ICANN Staff's Status Report on Single-Level Domains, dated 12 September 2005.

2.

Recent data from Kim Davies at IANA, showing single-letters delegated in 63 TLDs (<http://forum.icann.org/lists/gnso-rn-wg/msg00039.html>), and from Patrick Jones, showing almost 3000 single- and dual-character domains for sale at Sedo: 7 February 2007 email from Patrick Jones on Sedo auction (<http://forum.icann.org/lists/gnso-rn-wg/msg00041.html> and <http://forum.icann.org/lists/gnso-rn-wg/msg00042.html>)

wg/msg00042.html).

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3.

Correspondence:

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29 April 2007 email from William Tan to Patrick Jones, href="http://forum.icann.org/lists/gnso-sl-wg/msg00019.html">http://forum.icann.org/lists/gnso-sl-wg/msg00019.html.

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8 March 2007 email from Roberto Gaetano to GA list on single-letter names (href="http://gnso.icann.org/mailling-lists/archives/ga/msg06100.html">http://gnso.icann.org/mailling-lists/archives/ga/msg06100.html).

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8 March 2007 email from Patrick Jones to RN WG on TRAFFIC auction of two-character names (href="http://forum.icann.org/lists/gnso-rn-wg/msg00275.html">http://forum.icann.org/lists/gnso-rn-wg/msg00275.html)

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20 January 2007 email from John Klensin on single-letter names to GNSO Council (href="http://gnso.icann.org/mailling-lists/archives/council/msg03166.html">http://gnso.icann.org/mailling-lists/archives/council/msg03166.html)

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20 January 2007 email from Patrick Jones to Liz Williams for GNSO Council on GNR proposal and Funnel process (href="http://gnso.icann.org/mailling-lists/archives/council/msg03165.html">http://gnso.icann.org/mailling-lists/archives/council/msg03165.html)

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18 January 2007 email from John Klensin on single-letter names to GNSO Council list (href="http://gnso.icann.org/mailling-lists/archives/council/msg03164.html">http://gnso.icann.org/mailling-lists/archives/council/msg03164.html)

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Policy Recommendation from Overstock.com, May 2006 (insert hyperlink)

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Letter from Overstock.com, 28 November 2006 (href="http://www.icann.org/correspondence/warren-to-board-28nov06.pdf">http://www.icann.org/correspondence/warren-to-board-28nov06.pdf).

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Letter from Yahoo to ICANN, 12 December 2005 (href="http://www.icann.org/correspondence/filo-to-icann-12dec05.pdf">http://www.icann.org/correspondence/filo-to-icann-12dec05.pdf).

Letter from Lisa Martens to John Jeffrey, 12 December 2005  
(href="<http://www.icann.org/correspondence/martens-to-jeffrey-12dec05.pdf>")><http://www.icann.org/correspondence/martens-to-jeffrey-12dec05.pdf>).

Letter from Overstock.com, 11 November 2005  
(href="<http://www.icann.org/correspondence/byrne-to-twomey-11nov05.pdf>")><http://www.icann.org/correspondence/byrne-to-twomey-11nov05.pdf>).

Letter from K Computing, 30 June 2005  
(href="<http://www.icann.org/correspondence/dankwardt-to-pritz-30jun05.htm>")><http://www.icann.org/correspondence/dankwardt-to-pritz-30jun05.htm>).

4.

GNR proposal re two-character names, and supporting docs, 2006.

GNR Proposal:  
(href="[http://www.icann.org/registries/rsep/GNR\\_Proposal.pdf](http://www.icann.org/registries/rsep/GNR_Proposal.pdf)")><http://www.icann.org/registries/rsep/>

Submitted Applications page on GNR proposal  
(href="[http://www.icann.org/registries/rsep/submitted\\_app.html#2006004](http://www.icann.org/registries/rsep/submitted_app.html#2006004)")><http://www.icann.org/registries/rsep/>

20 October 2006 ICANN letter to RSTEP (href="<http://www.icann.org/registries/rsep/icann-to-rstep20oct06.pdf>")><http://www.icann.org/registries/rsep/icann-to-rstep20oct06.pdf>)

RSTEP Report on GNR Two-character name proposal  
(href="<http://www.icann.org/registries/rsep/RSTEP-GNR-proposal-review-team-rep...>")><http://www.icann.org/registries/rsep/RSTEP-GNR-proposal-review-team-rep...>).

16 January 2007 ICANN Board Resolution approving  
GNR service (<http://www.icann.org/minutes/prelim-report-16jan07.htm>).

5.

"Rainbow document" from Chuck Gomes re existing gTLD contract conditions re  
Reserved Names - see Appendix K in the original RN-WG report at <http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf>.

6.

Additional historical information on two-character names:

25 May 2004 Board resolution approving release of  
two-character strings in .AERO: href="<http://www.icann.org/minutes/resolutions-25may04.htm>")><http://www.icann.org/minutes/resolutions-25may04.htm>.

9 Sept 2001 GAC Communique: href="<http://www.icann.org/committees/gac/communique->

09sep01.htm"><http://www.icann.org/committees/gac/communique-09sep01.htm>.

30 Aug 2001 Letter from ISO 3166/MA to Louis Touton & Paul Twomey: href="<http://www.icann.org/tlds/wischhoefer-to-touton-30aug01.htm>"><http://www.icann.org/tlds/wischhoefer-to-touton-30aug01.htm>.

7. Correspondence from Kim Davies to Tim Denton, dated 7 January 2007:

"The single-letter/number domains in .com, .net, .org, .edu, .biz, .info, .name, .pro, .aero, .coop, and .museum are reserved by the IANA.

Accordingly, these names are not for "sale" or subject to transfer under established policy. A few of the single-letter names were registered before this reservation was made.

The IANA obtained the registration for most single-character names under .com in 1993 to implement a policy designed to enhance the extensibility of the domain-name space.

Since then, these names have been continuously under registration by the IANA. The IANA has received many inquiries from people seeking to register these names. As required by the existing policy, the IANA advises those inquiring that these names are already registered to the IANA and reserved for infrastructure purposes to help ensure stable operation of the Internet. The IANA has uniformly turned down all offers by third parties to purchase the right to register these names.

Four of the single-character names under .com were registered by other parties before the IANA entered its registration of these names. The registrations of these names have been (and are) grandfathered for the time being. Recently some of these registrations have been transferred from one third party to another. Those transfers are consistent with the grandfathering policy.

Having assumed the responsibility for operating the IANA, and for overall technical management of the Internet, ICANN is following the same policies for the operation of the IANA as were followed by Dr. Postel and his colleagues at the Information Sciences Institute. ICANN's charter and bylaws, together with its obligations under its various agreements with the United States Government, establish consensus-based procedures for modification of existing policies, fostering participation by affected parties. Until the policy is changed by the established procedures, ICANN is required to continue its registration of the single-letter .com domain names for the benefit of the Internet community."

There is also an Information page at <http://res-dom.iana.org/>.

#### 8. Email correspondence from Kim Davies, IANA

Technical Liaison, to Patrick Jones, posted on RN WG list 27 February 2007:

[href="http://forum.icann.org/lists/gnso-rn-wg/msg00163.html">http://forum.icann.org/lists/gnso-rn-wg/msg00163.html](http://forum.icann.org/lists/gnso-rn-wg/msg00163.html).

RFC 1591, sect 2 reads:

"In the Domain Name System (DNS) naming of computers there is a hierarchy of names. The root of system is unnamed. There are a set of what are called "top-level domain names" (TLDs). These are the generic TLDs (EDU, COM, NET, ORG, GOV, MIL, and INT), and the two letter country codes from ISO-3166."

As

any possible two-letter combination is eligible to be allocated or reserved in the ISO 3166-1 alpha-2 standard in the future, the working group is strongly encouraged not to consider using these possibilities for other applications. There is a risk of collisions between such allocations, and future ISO-3166 assignments, and in such cases would mean ICANN is unable to grant a ccTLD to a valid country.

IANA

has, since the introduction of the DNS, relied upon the determinations within the ISO-3166 standard to identify what constitutes a country, and what is the appropriate two-letter code for that country. This shields the organisation from making value judgments that would be very political, and instead lets and independent third party decide (the ISO 3166 Maintenance Agency, which is guided by the United Nations Statistics Office). On this matter, RFC 1591 is clear:

"The IANA is not in the business of deciding what is and what is not a country."

The

selection of the ISO 3166 list as a basis for country code top-level domain names was made with the knowledge that ISO has a procedure for determining which entities should be and should not be on that list."

The

ISO-3166 standard is not static, and evolves with changes to countries and their territories. Most importantly, new codes are added for new regions and countries. Just this year "AX", "ME" and "RS" have been new additions. One can assume there will be more changes in the future that we can not predict.

If a conflict is introduced between a newly created ccTLD code, and an allocated gTLD, IANA's neutrality would be compromised. It would either need to deprive a country of a country-code top-level domain, or it would need to stop adhering to the ISO 3166 standard which would be problematic. It would represent a key divergence from

one  
of the most central tenets of ccTLD policy.

9. Email from Chris Disspain to Patrick  
Jones, dated March 4, 2007:

I  
am copying this to the ccNSO members and council lists. Those who wish to  
comment, will you please send your comments to Gabi ([gabriella.schittek@icann.org](mailto:gabriella.schittek@icann.org))  
who will collate them and forward to Patrick.

I  
am unclear as to whether the draft report is intended to deal only with  
reserved names/characters in ASCII and so I'd like to make the following  
general points in respect to reserved names/characters at the top level. I  
believe this issue splits into 2 categories:

gTLDs  
in ASCII - there is, if I understand it correctly, a current prohibition on issuing  
new gTLDs with 2 characters. I imagine the vast majority of the ccTLD community  
would be in favour of this prohibition being retained. Apart from anything  
else, reservation of 2 characters at the top level is the only way of ensuring  
that a new ccTLD code will be available for new territories.

IDNs  
- here is where the problems start. I won't go into details here of the myriad  
challenges of .idn but the issue of reserved names serves to illustrate my  
serious concerns about the GNSO's decision to couple new gTLD policy with IDN  
policy. What is a relatively simple issue for new ASCII gTLDs (see paragraph  
above) becomes a minefield in respect to .idn. This is because there are  
currently no rules and no precedents.

So,  
for example, we could say that all 2 character names at the top level are  
reserved for ccTLD registrations in both ASCII and IDN characters but that  
assumes that new .idn ccTLDs will be limited to 2 characters and that is an  
assumption which cannot be made at this stage. It might end up being the case  
but we can't assume it now.

Further,  
the ccTLD community cannot sensibly create ccTLD .idn policy on an issue by  
issue basis. Reserved names is but one issue of many and whilst we can sensibly  
comment on it in regard to ASCII names we cannot in regard to IDNs.

If  
the report on single and dual characters is intended to cover only ASCII (and  
if that is the case then it needs to say so clearly) then I imagine that you  
will be able to get input from the cc community within a reasonable time. However,  
if it is also intended to cover IDNs the ccNSO will, I suspect, be unable to  
respond at this stage and the matter will need to be placed in the 'further  
time and research' category that you have outlined below.

Finally,

I believe that this situation is not isolated and my response above is likely to arise time and time again with respect to IDNs where there are cc and g crossover issues.

10. GAC Principles and Guidelines for the Delegation and Administration of Country-Code Top Level Domains (5 April 2005)

4.1.2. Every country or distinct economy with a government or public authority recognized in accordance with article 3.8 above should be able to ask for its appropriate country code to be represented as a ccTLD in the DNS and to designate the Registry for the ccTLD concerned.

11. WIPO II Report (Second WIPO Internet Domain Name Process, published 3 September 2001),  
<http://www.wipo.int/amc/en/processes/process2/report/html/report.html>><http://www.wipo.int/amc/en/proces>

19. The ccTLDs are those top-level domains which bear two letter codes essentially derived from the International Organization for Standardization's (ISO) Standard 3166.

**ISO 3166 Country Code Elements**

254. The origin of the codes reflecting country top-level domains is the International Organization for Standardization (ISO). ISO, which was established in 1947 as a non-governmental organization, is a worldwide federation of national standards bodies from 137 countries. Its mission is to promote the development of standardization and related activities in the world with a view to facilitating the international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity. [244] One of ISO's most famous standards is Part 1 of ISO 3166 concerning codes for the representation of names of countries and their subdivisions. Part 1 of ISO 3166 contains two letter country codes (alpha-2 codes; for example, au for Australia) and three letter country codes (alpha-3 codes, for example, aus for Australia). It is on the basis of the alpha-2 codes that the country code top-level domains (ccTLDs) were created by the Internet Authority for Assigned Names and Numbers (IANA) during the late eighties and early nineties. [245] Since the creation of the ccTLDs, registrations in the country domains have flourished, as the use of the Internet has spread throughout the world. It is expected that the importance of the ccTLDs will continue to grow in the future.

255. A phenomenon concerning ccTLDs that merits attention is the registration at the second level in the gTLDs of the country code elements (for example, *uk.com*). Often these domain names are registered by persons or entities in order to make them available to the public for the registration of names at the third level (for example, *company.uk.com*). [246] The implications of such practices are discussed below.

**ISO 3166 Country Code Elements**

268. The Interim Report recommended the exclusion of the ISO 3166 alpha-2 country code elements from registration as domain names in the new gTLDs, in the absence of an agreement to the contrary from the relevant competent authorities. Furthermore, the Interim Report recommended that persons or entities who have registered such codes at the second level in the existing gTLDs and who accept registrations of names under them should take measures to render the UDRP applicable to such lower level registrations.

269. Several commentators favored the exclusion mechanism proposed in the Interim Report for the ISO 3166 alpha-2 country code elements, [278] while others opposed it. [279] Some of the entities offering the possibility of registrations under the codes in the existing gTLDs have expressed a willingness to adopt the UDRP or a similar procedure, as recommended in the Interim Report.[280] Few administrators of ccTLDs submitted comments on the Interim Report's recommendations in this area. Trademark owners have expressed concerns that the exclusion mechanism proposed in the Interim Report would prevent the legitimate registration of two-letter trademarks or acronyms of trademarks. [281]

#### ***ISO 3166 Alpha-2 Country Code Elements***

290. The Interim Report formulated two recommendations in relation to ISO 3166 country code elements. First, it proposed that these codes be excluded from registration in the new gTLDs, unless the relevant authorities grant permission for their registration. Secondly, it recommended that persons or entities who have registered such codes at the second level in the existing gTLDs and who accept registrations of names under them take measures to ensure that the UDRP applies to such lower level registrations.

291. In connection with the first recommendation, we note that the current version of Appendix K to the Registry Agreements between ICANN and the sponsors and operators of the new gTLDs states that [a]ll two-character labels shall be initially reserved. The reservation of a two-character label string shall be released to the extent that the Registry Operator reaches agreement with the government and country-code manager, or the ISO 3166 maintenance agency, whichever appropriate. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes. [292]

*Exclusions for ISO 3166 Country Code Elements.* A number of factors, highlighted in the comments and reactions received on the Interim Report, have lead us to re-consider our recommendation that the ISO 3166 alpha-2 country code elements should be excluded from registration as domain names in the gTLDs. These factors are as follows:

- (i) While, on the Internet, the ISO 3166 codes have been associated in particular with country code top-level domains, in the physical world they find broad application and use throughout a wide variety of industries. This is consistent with the

nature and purpose of the standard, which itself states that [it] provides *universally applicable* coded representations of names of countries and that [it] is intended for use *in any application* requiring the expression of current country names in coded form. (*Emphasis added*)[293]

We observe that some of the industries which traditionally have used the ISO 3166 codes to structure themselves in the physical world are migrating some aspects of their operations to the online world, and that this trend may intensify in the future. As they move to the Internet, these industries may wish to rely on the same codes to replicate their structures in the networked environment, including the DNS. Excluding the registration of the ISO 3166 codes as domain names may, under certain circumstances, unfairly hamper those industries in their on-line activities, by establishing an overly exclusive linkage between the codes in question and the country domains.

(ii) Certain ISO 3166 country codes correspond to the acronyms of other identifiers, in particular trademarks. Excluding the codes from registration in the DNS would prevent such other identifiers from being registered as domain names without seeming justification.

292. In light of the above considerations, we no longer subscribe to the view that the ISO 3166 country code elements should be excluded from registration in the new gTLDs under all circumstances. Nonetheless, we remain concerned that, depending on the manner in which these codes are registered and used in the DNS, confusion may be created with the ccTLDs. That being the case, we believe that the proper focus should be on the avoidance of confusion with regard to those codes, rather than on an absolute prohibition of their registration and use.

293. If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimizes the potential for confusion with the ccTLDs.

#### 12. Transcript from Reserved

Names Working Group meeting in Lisbon, Portugal, 24 March 2007,

[href="http://www.icann.org/meetings/lisbon/transcript-gnso-new-gtlds-24mar07..."](http://www.icann.org/meetings/lisbon/transcript-gnso-new-gtlds-24mar07...)><http://www.icann.org/meetings/lisbon/transcript-gnso-new-gtlds-24mar07....>

#### 13. GAC Principles on New gTLDs,

[href="http://gac.icann.org/web/communiques/gac27com.pdf"](http://gac.icann.org/web/communiques/gac27com.pdf)><http://gac.icann.org/web/communiques/gac27com>.

#### 14.

##### RFCs & BCPs

RFC 920, [href="ftp://ftp.rfc-editor.org/in-notes/pdf/rfc920.txt.pdf"](ftp://ftp.rfc-editor.org/in-notes/pdf/rfc920.txt.pdf)><ftp://ftp.rfc-editor.org/in-notes/pdf/rfc920.txt.pdf>

RFC 952, [href="ftp://ftp.rfc-editor.org/in-notes/pdf/rfc952.txt.pdf"](ftp://ftp.rfc-editor.org/in-notes/pdf/rfc952.txt.pdf)><ftp://ftp.rfc-editor.org/in-notes/pdf/rfc952.txt.pdf>

RFC 1032, href="<ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1032.txt.pdf>"><ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1032.txt.pdf>

RFC 1034, <ftp://ftp.rfc-editor.org/in-notes/rfc1034.txt>

RFC

1035, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1035.txt.pdf>

RFC 1123, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1123.txt.pdf>.

RFC 1535, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1535.txt.pdf>.

RFC 1591, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1591.txt.pdf>

RFC 1815, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1815.txt.pdf>

RFC 3454, <http://www.ietf.org/rfc/rfc3454.txt>

RFC 3490, Internationalizing Domain Names in Applications (IDNA), <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc3490.txt.pdf>

RFC 3491, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc3491.txt.pdf>

RFC 3492, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc3492.txt.pdf>

RFC 3743, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc3743.txt.pdf>

RFC 4185, National and Local Characters for DNS Top Level Domain (TLD) Names (<ftp://ftp.rfc-editor.org/in-notes/pdf/rfc4185.txt.pdf>).

RFC 4290, Suggested Practices for Registration of Internationalized Domain Names (<ftp://ftp.rfc-editor.org/in-notes/pdf/rfc4290.txt.pdf>).

RFC 4690, Review and Recommendations for Internationalized Domain Names (<http://www.ietf.org/rfc/rfc4690.txt>).

<http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt>

<http://www.ietf.org/internet-drafts/draft-faltstrom-idnabis-tables-01.txt>

BCP 18, IETF Policy on Character Sets and Languages (<http://www.rfc-editor.org/rfc/bcp/bcp18.txt>).

15. The GNSO IDN Working Group used the following definition of 'character': "a member of a set of elements used for the organization, control, or representation of data." This definition is identical to the definition appearing in ISO 10646 (<http://std.dkuug.dk/JTC1/SC2/WG2/>) and appears in the Unicode Consortium definition of 'character' (<http://www.unicode.org/glossary/#C>).

16. Definition of character used by GNSO IDN Working Group: [http://idn.wat.ch/wiki/index.php?title=Working\\_Definitions#.E2.80.9Ccharacter.E2.80.9D](http://idn.wat.ch/wiki/index.php?title=Working_Definitions#.E2.80.9Ccharacter.E2.80.9D).

17. January 2002 Internet Draft, written by Paul Hoffman, <http://www.icann.org/committees/idn/draft-hoffman-i18n-terms-05.txt>

18. ISO 10646 Technical Report: Information Technology - An operational model for characters and glyphs (1998), <http://std.dkuug.dk/JTC1/SC2/WG2/docs/tr15285:1998.pdf>

19. 30 March 2007 Letter from Bruce Tonkin to Janis Karklins, <http://gnso.icann.org/correspondence/tonkin-to-karklins-30mar07.pdf>.
20. 16 April 2007 GAC-GNSO New gTLD Committee Teleconference transcript, <http://gnso.icann.org/meetings/transcript-gac-gnso-new-gtlds-16apr07.pdf>.
21. 13 June 2002 IDN Committee paper on Non-ASCII TLD Policy Issues, <http://www.icann.org/committees/idn/non-ascii-tld-paper-13jun02.htm>.
22. 13 June 2002 IDN Committee paper on Registry Selection Considerations for Non-ASCII TLDs, <http://www.icann.org/committees/idn/registry-selection-paper-13jun02.htm>
23. Link to Outcomes Report of the GNSO IDN Working Group: <http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>.
24. RN WG Teleconference 1 March 2007, expert consultation on IDNs with Cary Karp and Ram Mohan, <http://gnso.icann.org/meetings/transcript-rn-wg-01mar07.pdf>.
25. GAC, GNSO, ccNSO Workshop on IDNs, 28 March 2007, <http://www.icann.org/meetings/lisbon/transcript-idn-wg-28mar07.htm>.
26. GAC-GNSO New gTLD Committee Teleconference, 16 April 2007, <http://gnso-audio.icann.org/gtld-gac-20070416.mp3>.
27. Information on current gTLD registry implementations of IDNs is available at the following links:
  - .BIZ - <http://www.neulevel.biz/idn/>
  - .INFO - [http://www.afiliias.info/faqs/idn\\_registrant\\_faq](http://www.afiliias.info/faqs/idn_registrant_faq)
  - .MUSEUM - <http://about.museum/idn/>
  - .ORG - <http://www.pir.org/GetAOrg/IDN.aspx>
  - .COM/.NET - <http://www.verisign.com/information-services/naming-services/internationalized-domain-names/index.html>.
28. 27 June 2002 IDN Committee Final Report, <http://www.icann.org/committees/idn/final-report-27jun02.htm>.
29. Unicode Consortium, Chapter 4, <http://www.unicode.org/versions/Unicode4.0.0/ch04.pdf>.
30. Panel discussion on IDNs at Yale University, Access to Knowledge Conference, 27 April 2007, [http://research.yale.edu/isp/a2k/wiki/index.php/Internationalized\\_Domain\\_Names](http://research.yale.edu/isp/a2k/wiki/index.php/Internationalized_Domain_Names)

## **ANNEX THREE -- TAGGED NAMES SUB GROUP REPORT**

### **GNSO new TLDs Committee**

### **Reserved Names Working Group**

### **Sub-Group Report - Tagged Names**

## **DEFINITION**

Tagged Names	All labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")
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## EXECUTIVE SUMMARY

1. This Report contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding tagged names.
2. Chuck Gomes and Patrick Jones served as the subgroup for this report.
3. The recommendations of this report were approved by the full RN-WG.
4. There was no disagreement with the recommendations and hence no minority positions.
5. The table below contains the recommendations for ASCII tagged names as well as one recommendation with regard to application requirements for IDN gTLDs. Note that the concept of tagged names is not applicable because only ASCII names are allowed in the DNS.

SoW number (RN-WG 30-day extension SoW)	Reserved Name Category	Domain Name Level(s)	Recommendation
Recommendation task 4	Tagged Names	Top Level ASCII	In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the top level.[30]
Recommendation task 4	N/A	Top Level IDN	For each IDN gTLD proposed, applicant must provide both the "ASCII compatible encoding" ("A-label") and the "Unicode display form" ("U-label") [31] For example: <ul style="list-style-type: none"> <li>• If the Chinese word for 'Beijing' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lq90i) and the U-label (北京).</li> <li>• If the Japanese word for 'Tokyo' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lqs71d) and the U-label (東京).</li> </ul>

SoW number (RN-WG 30-day extension SoW)	Reserved Name Category	Domain Name Level(s)	Recommendation
Recommendation task 4	Tagged Names	2 <sup>nd</sup> Level ASCII	The current reservation requirement be reworded to say, " <i>In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq-1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the second (2<sup>nd</sup>) level.</i> [32] - added words in italics. (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)
Recommendation task 4	Tagged Names	3 <sup>rd</sup> Level ASCII	All labels with hyphens in both the third and fourth character positions (e.g., "bq-1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the third (3 <sup>rd</sup> level) for gTLD registries that register names at the third level." <i>[33] - added words in italics. (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)</i>

## Supporting Information

### 1. Background

All existing ICANN registry agreements as of 25 April 2007 contain the requirement for gTLD registries to reserve all labels with hyphens in the third and fourth positions (e.g., "xn--ndk061n"). This requirement comes directly from the approved technical standards for Internationalized Domain Names (IDNs) (found on the ICANN website at <http://www.icann.org/topics/idn/implementation-guidelines.htm>). Note that this reservation requirement does not specify any domain name level, so it is assumed that it applies to all levels of names registered by a given gTLD registry.

Only ASCII characters are permitted in the Domain Name System (DNS) thereby limiting characters to the letters a-z, the numbers 0-9 and the hyphen-dash (-), the last of which cannot be the first or last character of a domain name. Consequently, to be able to allow representation of domain names in non-ASCII characters, standards were developed in the Internet Engineering Task Force (IETF) that map international scripts to strings of ASCII characters. Those standards require that all ASCII representations of IDNs begin with a 4-character prefix with hyphens in the third and fourth positions.

The current prefix is "xn--". To avoid confusion of IDNs with ASCII names having the same prefix, it is necessary to reserve the "xn--" prefix. Prior to the finalization of the IDN standards, other prefixes were used,

the most recent of which was "bq--". At that time, speculators started registering ASCII names with the "bq--" prefix. To avoid this possibility with future prefixes, it was decided to reserve all prefixes of this form.

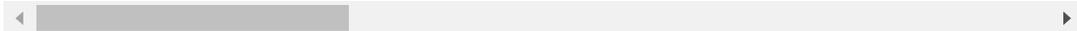
It is also important to note that the current prefix might need to be changed in the future. If that happens, confusion will be avoided by the fact that all labels with hyphens in the third and fourth positions are reserved.

For further information regarding IDNs, please refer to the ICANN Internationalized Domain Names (IDN) information area: <http://www.icann.org/topics/idn/>.

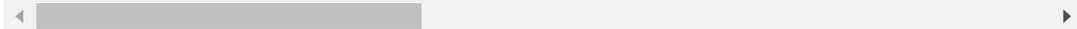
## 2. Rationale for the recommendations

The role of the tagged name reservation requirement is to be able to provide a way to easily identify an IDN label in the DNS and to avoid confusion of non-IDN ASCII labels. Implicit in this role is the need to reserve tagged names for future use in case the ASCII IDN prefix is changed.

The rationale for the recommendations of tagged ASCII names then is to avoid user confusion that



The reason for recommending that applicants for IDN gTLDs be required to provide both the A-label]



## 3. Consultation with experts

The Tagged Name Subgroup relied on the advice of Ram Mohan (Chair of the GNSO IDN Working Group, Member of the ICANN President's IDN Committee, and Member of the ICANN IDN Guidelines Working Group), Cary Karp (Member of the GNSO IDN Working Group, Member of the ICANN President's IDN Committee, and Member of the ICANN IDN Guidelines Working Group) and Tina Dam (ICANN IDN Program Director) as experts and did not believe that additional expert consultation was needed for the topic of tagged name reservations. On 1 March 2007 a full WG consultation with Ram, Cary and Tina was held to assist in the finalization of reports for other reserved name categories with regard to IDNs.

The following questions were asked of Ram and Tina:

Would it be possible to only reserve a subset of the tagged names of the form character-character-dash-dash instead of all 1296 variations?

If so, how big a subset would be needed?

Would we need feedback from the technical community in this regard?

If so, who do you think we should contact in that regard?

Here is Ram's response:

"The IETF has defined "xn--" for IDNA, as you know. It is safe to say that questions of defining a subset of the available CCHH range should definitely be run by the IAB, with a note sent to the IAB Chair (Leslie).

"To your question regarding how big a subset would be "needed", the fact is that all CCHH names are restricted so that we don't have charlatans who sell unwitting customers some other CCHH name(s) that will absolutely not work with the existing technical protocols for resolving IDN names worldwide. Therefore, my sense is that it is much safer to restrict all CCHH combinations than to allow just a few, because the end-user is just not going to be able to tell the difference between a legitimate IDN name and an illegitimate one."

Here is Tina's response:

". . I agree with Ram. There is no reason currently to believe that the xn prefix will change but I still think it might be a good pre-caution to keep all labels with "--" in third and fourth place reserved.

One additional comment. The reservation of these kinds of labels must include a process for allowing such reserved labels to be registered (at the time where internationalized top level labels are available for registration) and possible some reference to the Unicode version of that label (following the IDNA protocol) is reserved as well. The latter is to make sure that both the stored and displayed names are reserved together. More specific and clear terminology for the stored/displayed label will come for the protocol revision work. As soon as this is available I will send you another note for potential inclusion in the RN-WG work."

Numerous exchanges occurred involving Tina and Ram to clarify Tina's suggestion regarding Unicode versions of labels. Rather than pasting all of the email (the full mail archive is found at <http://forum.icann.org/lists/gnso-idn-wg/>), we report that the basic suggestion is that, for any IDN gTLDs that are proposed, the applicant should be required to provide the "ASCII compatible (ACE) form of an IDNA valid string" representations along with the corresponding Unicode representation to ensure that there is a one-to-one mapping between the "ASCII compatible (ACE) form of an IDNA valid string" and Unicode representations.

Tina also reported that clearer terminology will come from the protocol revision group and suggests that all IDN related WGs incorporate this terminology. It is expected that the protocol revision, soon to be released, will likely recommend against the use of the term "punycode string" and instead recommend the use of "ASCII compatible (ACE) form of an IDNA valid string". She went on to clarify that "an IDNA valid string is a string that fulfills the requirements of the IDNA protocol" and noted that "the protocol document goes into further details of what this means". She suggested using the following term: "ASCII compatible (ACE) form of an IDNA protocol valid string". Finally, she stated that under the revised protocol, "Every ACE label will begin with the IDNA ACE prefix, 'xn--'."

#### 4. Summary of Relevant Information Sources

##### a. ICANN Registry Agreement Requirements

All 16 existing gTLD registry agreements posted on ICANN's website as of 2 February 2007 (.aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel) contain the following requirement<sup>[34]</sup>

Except to the extent that ICANN otherwise expressly authorizes in writing, the Registry Operator shall reserve names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

**C. Tagged Domain Names.** All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n").

**ICANN also has ccTLD Sponsorship Agreements and MOUs in place with 12 ccTLD managers.<sup>[35]</sup> Each of those agreements contains the following requirement on tagged names:**

4. Tagged Domain Names. In addition, domain names in the Delegated ccTLD (excluding sub-domain names under domains registered to third parties) having labels with hyphens in the third and fourth character positions (e.g., "rq--1k2n4h4b") are reserved from initial (i.e. other than renewal) registration, except as authorized by ICANN policy or by written exception from ICANN.<sup>[36]</sup>

- b. RFC 3490 (found at <http://www.faqs.org/rfcs/rfc3490.html>), Internationalizing Domain Names in Applications (IDNA)[37]

The Introduction of RFC 3490 says:

"IDNA works by allowing applications to use certain ASCII name labels (beginning with a

< [REDACTED] >

"To allow internationalized labels to be handled by existing applications, IDNA uses an

< [REDACTED] >

Section 5 (ACE Prefix) reads:

"The ACE prefix, used in the conversion operations (section 4), is two alphanumeric A

< [REDACTED] >

"The ACE prefix for IDNA is "xn--" or any capitalization thereof. This means that an ACE

< [REDACTED] >

"While all ACE labels begin with the ACE prefix, not all labels beginning with the ACE p

< [REDACTED] >

- c. RFC 3492, Punycode: A Bootstring encoding of Unicode for Internationalized Domain Names in Applications (IDNA), March 2003[38]

The Introduction of this RFC says the following:

"[IDNA] describes an architecture for supporting internationalized domain names. Labels containing non-ASCII characters can be represented by ACE labels, which begin with a special ACE prefix and contain only ASCII characters. The remainder of the label after the prefix is a Punycode encoding of a Unicode string satisfying certain constraints. For the details of the prefix and constraints, see [IDNA] and [NAMEPREP]."

- d. GNSO Preliminary Issues Report Policy Issues relating to IDN at the top-level, 28 May 2006[39]

An introduction of PUNYCODE is provided in this document:

"Punycode is a bootstring encoding that will convert the local characters in a domain name into the limited character set that is supported by the DNS. The encoding is applied to each component of a domain name and a prefix 'xn--' is added to the translated Punycode string. For example, the first component of the domain name rødgrødmedfløde.dk becomes 'xn--rdgrdmedfide-vjbdg', and the domain will be represented as xn--rdgrdmedfide-vjbdg.dk. This kind of encoding would apply for top-level labels with characters from non-Latin scripts."

- e. Informational RFC 4690, Review and Recommendations for Internationalized Domain Names (IDNs), September 2006[40]

The following excerpt relates to the possibility of the need to change the Punycode prefix:

"It is worth noting that sufficiently extreme changes to IDNA would require a new Punycode prefix, probably with long-term support for both the old prefix and the new one in both registration arrangements and applications. An alternative, which is almost certainly impractical, would be some sort of "flag day", i.e., a date on which the old rules are simultaneously abandoned by everyone and the new ones adopted. However, preliminary analysis indicates that few, if any, of the changes recommended for consideration elsewhere in this document would require this type of version change. For example, suppose additional restrictions, such as those implied above, are imposed on what can be registered. Those restrictions might require policy decisions about how labels are to be disposed of if they conformed to the earlier rules but not to the new ones. But they would not inherently require changes in the protocol or prefix."

- f. Internet Draft, Proposed Issues and Changes for IDNA - An Overview, October 16, 2006[41]

Section 5, The Question of Prefix Changes, says the following:

"The conditions that would require a change in the IDNA "prefix" ("xn--" for the version

"5.1. Conditions requiring a prefix change

"An IDN prefix change is needed if a given string would resolve or otherwise be in

he conversion of a Punycode string to Unicode yields one string under IDNA20

An input string that is valid under IDNA2003 and also valid under IDNA200x

Note, however, that if the input string is valid under one version and not v

A fundamental change is made to the semantics of the string that is inserte

Sufficient characters are added to Unicode that the Punycode mechanism f

- g. Internet Draft, Proposed Issues and Changes for IDNA - An Overview (IDNAbis Issues), February 23, 2007[42]

(Note: This is version 01, an update to the previously listed Internet Draft of the same name, version 00.)

Section 8.1, Design Criteria, says the following regarding tagged names:

"3. Anyone entering a label into a DNS zone must properly validate that label -- i.e., b

◀ [REDACTED] ▶

Any label that contains hyphens as its third and fourth characters MUST be

◀ [REDACTED] ▶

Section 8.3, The Question of Prefix Changes, says:

"The conditions that would require a change in the IDNA "prefix" ("xn--" for the version

◀ [REDACTED] ▶

"8.3.1. Conditions requiring a prefix change

"An IDN prefix change is needed if a given string would resolve or otherwise be inte

◀ [REDACTED] ▶

he conversion of a Punycode string to Unicode yields one string under IDNA20

◀ [REDACTED] ▶

n input string that is valid under IDNA2003 and also valid under IDNA200x yi

◀ [REDACTED] ▶

Note, however, that if the input string is valid under one version and not v

◀ [REDACTED] ▶

fundamental change is made to the semantics of the string that is inserted

◀ [REDACTED] ▶

sufficiently large number of characters is added to Unicode so that the Pun

◀ [REDACTED] ▶

"Section 8.3.2, Conditions not requiring a prefix change, says:

"In particular, as a result of the principles described above, none of the following

◀ [REDACTED] ▶

prohibition of some characters as input to IDNA. This may make names that are now

◀ [REDACTED] ▶

djustments in Stringprep tables or IDNA actions, including normalization definit

◀ [REDACTED] ▶

changes in the style of definitions of Stringprep or Nameprep that do not alter t

## ANNEX FOUR -- NIC/WHOIS/WWW SUB GROUP REPORT

### GNSO new TLDs Committee

### Reserved Names Working Group

### Sub-Group Report - NIC, Whois, www

## DEFINITION

NIC, Whois & www

Names reserved for registry operations at the second-level

## EXECUTIVE SUMMARY

1. This Report contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding Names Reserved for Registry Operations, NIC, Whois and www.
2. Tim Denton served as a one-person subgroup for this category with support from Chuck Gomes and ICANN staff in the preparation of the final subgroup report.
3. The recommendations of this report were approved by the full RN-WG.
4. There was no disagreement with the recommendations and hence no minority positions.
5. The table below contains the recommendations for Names Reserved for Registry Operations, NIC, Whois and www.

SoW number (RN-WG 30-day extension SoW)	Reserved Name Category	Domain Name Level(s)	Recommendation
Recommendation task 5	NIC, Whois, www	Top level, ASCII	The following names must be reserved: NIC, Whois, www.
Recommendation task 5	NIC, Whois, www	Top level, IDN	Do not try to translate NIC, Whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.

<b>SoW number</b> (RN-WG 30-day extension SoW)	<b>Reserved Name Category</b>	<b>Domain Name Level(s)</b>	<b>Recommendation</b>
Recommendation task 5	NIC, Whois, www	2 <sup>nd</sup> level, ASCII	The following names must be reserved for use in connection with the operation of the registry for the Registry TLD: NIC, Whois, www. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN.
Recommendation task 5	NIC, Whois, www	2 <sup>nd</sup> level, IDN	Do not try to translate NIC, Whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries.
Recommendation task 5	NIC, Whois, www	3 <sup>rd</sup> level, ASCII	For gTLDs with registrations as the third level, the following names must be reserved for use in connection with the operation of the registry for the Registry TLD: NIC, Whois, www. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN.
Recommendation task 5	NIC, Whois, www	3 <sup>rd</sup> level, IDN	For gTLDs with registrations at the third level, do not try to translate NIC, Whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries.

## Supporting Information

### 1. Background

In all gTLD registry agreements as of 25 April 2007, the following three names are reserved for use in connection with the operation of the registry for the Registry TLD.

NIC

Whois

www

All 16 of the current gTLD registry agreements prohibit these from being used by any other gTLD registry at the second-level: .aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel.

Fourteen (14) out of 16 agreements have a successor rights clause that specifies that the Registry Operator may use them, but upon conclusion of the Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN. These include the following 14 agreements: .aero, asia, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .pro, .tel and .travel. The successor rights clause does not appear in the cases of: .biz, .org.

Names	Registries affected	Successor Rights clause not found in	Who may use the names
NIC Whois www	.aero, asia, .biz, .cat, .com, .coop, .info, .jobs, .mobi, .museum, .name, .net, .org, .pro, .tel and .travel	.biz, .org	Only the registries in question, no one else

In the course of the work, the question arose whether to reserve `html`, `http` and `https`. That issue is dealt with in the report on ICANN and IANA reserved names. Because the names which this report addresses (NIC, Whois, www) are for registry operational uses and because there does not seem to be any identified registry operational need for `html`, `http` and `https`, it is not recommended that `html`, `http` and `https` be added to this category.

## 2. Rationale for the recommendations

The rationale for the reservation of these ASCII names below the top level for use by registry operators is based upon long standing and well established use of these strings by registry operators (both gTLDs and ccTLDs) in connection with normal registry operations.

At the top level, use of NIC, Whois or www could possibly cause user confusion with regard to uses of the same names below the top-level by certain registry operators. In the case of Whois at the top level, if there ever was a centralized or universal Whois service, the use of a 'Whois' top level domain would seem to be a natural TLD for that use. In the case of www at the top level, there could possibly be confusion at the application level with regard to URLs that often include www.

Regarding the IDN implications of these three names, there are two primary reasons why no general reservation requirement is recommended: 1) these names are "integral designators" in Internet usage and as such were never intended to be used with translation; 2) in many scripts, it is difficult or impossible to translate or transliterate acronyms or unique strings. In cases where it is possible to find translated or transliterated versions of NIC, Whois or www, the applicable registry operators could reserve such IDN names on a case-by-case basis.

## 3. Consultation with experts

Three kinds of questions arose in connection with these names: 1) Why is there a difference in the reservation of names for .biz and .org (successor rights clause)? 2) Based on general principle, should these

names be reserved? 3) Should IDN versions of the names be reserved? Each of these questions is discussed in the subsections below.

### 3.1 Successor rights clause

The successor rights clause does not appear in the registry agreements of .biz and .org. Upon inquiry of Jeff Neuman, Senior Director, Law and Advanced Systems, of NeuStar, operator of .biz, he replied:

"To tell you the truth, we did not focus on this exhibit at all during the renegotiation and did not realize that this was any different than the other operators. Any deviation from the original 2001 agreement we signed was inadvertent and missed by both us and ICANN during the renegotiations."

David Maher, Senior Vice President, Law and Policy, of the Public Interest Registry, wrote as follows:

"The answer appears to be that these second level names are in use. They were registered before there was a policy limiting their use. If the registrations were ever terminated, then they would become reserved."

### 3.2 Reservations of these names in principle

The official contact people within top-level and country code registries were consulted via email and in one case by telephone. Responses were received from representatives of .aero, .org, .name, .travel, .biz, .museum and .jobs.

David Maher of .org responded: "Yes, the names should be kept reserved."

Marie Zitkova of .aero responded as follows:

1) As a registry, do you wish to keep those names reserved?

"Yes, these names are traditionally used by TLDs to designate specific functions key to the operation of registry and it makes sense for ICANN to maintain a certain standard across the board."

2) If they were not reserved, what actions would you take to protect your interests in those names?

"I am not sure I understand the question. First, these names were reserved from day 1 so no such question ever came up and it cannot come up anymore because the names are in use.

"Second, I certainly do not understand what is implied by 'our interest' in those names. We are not talking about trade names or trademarks. Surely, the reservation above was mandated not because of an interest of any individual sponsor or registry operator but because it makes sense for the entire system of TLDs to have some minimum level of predictability to locate elementary functions associated with the operation of the TLD.

"Third, and that is answering the very hypothetical question what would happen before the launch of our TLD if these three names were not reserved by ICANN. We are a Sponsor of a sponsored TLD, availability of names and eligibility criteria for the registration would be determined by the policies set by the Sponsor in consultation with the sponsored community and in the best interests of the aviation community, same process as we follow in all other cases, and the Registry Operator would implement those policies upon the request from the Sponsor."

Hakon Haugnes of .name responded:

"1) Yes, they are in use and are expected to exist by the community.

2) They are in use by the Registry so I guess that would be protection enough. It would be silly to have to defend them under UDRP, for example. We believe, though, that they belong to the Registry and not to the Company, of course.

"I must admit I am not fully aware of the work of the WG, but what would be the purpose of not making them reserved?"

Cherian Mathai of .travel was reached by telephone. When asked whether he wanted those three names reserved, he responded "yes".

Eric Brown of .biz responded as follows:

"1. We believe that NIC and WHOIS should remain reserved. They are used to denote functionality to the .BIZ registry. For example, if one types in WHOIS.BIZ, they will be taken to our official WHOIS website for .BIZ domain names. In addition, with respect to NIC.BIZ, this is essential to keep reserved as well. This is because there are a number of people that do not know who a particular registry operator is and therefore have no way to get to the official registry site. NIC.TLD is important because it is a predictable place that one could (and should) always go when they know the TLD, but not the operator.

"2. It is not that we believe we have some sort of intellectual property rights in the names so there are no actions we would take to protect it from an IP perspective. However, to not reserve these names (at least NIC and WHOIS), would cause confusion among consumers looking for the official WHOIS database of the TLD or looking for the official website of the registry (when they do not know the name)."

Cary Karp of .museum responded as follows:

1) As a registry, do you wish to keep those names reserved?

". . . in my conceptual frame of reference, reservation places constraints on the circumstances under which a name may be registered. By definition, the reservation is terminated (or suspended, if you'd prefer) when that registration takes place. If such name should subsequently ever be removed from the DNS it could be placed back on the reserved list. In the hope that it properly answers your question, that is what I would intend to happen with the labels NIC, Whois, and www if they are ever removed from the .museum zone."

2) If they were not reserved, what actions would you take to protect your interests in those names?

"If they had not been reserved we would have protected our interests in them by registering them in precisely the manner that we have."

Ray Fassett of .jobs responded as follows:

1) As a registry, do you wish to keep those names reserved?

"Before I can answer this question, I must qualify how I define a reserved name: A name that is prohibited to be allocated by the TLD operator to a third party of the contract.

"I believe it is appropriate for the names *www*, *NIC*, and *Whois* to be prohibited from allocation by the TLD operator to a third party of the contract."

2) If they were not reserved, what actions would you take to protect your interests in those names?

"I believe an interest - or expectation - from the user community has evolved for these 3 names more so than an 'interest' to us as the TLD operator in need of 'protecting'. Given the hypothetical nature of this question, the best I can answer would be an action felt to be in the best interests of the HR Community, consistent to the mission of *.jobs*."

It is likely that these names could be removed from the reserved list by negotiation between each registry and ICANN, if they thought this was to their respective advantages. Second, the fact that these names were not in contention suggests that the reservation of these names is not controversial.

To generalize from a few respondents, it appears that country codes are rather freer to follow less consistent policies. Michael Haberler of *.at* wrote:

"What we did in the past is register 'interesting' (which might be contentious if held by the wrong party) names like *www.at*, *internet.at* etc. on trustworthy registrants, like ourselves, or the ISP association. We do register others for our own purposes or likely fields of activity. But conceptually that's just a registration, not a reservation. We had the issue come up with registrars bitching about it and I just told them that we reserve the right to acquire names for our own purposes, and that's it, period."

Sabine Dolderer (representing *.de* at the time) responded as follows:

1) Does *.de* have reserved names?

"We have only some minor restrictions for domains which could not be registered but that are no real reservations. They are:

- No domain name with less than 3 characters is allowed
- No domain name which is equal to an existing TLD is allowed (actually only *com/net/org/edu/int*) because of problems related to RFC1535
- No domains which are equal to local community car plate numbers are allowed. This is done because when the rule was created it was unclear if one would need a future structuring mechanism."

2) Does it reserve */NIC*, *www/*, and or */Whois/*?

"No."

3) Does it give a reason for these reservations, if it has them?

"The reason for reserving 2-character and existing TLDs is because of problems with TLD.TLD as described in RFC 1535. Car plate numbers were reserved because of the potential structuring issue. The reasons are no longer really valid but most have 1- or 2-character abbreviations."

Canada's Bernard Turcotte wrote back in relation to *.ca* that these names are not reserved in the case of CIRA, but that, on reflection, he thought they ought to have been reserved.

A more systematic process of consultation with country code operators might enlighten us about their practices but would not be directly pertinent to whether the three names should be reserved at the generic TLD level.

### 3.3 Consultations with IDN experts

Regarding the IDN implications of these three names, both Cary Karp and Ram Mohan were consulted in a teleconference call held on March 1, 2007. The advice received was that these names were "integral designators" to be used "without translation". In other words, there was no need to reserve these strings in other languages. Ram Mohan suggested "Find the equivalent and reserve them at that time" and added "Don't try to translate them", referring to the acronyms and/or abbreviations."

## 4. Summary of Relevant Information Sources

The primary source of information for this category of reserved names is the set of ICANN-registry agreements, found at <http://www.icann.org/registries/agreements.htm> In particular refer to the Schedule of Reserved Names appendix for each agreement (Appendix 6 in most cases).

There do not appear to be any documented rationales or explanations.

## ANNEX FIVE -- GEOGRAPHICAL AND GEOPOLITICAL NAMES SUB GROUP REPORT

### GNSO new TLDs Committee

### Reserved Names Working Group

### Sub-Group Report

### Geographic and Geopolitical Names

10 May 2007

## DEFINITIONS

Geographical Names	Geographical names refer to those names in the ISO 3166-1 list (e.g., Portugal, India, Bra: China, Canada) & names of territories, distinct geographic locations (or economies), and other geographic names as ICANN may direct from time to time.
Geopolitical Names	The reserved name category titled 'Geographic and Geopolitical Names' is contained in a subset of existing ICANN registry agreements. Geopolitical names is a term that has not been widely used within the broader geographical identifier discussion. In fact, the term is only used once in a parenthetical in the entire WIPO II Process final report. See <a href="http://www.wipo.int/amc/en/processes/process2/report/html/report.html">http://www.wipo.int/amc/en/processes/process2/report/html/report.html</a> Paragraph 55.

## EXECUTIVE SUMMARY

1. This Report contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding Geographical and Geopolitical Names
2. The Reserved Names Working Group on Geographical and Geopolitical Names was composed of Alistair Dixon, Caroline Greer, Michael Palage, and Tim Ruiz.

3. The Working Group on Geographical and Geopolitical Names reached unanimous agreement on the recommendations in this report.
4. There was no disagreement with the recommendations and hence no minority positions.
5. The table below contains the consensus recommendations for Geographic and Geopolitical Reserved Names.

<b>SoW number</b> (RN-WG 30-day extension SoW)	<b>Reserved Name Category</b>	<b>Domain Name Level(s)</b>	<b>Recommendation</b>
Recommendation task 6	Geographical	Top Level (ASCII and IDN)	<p>There should be no geographical reserve names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or loc governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not a violation of the national laws in which the applicant is incorporated.</p> <p>However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC principles, and the advisory role vested in it under the ICANN bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested in the GAC under the ICANN bylaws.</p>

SoW number (RN-WG 30-day extension SoW)	Reserved Name Category	Domain Name Level(s)	Recommendation
Recommendation task 6	Geopolitical	All Levels (ASCII and IDN)	The term 'geopolitical names' should be avoided until such time that a useful definition can be adopted. The basis for this recommendation is founded on the potential ambiguity regarding the definition of the term, and the lack of any specific definition of it in the WIPO Second Report on Domain Names or GAC recommendations.
Recommendation task 6	Geographical	Second Level & Third Level if applicable	<p>The consensus view of the working group given the lack of any established international law on the subject, conflicting legal opinions, and conflicting recommendations emerging from various governmental fora, the current geographical reservation provision contained in the sTLD contracts during the 2004 Round should be removed, and harmonized with the more recently executed .COM, .NET, .ORG, .B and .INFO registry contracts. The only exception to this consensus recommendation is those registries incorporated/organized under countries that require additional protection for geographical identifiers. In this instance, a registry would have to incorporate appropriate mechanisms to comply with their national/local laws.</p> <p>For those registries incorporated/organized under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly, it is strongly recommended (but not mandated) that these registries take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national law of the applicable Member State.</p>

### Supporting Information

## 1. Background

Geographic and geopolitical domain name reservations are a relatively new class of reservations that were first incorporated into the ICANN registry contracts in connection with the 2004 sTLD round. However, the genesis for this type of reservation can be specifically tracked back to ICANN Board resolution 01-92[43] involving issues surrounding the rollout of the .INFO gTLD. This topic has also received significant attention in other International fora, most notably the World Intellectual Property Organization's Second WIPO Internet Domain Name Process (hereinafter WIPO II Process).[44] As the WIPO II Process accurately notes, "[t]his is a difficult area on which views are not only divided, but also ardently held." [45]

It is important to note at the outset that "geopolitical" domain name reservations is a term that has not been widely used within the broader geographical identifier discussion. In fact, the term is only used once in a parenthetical in the entire WIPO II Process final report.[46] Given the lack of any legal construct involving the term geopolitical domain names, it is most prudent to use the terminology contained in the WIPO II Process final report as a framework for discussion. Specifically, geographical identifiers should serve as an umbrella term that includes not only country names, but names of places within countries[47], geographical indications[48], and names of indigenous peoples[49].

The first action by ICANN to affirmatively seek protection for this class of names was in connection with ICANN Board Resolution 01-92. This action was taken by the ICANN Board in response to the 9 September 2001 Government Advisory Committee (GAC) communiqué[50] sent by Dr. Paul Twomey acting in his capacity as GAC Chair which states in relevant part:

**A.** The GAC confirmed that this is an issue of considerable political importance and complexity that merits thorough study by qualified and competent experts. The issue also relates to the overall taxonomy of the DNS and its evolution concerning the expansion of the TLD space.

**B.** ...

**C.** The GAC notes that the issue of geographical and geopolitical names is very complex and the subject of ongoing international discussion. Without prejudice to any future discussions, general policy or international rules in this area, and considering the very special nature of *.info*, and problems that have become apparent with the registration of such names in the sunrise period, the GAC agreed that interim *ad hoc* measures should be taken by ICANN and the Registries to prevent avoidable conflicts in *.info*. The GAC agreed that the use of names of countries and distinct economies as recognized in international fora as second level domains in the *.info* TLD should be at the discretion of the respective governments and public authorities.

It is important to note that GAC communiqué was limited to just the .INFO top-level domain (TLD) citing "the very special nature" of that TLD. Also noteworthy is the fact that none of the other six proof of concept TLDs had formerly launched.[51]

Notwithstanding the narrow construct of the GAC communiqué and the corresponding board action, the new registry contract language resulting from the 2004 sTLD round included several provisions dealing with geographic and geopolitical names which are summarized below.

**E. Geographic and Geopolitical Names.** All geographic and geopolitical names contained in the ISO 3166-1 list from time to time shall initially be reserved at both the second level and at all other levels within the TLD at which the Registry Operator provides for registrations. All names shall be reserved both in English and in all related official languages as may be directed by ICANN or the GAC.

**NOTE: This is the exact provision contained with the .ASIA registry contract. The other 2004 sTLD registry contracts (.CAT, .JOBS, .MOBI, .TEL and .TRAVEL include**

**the same language with the exception of "as may directed by ICANN or the GAC" which has been excluded in these contracts. There is no such corresponding provision in the .AERO, .BIZ, .COM, .COOP, .INFO, .MUSEUM, .NAME, .NET, .ORG or .PRO registry contracts.**

In addition, Registry Operator shall reserve names of territories, distinct geographic locations, and other geographic and geopolitical names as ICANN may direct from time to time. Such names shall be reserved from registration during any sunrise period, and shall be registered in ICANN's name prior to start-up and open registration in the TLD. Registry Operator shall post and maintain an updated listing of all such names on its website, which list shall be subject to change at ICANN's direction. Upon determination by ICANN of appropriate standards and qualifications for registration following input from interested parties in the Internet community, such names may be approved for registration to the appropriate authoritative body.

**NOTE: This is the exact provision contained with the .ASIA registry contract. The other 2004 sTLD registry contracts (.CAT, .JOBS, .MOBI, .TEL and .TRAVEL include the same language but "geographic locations" is replaced by "economies". There is no such corresponding provision in the .AERO, .BIZ, .COM, .COOP, .INFO, .MUSEUM, .NAME, .NET, .ORG or .PRO registry contracts**

## 2. Rationale for the recommendations

As noted above in the WIPO II report, "[t]his is a difficult area in which views are not only divided, but also ardently held."<sup>[52]</sup> Therefore, this subgroup undertook a very cautious approach to ensure that "there is a solid and clear basis in existing international law which can be applied so as to prevent erosion of the integrity of geographical indicators and enhance the creditability of the DNS."<sup>[53]</sup>

The work of this subgroup began with a review of this subgroup's previous work and the final GAC Principles Regarding New gTLDs, specifically Paragraph 2.7 that states in relevant part:

Applicant registries for new gTLDs should pledge to:

A) Adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new TLDs.

B) Ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

In reviewing this GAC principle, the subgroup was concerned about the apparent "rights in gross" that the principle seems to imply in connection with geographic identifiers. This concern was based on several factors. First, the GAC provided no legal basis for their claim. Second, per se rights in gross regarding geographical identifiers were specifically considered in the WIPO II report, but not adopted.<sup>[54]</sup> Third, the GAC principle on its face appears to be inconsistent with the recommendations of the WIPO General Assembly that conducted a multi-year and detailed international consultation on this exact topic. Finally, some of the legal decisions involving geographical identifiers and domain names appear to support the statements in the WIPO II report that concluded that "we have reached the limits of what can be **achieved legitimately** through consultation processes, such as the WIPO Internet Domain Name Processes or any similar ICANN processes." (emphasis added).<sup>[55]</sup>

### Lack of International Legal Authority Cited in the GAC Principles:

In response to the lack of authority cited in the GAC Principles, the subgroup submitted through ICANN staff a list of questions (see Section 3 below) seeking to understand the international legal authority upon which

the GAC Principles were based. While we recognize that the short turn around would likely limit any in-depth response to our inquiries, upon the finalization of this report, no responses had been received.

In the absence of any response from the GAC, the subgroup revisited the comprehensive work of the WIPO on this subject matter, with particular attention focused on the legal treaties that member states have entered into. There are four treaties that provide "a well established framework for the prohibition of the misuse of geographical identifiers at the international, regional and national levels."<sup>[56]</sup> These treaties are the Paris Convention for the Protection of Industrial Property (Paris Convention), to which 162 States are party; the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (the Madrid (indications of Source) Agreement), to which 33 States are party; the Lisbon Agreement for the Protection of Appellations of Origin (the Lisbon Agreement), to which 20 States are party; and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), which has 142 Contracting Parties.<sup>[57]</sup>

This international framework of protection for geographical identifiers consists of two elements: (i) a prohibition of the false descriptions of the geographic source of goods; and (ii) a more extensive set of rules prohibiting the misuse of one class of geographic source indicators, known as geographic indicators."<sup>[58]</sup>

The first element that prohibits the use of false indications of geographical source **on goods** is established in three treaties: the Paris Convention; the Madrid Agreement, and the TRIPS Agreement.<sup>[59]</sup> However, the scope of this protection is primarily limited to goods, and does not extend to services. The WIPO II Report expands upon other potential considerations limiting the extension of these treaties to cover the false use of geographical identifiers in the DNS.<sup>[60]</sup>

With regard to the second element relating to a more extensive set of rules prohibiting the misuse of geographical indications, one needs to refer to Article 22.1 of the TRIPS Agreement that prohibits:

(a) The use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) Any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

"The essential difference between the rules relating to geographical indications and those relating to false indications of geographical source is that the former place emphasis on a certain quality attached to a limited class of geographical terms, rather than establishing a rule of market behaviors which may be violated through the false use of any geographical term."<sup>[61]</sup>

In reviewing the WIPO II report and these treaties, the subgroup could find no legal basis for the recommendations included in the GAC Principles regarding New TLDs.

#### The Non-Existence of Per Se Rights in Gross with regard to Geographical Indicators:

The proposed GAC Principles call for the new gTLDs to provide for "blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new TLDs." This could be interpreted to imply a unilateral claim by governments for rights in gross to an undefined universe of names that they themselves are entitled to establish. Such a claim would be unusual and extraordinary because the WIPO II report specifically analyzed the preference and protection for geographical terms per se, and elected not to recognize such claims. Providing any party rights in gross in connection with a specific designation would be inconsistent with fundamental tenets of international trademark law.<sup>[62]</sup>

*GAC Principles Appear on their Face to be Inconsistent with the WIPO General Assembly*

*Recommendations:*

While respecting the authority of the GAC under the ICANN bylaws to provide advice, the subgroup struggled to reconcile the GAC advice with the output of the WIPO multi-lateral consultative processes. Specifically, the GAC provided no underlying legal analysis to support their expansive claim of rights in gross to a yet undefined list of names of national or geographic significance. This was in contrast to the WIPO processes that described in great detail the underlying legal analysis surrounding the issue, and included an extensive record of written submissions of numerous Member States. It is also important to note that the final recommendations of the WIPO General Assembly called for an administrative process to balance a series of factors prior to making a determination if such use was inappropriate, not a per se claim for rights in gross as claimed in the GAC principles.

Balancing these factors, the subgroup elected to recommend the use of the WIPO General Assembly guidelines, for those registries incorporated under the laws of those Member States that voted in favour of these guidelines.

*Conflicting Legal Decisions:*

The lack of a uniform body of international law on this subject can be easily ascertained by a brief review of a number of legal decisions from various national courts that have dealt with this issue. For example, in litigation involving the domain name solingen.info, a German Federal High Court ruled in favour of the city of Solingen. However, in its ruling the court noted the unique nature of .info and distinguished it from other TLDs such as .com, .biz and .pro. This is an important distinction that was also noted in the original GAC 2001 Communiqué that provided the initial foundation for the discussion.

This ruling is in contrast to a recent decision involving French city of Lavallois Perret that filed suit against 1&1 Internet over the domain name lavallois.tv. In this case the Tribunal de grande instance de Nanterre Ordonnance de référé 30 janvier 2007 Commune de Lavallois Perret / Loïc L., 1 & 1 Internet, ruled against the city of Lavallois Perret and they were ordered to pay 1,000 euros and the costs of the action to 1&1.

In response to these types of legal proceedings, domain name registrants have begun to proactively seek redress through the court system. For example, in response to claims by the city of Paris, the domain name owners of paris.com and paris.tv are now suing the city of Paris in the U.S. Federal Court in New York and Virginia respectively.

Another reason for ICANN to carefully consider imposing via contract any consensus policies not based on sound legal principles, is because of the potential litigation risk that it might be exposing registration authorities to, as was the case in the 1&1 litigation. This concern is even more valid as ICANN has been systematically removing from registry contracts the provision that provided registries indemnification from ICANN in connection with consensus policies that they implement.

*Conclusion*

Protection afforded to Geographic indicators is an evolving area of international law in which a one-size fits all approach is not currently viable. The proposed recommendations of this subgroup are designed to ensure that registry operators comply with the national laws under which they are legally incorporated/organized.

3. Expert Consultation

Listed below are the questions that the group asked ICANN staff to submit to WIPO, the GAC and the ccNSO in connection with its work. If and when responses to the questions are received, it is recommended that the New gTLD Committee or the GNSO Council review and consider them in their deliberations.

As of 10 may 2007, no responses were received.

Question #1 to WIPO:

In Francis Gurry's correspondence to ICANN dated 21 February 2003, in Annex 2 Paragraph 7 (iv) states in relevant part that "the protection should be extended to all future registrations of domain names in generic top-level domains (gTLDs)" citing the Summary by the Chair of the SCT dated 15 November 2002. This appears to be a narrowing of the scope of protection originally sought during the second Special Session of the SCT in May 2002, where the chair concluded that "the protection should be extended to all top-level domains, both gTLD and ccTLDs." However, in document WO/GA/30/2, prepared for the WIPO Generally Assembly and dated 7 August 2003, Paragraph 14 cites the original May 2002 report affording protection of country names in both gTLDs and ccTLDs.

Are WIPO Member States seeking protection for country names in just gTLDs as noted in Summary of the Chair dated 15 November 2002, or protection for country names in both gTLDs and ccTLDs as noted in the May 2002 and August 2003 documentation?

## Question #2 to WIPO

If WIPO Member States are only seeking protection for country names in gTLDs, can WIPO point to any interventions or documentation following the May 2002 report that lead to the narrowing of this protection to just gTLDs?

Question #3 to GAC:

Paragraph 2.7 of the GAC Principles regarding New TLDs states:

Applicant registries for new gTLDs should pledge to:

A) Adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new TLDs.

B) Ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

The scope of this protection on its face appears to represent an expansion of the protection documented through the WIPO Member States in the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications which calls for the following protection:

- (i) Protection should be extended to the long and short names of countries, as provided by the United Nations Terminology Bulletin;
- (ii) the protection should be operative against the registration or use of a domain name which is identical or misleadingly similar to a country name, where the domain name holder has no right or legitimate interest in the name and the domain name is of a nature that is likely to mislead users into believing that there is an association between the domain name holder and the constitutional authorities of the country in question;
- (iii) Each country name should be protected in the official language(s) of the country concerned and in the six official languages of the United Nations; and
- (iv) The protection should be extended to all future registrations of domain names in generic top-level domains (gTLDs).

Can the GAC provide any basis for the broadened scope of protection they are seeking under Paragraph 2.7 of the GAC Principles regarding New TLDs that call for an absolute right of blocking a country's name while apparently abandoning the SCT recommendations that call for legal determination based on a number of factors.

Question #4 to the GAC:

Can the GAC please attempt to reconcile these two different standards. Specifically, the GAC Principles regarding New gTLDs provide the government with "rights in gross" where as the WIPO General Assembly provides a balancing test including several factors for resolving potential challenges.

Question #5 to the GAC:

Coupled with the fact that this specific principle suggests just a "pledge" (not a mandated requirement) on behalf of new gTLD applicants, would the GAC be in support of mandating that registry operators comply with the national laws under which they are incorporated, similar to that of a ccTLD operator?

Question #6 to the GAC and the ccNSO:

Paragraph 261 of the WIPO II Report cites eight ccTLD administrators that have adopted policies for "excluding the names of places in their countries from registration as domain names, at least under certain conditions." Is the GAC or ccNSO aware of a ccTLD administrator that has provided protection for geographic indicators from another county, if so which ones?

Question #7 to the GAC and the ccNSO:

Is the GAC or ccNSO aware of any ccTLD administrator that has provided the protection sought by the GAC in Paragraph 2.7 of the GAC Principles regarding New gTLDs and if so which ones?

#### 4. Summary of Relevant Information Sources

GAC Principles regarding New gTLDs:

[http://gac.icann.org/web/home/gTLD\\_principles.pdf](http://gac.icann.org/web/home/gTLD_principles.pdf)

Second WIPO Internet Domain Name Process

<http://www.wipo.int/amc/en/processes/process2/report/html/report.html>

WIPO General Assembly, Twenty-Eighth (13th Extraordinary) Session; Geneva, September 23 to October 1, 2002

[http://www.wipo.int/documents/en/document/govbody/wo\\_gb\\_ga/index\\_28.htm](http://www.wipo.int/documents/en/document/govbody/wo_gb_ga/index_28.htm)

[http://www.wipo.int/edocs/mdocs/sct/en/sct\\_9/sct\\_9\\_8.pdf](http://www.wipo.int/edocs/mdocs/sct/en/sct_9/sct_9_8.pdf)

WIPO Presentation to the GAC on GIs and WIPOII

<http://gac.icann.org/web/meetings/mtg15/RioPresentations/WIPOSecondProcess/WIPOSecondProcess>

Letter from WIPO to ICANN

<http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm>

GAC Communiqués:

<http://gac.icann.org/web/communiqués/gac10com.htm>

ICANN Board Resolution:

<http://www.icann.org/minutes/minutes-10sep01.htm>

ICANN Country Name Action Plan wrt Afilias (.INFO)

<http://www.icann.org/montevideo/action-plan-country-names-09oct01.htm>

DNSO Resolution on Geographical Identifiers

<http://www.dnso.org/clubpublic/council/Arc06/msg00202.html>

GAC Commentary to DNSO Resolution:

<http://www.icann.org/committees/gac/names-council-resolution-commentary-26oct01.htm>

.COOP Community Names Program involving country names

<http://www.icann.org/tlds/agreements/coop/>

<http://www.nic.coop/information.asp>

[www.coop/downloads/registrars/RegistrarBackgroundInfo.doc](http://www.coop/downloads/registrars/RegistrarBackgroundInfo.doc)

<http://www.australia.coop>

.INFO Country Name Plan of action

<http://www.icann.org/montevideo/action-plan-country-names-09oct01.htm>

## **ANNEX SIX -- Sub-Group Report - gTLD Strings**

**GNSO new TLDs Committee**

**Reserved Names Working Group**

### **Sub-Group Report - gTLD Strings**

**10 May 2007**

#### **DEFINITION**

gTLD Strings	gTLD strings refer to gTLDs (i.e. .com, .net .org, .mobi) that are reserved from registration at the second level and third level where applicable as a contractual condition (e.g., net.travel, org.jobs, mobi.asia). Reservation is based upon the list contained at <a href="http://data.iana.org/TLD/tlds-alpha-by-domain.txt">http://data.iana.org/TLD/tlds-alpha-by-domain.txt</a>
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#### **EXECUTIVE SUMMARY**

1. This Report contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding gTLD reserved names at the second and third level.
2. Ray Fassett, Edmon Chung, and Patrick Jones served as the subgroup for this report.
3. The recommendations of this report were approved by all three of the subgroup members.
4. There were no minority statements from the subgroup members. Minority opinions from individuals from various GNSO constituencies who were not part of the RN-WG are included in Section 3 of this report (Consultation with Experts).
5. The table below contains the recommendation for gTLD reserved names.

SoW number (RN-WG 30-day extension SoW)	Reserved Name Category	Domain Name Level(s)	Recommendation
Recommendation task 8	gTLD Reserved Names	Second & Third Level, IDN (when applicable)	Absent justification for user confusion[63], the recommendation is that gTLD strings should not be reserved from registration for new gTLDs at the second level when applicable at the third level. Applicants for new gTLDs should take into consideration possible abusive uses of existing gTLD strings at the second level of the corresponding gTLD, based on the nature of the gTLD when developing the startup process for their gTLD.

### Supporting Information

#### 1. Background

Language INCLUDED within the main body Registry Agreements for .asia, .biz, .cat, .com, .info, .jobs, .mobi, .net, .org, .travel and .tel (the later modified slightly) states that:

*"Registry Operator shall reserve, and not register any TLD strings appearing on the list of reserved TLD strings attached as Appendix 6 hereto or located at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt> for initial (i.e., other than renewal) registration at the second level within the TLD."*

That particular language is NOT INCLUDED in older TLD Agreements: .aero (2001), .coop (2001), .museum (2001), .name (2001) and .pro (2002) - those TLDs reserve the following names either as per Appendix 11 or Appendix K of their contracts in addition to two letter labels:

- aero
- arpa
- biz
- com
- coop
- edu
- gov
- info
- int
- mil
- museum
- name
- net
- org

pro

## 2. Rationale for the recommendations

Guiding Principle 1: TLD1.TLD2 (e.g., com.travel) has recently been identified as not being a risk to the security and stability of the DNS by an expert technical panel (<http://www.icann.org/registries/rsep/RSTEP-GNR-proposal-review-team-report.pdf>)

Guiding Principle 2: Evidence has not been presented to justify that user confusion would exist as a result of TLD1.TLD2 with the addition of new gTLDs.

Guiding Principle 3: There is market evidence to indicate that TLD1.TLD2 has not resulted in user confusion.

Consultation with ICANN staff identified that this measure was originally put in place by ICANN in order to avoid consumer confusion in relation to 'double' TLD addresses (i.e., TLD1.TLD2 such as com.travel and travel.jobs). For existing gTLDs, reservation of gTLD strings is a contractual condition imposed upon the TLD operator, not a result of ICANN policy development.

As new gTLDs came on board as of 2005, the hyperlink to the IANA list was referenced in the gTLD contract so that there would not be a static list of gTLDs, rather a dynamic list. For contractual compliance, existing registries need to consult this list on an ongoing basis. The goal of the GNSO Dec05 PDP (Introduction of New gTLDs) is to develop an objective process to allow many new gTLDs to exist on the Internet that would have the effect of expanding the IANA list contained at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>.

The primary reasons for the sub-group recommendation are 1) TLD1.TLD2 has recently been identified as not being a risk to the security and stability of the DNS and 2) The potential risk of user confusion for new gTLDs has been balanced against a) the fact that thousands of combinations have existed for an extended period of time for TLD1.TLD2 (e.g. [www.net.com](http://www.net.com), [www.edu.org](http://www.edu.org), [www.jobs.com](http://www.jobs.com), [www.travel.ca](http://www.travel.ca)) without any documented side effects of user confusion to corresponding gTLD strings and b) the anticipation of many new gTLDs to the root zone (and the timing of new gTLDs to the root zone) poses a scalability issue for the management of this reserved names category. As a result, the basis for a given gTLD reservation in a given gTLD string contained at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt> could become confusing for just about anyone to understand the origin of. Scalability of the gTLD reserved names category comes into question under the assumption that an objective process is in place to admit many new gTLD strings at varying points in time in the coming years ahead.

## 3. Consultation with experts

The sub-group did not feel the need to seek additional technical expert advice for the reason ICANN's RSTEP recently provided its expert opinion that TLD1.TLD2 was not a risk to the security and stability of the DNS as follows:

*"<TLD>.<TLD> combinations are already extremely common, including combinations that seem far more likely to cause problems than two-character SLDs within .name, such as net.uk or de.com. **The review team is not aware of any reports of problems attributed to existing <TLD>.<TLD> combinations**" (emphasis added).*

The gTLD Reserved Name sub-group relied upon additional advice provided by members of ICANN's GNSO constituencies. The primary issue at hand for investigation by the sub-group pertained to the potential risk to user confusion as a result of removing gTLD strings as a reserved names category for future, new TLDs. It is always difficult to gauge potential future risk absent empirical evidence. The sub-group recommendation takes into account that the primary goals of the Dec05 PDP will be achieved, which is a process to introduce many new gTLDs in a manner that is objective and can scale with least amount of subjectivity.

The sub-group took appreciation to the fact that conflicting opinion was in fact the result of the initial work of the gTLD reserved names category (i.e., there was not a clear - or majority view - to the issue of user confusion but instead conflicting views). For this reason, the sub-group - during its extended work - chose the initial approach of challenging the view that user confusion would NOT become the result.

Substantive feedback from GNSO constituency members indicated that the burden of potential user confusion should instead be placed upon those that wish to maintain the status quo of gTLD strings as reserved names. Reasons for this included unfair protectionism for existing gTLD operators, scalability concerns, and unfounded claims for potential user confusion where such have not been shown to exist today. Further investigation by the sub-group of Registry Constituency members found that not all members of the Registry Constituency shared the view of potential user confusion.

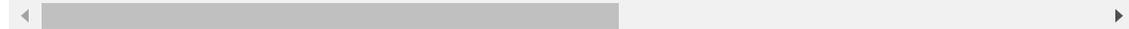
In all, members of the Registry, Registrar, and Business Constituency responded to the sub-group's request for feedback. The concern for potential user confusion was voiced the strongest by members of the Registry Constituency - but not an opinion shared by all Registry Constituency members. Also, there was not consistency of opinion based upon whether the Registry Constituency member is sponsored or unsponsored. For example, some sponsored gTLDs felt there would not be a likelihood of user confusion as result of removing gTLD strings as reserved names for future gTLDs while other sponsored gTLDs had the opposite opinion. Likewise, unsponsored gTLDs offered opposite opinions to the issue of potential user confusion.

Feedback from individual members of the Registrar Constituency and Business Constituency supported the notion that there would not be a likelihood of user confusion as the result of TLD1.TLD2 for new gTLDs. Feedback was not received from the IP Constituency, ISP Constituency, and Non Commercial Users Constituency. The subgroup assumed that this indicates the issue is not of material impact to the respective constituency members, including the issue of potential user confusion as a result of removing gTLD strings as reserved names for new gTLDs.

The sub-group examined the GAC Principles regarding New gTLDs ([http://gac.icann.org/web/home/gTLD\\_principles.pdf](http://gac.icann.org/web/home/gTLD_principles.pdf)) and determined that this recommendation did not go against these principles.

The sub-group examined the fact that technical expert opinion recently, and for the first time, cited that TLD1.TLD2 did not pose a threat to the security and stability of the DNS and therefore questioned whether ICANN should be imposing such a reserved names category upon new TLD operators. In this light, the sub-group did take into account ICANN's Core Value 3:

*To the extent feasible and appropriate, delegating coordination functions to or recognizing the polic*



A common thread of all input received by the sub-group is that gTLD strings can be unreserved without known adverse effect to the security and stability of the DNS. A minority opinion surfaced that any such release of gTLD strings in a new gTLD should be upon some 'condition' for the primary reason of avoiding potential user confusion. The minority opinion was unable to justify that user confusion would exist to substantiate the need for conditional release.

The sub-group members reasoned that those in favor of conditional release would have time to document their justification for potential user confusion in the coming months, such as through various public comment periods inclusive with the Dec05 PDP. In consideration of this, the sub-group has noticeably prefaced its recommendation with: "Absent justification for user confusion..."

The sub-group examined the findings of the GNSO Internationalized Domain Names Working Group (<http://gns0.icann.org/drafts/idn-wg-fr-22mar07.htm>), notably 4.1.5 (Limit Variant Confusion and Collision) and 4.1.6 (Limit Confusingly Similar Strings). The sub-group reasoned that SLD.TLD, where SLD is a

different script than TLD, can already exist in a manner that is ICANN compliant (<http://www.icann.org/topics/idn/>).

Comments the sub-group interpreted as in favor of the recommendation are contained below. (Comments in support of the minority opinion to maintain the status quo to reserve gTLD strings for new gTLDs follow after.)

Marie Zitkova, SITA, .aero registry operator:

*Strictly speaking, the current "system" is favoring incumbents, i.e.,*

*aero.com exists but we are not allowed to register com.aero no matter how much the Coleman airport in the US using this airport code may need it.*

*Also it in no way addresses the same situation in ccTLDs, i.e., coop.cc is perfectly acceptable to ICANN although if we are talking consumer confusion, that is much more likely.*

*b) could be confusing if specific rules are not set. I assume that most registries will not know who will register the released name and cannot guarantee how such names would be used once registered so making a registry-registry agreement does not seem to make much sense. If specific rules are set (such as in case of two char names - to implement measure which prevents confusion), this would create additional eligibility requirement and de facto new eligibility policy for some names set for all TLDs. While this is possible, I am not sure about feasibility for all TLDs.*

Pat Kane, VeriSign, com/net registry operator:

*I think that there is a difference in this space for us as to whether we are sponsored or unsponsored gTLDs.*

*From a practical perspective, the com and net registries will likely have the names we are talking about for the future already registered, even if new IDN gTLDs are introduced. So from a consistency approach I believe that there should be no restrictions on unsponsored TLDs. Whereas sponsored TLDs support a specific community or sponsoring organization, a reserved list should be completely up to that sponsored TLD, but should be in line with the mission of the TLD. Some of the categories they may choose may be ISO lists of country codes if they have a geography foundation, SIC codes if they have an industry categorization component, or whatever.*

Keith Drazek, NeuStar, .biz registry operator:

*NeuStar supports recommendation (a) that the reservation requirement be removed from future TLD contracts, and (b) that existing registries are able to release in agreement with each other. Please let me know if you have any other questions.*

Ray Fassett, Employ Media, .jobs registry operator[64]:

*.jobs is not opposed to removing the reservation requirement for two reasons:*

- 1. No technical security or stability issue has been identified for the reservation requirement.*
- 2. The fact that some of the more recent TLD strings have long been released as second level domains in prior released gTLDs. In effect it is different rules for different circumstances that a general user population is not going to understand the origin of.*

Tim Ruiz, Go Daddy registrar:

*I would suggest that this reserved name requirement be dropped for all new gTLDs, and that existing gTLDs be allowed to request these strings to be unreserved and that ICANN would not unreasonably deny such requests.*

*Peter Stevenson, Fabulous.com registrar:*

*I agree with Tim and believe that the reserving of gTLD strings from registration at a second level should be dropped for all new gTLDs.*

*All new gTLDs should be treated the same as each other.*

*I do not believe or know of any adverse affects that would occur from this being dropped.*

Ross Radar, Tucows registrar:

*I don't believe that we need policy in this area at this time. The number of reservations and the size of the "problem" are both small enough that continuing to pursue this in an ad hoc manner between ICANN staff and the registry in question seems appropriate. Until it can be demonstrated that there are security or stability issues, I believe ICANN's policy community should continue to focus its efforts in areas where there is clear harm as a higher priority.*

Mike Rodenbaugh, member of Business Constituency:

*I very much doubt users would be confused to thinking, for example, that jobs.travel must be affiliated with the .jobs registry or that org.jobs must be affiliated with the .org registry. I also think it is an unfair advantage for existing TLD registries to reserve their name at the second level in every new TLD, while new gTLD operators can have no such protection in existing TLDs. Indeed that is the case now with all the 'newer' TLD strings registered in com, net and org. In the world of 1000 TLDs that everyone envisions, this reservation requirement makes no sense and it has not been justified in any way by anyone to date. I think therefore that the WG should recommend it be eliminated, and existing domains reserved on this basis should be released.*

*If this is not the majority opinion, then I would like to make this a minority statement.*

Alistair Dixon, Member of Business Constituency:

*I have similar concerns to Mike: a requirement for permission from the relevant gTLD registry for release of a gTLD string seems to me as much a device to restrict competition as to unreserve names. As was pointed out on the call, gTLD strings are present in many cc domains, e.g., .com.au, .net.nz, .mil.nz, .org.uk, etc. There is certainly no evidence of user confusion with these strings and why there would be with jobs.travel or mobi.net is unclear to me. The RSTEP report seems to confirm this. I would therefore agree with Mike's proposed recommendation that existing names reserved on this basis be released.*

John Berryhill (in part):

*If there is an issue relating to how the strings are used, that is probably outside of the scope of domain name policy per se.*

#### **MINORITY OPINIONS:**

David Maher, PIR, .org registry operator:

*PIR votes to preserve the reserved names provisions (with some conditions for release) as they exist for .ORG, and to maintain a similar reserved names provision for new gTLDs.*

Caroline Greer, mTLD, .mobi registry operator:

*DotMobi agrees with the pre recommendation-i.e., lifting of the requirement if agreement is reached between the relevant Registries and subsequent notification to ICANN.*

Cherian Mathai, Tralliance, .travel registry operator:

*.travel supports the second proposition - to preserve the reservation of gTLD strings for new TLDs.*

*We believe it should continue because otherwise*

*(a) it can lead to confusion as to what a TLD is, and*

*(b) for a sponsored TLD, the name string belongs to a particular community and if it is not reserved it could lead to usage of that string by extraneous elements in a way detrimental to community's TLD.*

*A case in point would be the .travel string promoted by new.net that took the .travel domain name at the third level and started marketing .travel.*

*It took us more than three years and counting at an enormous cost to educate the travel community that new.net's .travel is not a TLD. This is what we referred to as the confusion with regard to what a TLD is. We had to keep on harping the theme that we are the ICANN approved TLD and the other is a third level domain name, even though with the use of the freely downloadable software they were able to confuse the market place and mask itself as a TLD. As the only TLD who had been a victim of new.net we feel that this reservation has a lot of merit.*

*If such an entity can do an end-run on a bonafide TLD at the third-level, imagine what it would be like if the name is available at the second-level in all future TLDs. We do not know whether this is a security and stability issue according to SSAC. But as seen in the case of new.net and also possibly in the future it would lead to confusion and mis-appropriation of domain names under false pretenses. This would make a mockery of the ICANN TLD award process.*

*We are not sure ... that if the reservation of existing TLDs is released, the current and future TLD operators are bound by the name eligibility policies of an existing sponsored TLD. We do not believe that travel.mobi or travel.tel or a future travel.bank will be bound by the name eligibility policies of the global travel community conceived and developed through the .travel sponsor, The Travel Partnership Corporation.*

*True, there is no protection for future TLD strings in existing TLDs. But it is better to limit the damage that could be caused by upstart elements creating confusion and chaos in the domain name marketplace rather than provide them with an "open season".*

Simon Heard, Global Name Registry, .name registry operator:

*.name's supports preserving current practice with certain conditions for release.*

Philip Colebrook, Telnic, .tel registry operator

*Support reservation of gTLD strings with release under certain circumstances.*

Edmon Chung, dotASIA, .asia registry operator:

*I do not quite understand the point about restriction of competition. This particular whole process for creating new gTLDs creates competition for registries, which I do not find any problem with. I personally do think that it is a sensible idea to caution new gTLDs on the release of names that correspond to other TLDs. That is no different than cautioning new gTLDs on releasing names that have some form of registered prior right that may or may not be confusing given a particular TLD.*

*What I am suggesting I think makes sense in a way that would caution new TLD operators that it is important to take into consideration the other TLDs when you allocate these names. As mentioned, the idea is that consent be sought from existing registry operator for which must not be unreasonably withheld. For example, it is unreasonable to withhold such consent due to anti-competition reason.*

*So I don't quite understand the issue with restricting competition.*

*The other part about managing the process, well even at the 1000 gTLDs level, I do not think it will be overly burdensome if these names required such a consideration. Again, back to the point that giving some consideration and not prevention is important in my mind.*

*Furthermore, before we get to that volume, I am sure many other policies have to be revised as well... and this would not be on top of the list I feel.*

Marcus Faure, CORE registrar:

*While I can see that damage has already been done, this should not mean we deliberately increase the level of damage. The cc.com business relies on confusing users and leaves them in the hands of a commercial institution with no oversight; hence I see this as counterproductive to the development of the DNS. I therefore suggest to stay with the current restrictions and moreover ask to have the effect of cc.com registrations on us investigated.*

*I do not have a problem with a company using tld.com for their own website. I do have a problem with a "registrar" offering 3rd level registrations under tld.com, especially if they tell you that this is the way the internet is structured, and the reason it is structured like that is because they have a good deal with [insert name of big icann registrar].*

*This may not be within our scope, but if I were king I'd rule this out.*

#### 4. Summary of Relevant Information Sources

##### h. ICANN Registry Agreement Requirements

Language INCLUDED within the main body Registry Agreements for .asia, .biz, .cat, .com, .info, .jobs, .mobi, .net, .org, .travel and .tel (the latter modified slightly) states that:

*"Registry Operator shall reserve, and not register any TLD strings appearing on the list of reserved TLD strings attached as Appendix 6 hereto or located at <http://data.iana.org/TLD/tlds-alpha-by-domain.txt> for initial (i.e., other than renewal) registration at the second level within the TLD."*

That particular language is NOT INCLUDED in older TLD Agreements: .aero (2001), .coop (2001), .museum (2001), .name (2001) and .pro (2002) - those TLDs reserve the following names either as per Appendix 11 or Appendix K of their contracts in addition to two letter labels:

- aero
- arpa
- biz
- com
- coop
- edu
- gov
- info
- int
- mil

- museum
  - name
  - net
  - org
  - pro
- a. GAC Principles Regarding New gTLDs  
[http://gac.icann.org/web/home/gTLD\\_principles.pdf](http://gac.icann.org/web/home/gTLD_principles.pdf)
- i. ICANN Registry Services Technical Evaluation Panel  
<http://www.icann.org/registries/rsep/RSTEP-GNR-proposal-review-team-report.pdf>
- j. GNSO Internationalized Domain Names Working Group <http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>

**Report on Internet Security and Stability Implications  
of the Global Name Registry, LTD**

**Proposal for the Limited Release of Initially Reserved**

**Two-Character Names**

**December 4, 2006**

**Excerpt below. Full report at:** <http://www.icann.org/registries/rsep/RSTEP-GNR-proposal-review-team-report.pdf>

**3 Analysis of Security and Stability Issues**

In order to assess the potential security and stability impact of introducing two-character SLDs into .name, the review team began by considering the current practices regarding two-character SLDs within various TLDs, as well as the presence of <TLD>.<TLD> combinations. The review team noted that there are a significant number of TLDs that allow the registration of TLDs as SLDs. A systematic walk through the DNS shows the following numbers:

Number of TLDs registered in the root zone 265

Possible <TLD>.<TLD> combinations 70225

<TLD>.<TLD> combinations with NS or A

Records 11592

In addition to considering the frequency of two-character SLDs and

<TLD>.<TLD> combinations, the team reviewed known problems with <TLD>.<TLD> combinations. A recent overview of known problems with the DNS was presented at the RIPE53 meeting by Duane Wessels of The Measurement Factory/CAIDA. It recited a list of 32 known problems with the DNS, categorized as follows:

Protocol Issues 9

Implementation Issues 8

Operational Issues 10

Registry/Registrar Issues 5

Of the eight implementation issues, two were related to a combination of the presence of <TLD>.<TLD> domains and bad software behavior. The most significant of these problems is described in RFC 1535 and is discussed in detail in Section 3.1.1 below. The review team also conducted an exhaustive investigation of the potential security- and stability-related effects in each of the potential problem areas.

In addition, the review team conducted two kinds of analysis on the data collected from the behavior of actual DNS servers. First, we reviewed name server data from one of the .uk name servers.

Second, we conducted an experiment in an attempt to produce the problems theoretically caused by <TLD>.<TLD> combinations.

We also considered special characteristics of the .name domain.

Taking these factors into consideration, the review team concludes that:

(1) Name server and experimental data reveal that inadvertent queries for <TLD>.<TLD> domains are fairly uncommon. More often than not, these queries seem to be the result of user error or temporary failures as opposed to software errors.

(2) <TLD>.<TLD> combinations are already extremely common, including combinations that seem far more likely to cause problems than two-character SLDs within .name, such as net.uk or de.com. The review team is not aware of any reports of problems attributed to existing <TLD>.<TLD> combinations.

(3) On balance, and taking into account theoretical security and stability effects as a result of the introduction of two-character

SLDs within .name, these SLDs are unlikely to have any meaningful net increase in the level of these security or stability issues.

**ANNEX SEVEN -- CONTROVERSIAL NAMES SUB GROUP REPORT**

**GNSO new TLDs Committee**

**Reserved Names Working Group**

**Sub-Group Report**

**Controversial Names**

**10 May 2007**

**DEFINITIONS**

Controversial Names	A name is designated as a controversial name if it qualifies as a gTLD under the then prevailing String Criteria, does not fall under any other Reserved Name category and is disputed for reasons other than that it either falls under any other Reserved Name category or that infringes on the prior legal rights of others.
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CN-DRP	Controversial Names - Dispute Resolution Panel
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## EXECUTIVE SUMMARY

1. This Report contains the recommendations and supporting information from the GNSO Reserved Names Working Group (RN-WG) regarding Controversial Names.
2. The members of the group are:
  - I Marilyn Cade
  - I Avri Doria (chair)
  - I Victoria McEvedy
  - I Michael Palage
  - I Tamara Reznik
3. The subgroup reached full consensus on the recommendations below.
4. *There was no disagreement in the subgroup regarding the recommendations below.*
5. The table below contains the recommendations for Controversial names.

SoW number (RN-WG 30-day extension SoW)	Reserved Name Category	Domain Name Level(s)	Recommendation
Recommendation task 10	Controversial Names	All Levels, ASCII & IDN	There should not be a new reserved names category for Controversial Names.
Recommendation task 10	Controversial Names	Top Level, ASCII & IDN	There should be a list of disputed names created as a result of the dispute process to be created by the new gTLD process.

SoW number (RN-WG 30-day extension SoW)	Reserved Name Category	Domain Name Level(s)	Recommendation
Recommendation task 10	Controversial Names	Top Level, ASCII & IDN	In the event of the initiation of a CN-DRP process, applications for that label will be placed in a HOLD status that would allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications will reenter the processing queue. The period of time allowed for dispute should be finite and should be relegated to the CN-DRP process. The external dispute process should be defined to be objective, neutral, and transparent. The outcome of any dispute shall not result in the development of new categories of Reserved Names.[65]
Recommendation task 10	Controversial Names	Top Level, ASCII & IDN	The new GTLD Controversial Names Dispute Resolution Panel should be established as a standing mechanism that is convened at the time a dispute is initiated. Preliminary elements of that process are provided in this report but further work is needed in this area.

SoW number (RN-WG 30-day extension SoW)	Reserved Name Category	Domain Name Level(s)	Recommendation
Recommendation task 10	Controversial Names	Top Level, ASCII & IDN	<p>Within the dispute process, disputes would be initiated by the ICANN Advisory Committees (e.g., ALAC or GAC) or supporting organizations (e.g., GNSO or ccNSO). As these organizations do not currently have formal processes for receiving, and deciding on such activities, these processes would need to be defined:</p> <ul style="list-style-type: none"> <li>I The Advisory Groups and the Supporting Organizations, using their own processes and consistent with their organizational structure, will need to define procedures for deciding on any requests for dispute initiation.</li> <li>I Any consensus or other formally supported position from an ICANN Advisory Committee or ICANN Supporting Organization must document the position of each member within that committee or organization (i.e., support, opposition, abstention) in compliance with both the spirit and letter of the ICANN bylaws regarding openness and transparency.</li> </ul>

SoW number (RN-WG 30-day extension SoW)	Reserved Name Category	Domain Name Level(s)	Recommendation
Recommendation task 10	Controversial Names	Top Level, ASCII & IDN	Further work is needed to develop predictable and transparent criteria that can be used by the Controversial Resolution Panel. These criteria must take into account the need to: <ul style="list-style-type: none"> <li>I Protect freedom of expression</li> <li>I Affirm the fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women</li> <li>I Take into account sensitivities regarding terms with cultural and religious significance.</li> </ul>
Recommendation task 10	Controversial Names	Top Level, ASCII & IDN	In any dispute resolution process, or sequence of issue resolution processes, the Controversial name category should be the last category considered.

## Supporting Information

### 1. Background

The work items for the subgroup contained the following elements:

- a. *Review the GAC Principles regarding New gTLDs with regard to controversial names*
- b. *Consult with the GAC as possible*
- c. *Consider the possibility of creating a disputed name list (not a reserved name list) that would be updated whenever controversial names are rejected and would be used for guideline purposes only*
- d. *Restate recommendations in the original RN-WG report for possible use in the New gTLD evaluation process, not as reserved names*
- e. *Describe process flow*

### 2. Rationale for the recommendations

The following reflects the work that was done on each of the work items listed in the SOW.

- a. The GAC principles were reviewed.

One that was discussed in particular and that created some concern:

*If individual GAC members or other governments express formal concerns about any issues related to the new gTLDs, the ICANN board should fully consider those concerns and clearly explain how it will address them.*

Some of the subgroup members indicated a concern that the GAC principle points to an issue with the original position that was supported by the RN WG. Specifically in recommendation number 1 from the RN WG report of 19 March 2007:

*A label that is applied for would be considered Controversial if during the Public Comment phase of the new gTLD application process the label becomes disputed by a formal notice of a consensus position from an ICANN Advisory Committee or ICANN Supporting Organization, and otherwise meets the definition of Controversial Names as defined above.*

This previous recommendation indicated that the dispute process would only be activated by a consensus position of an Advisory Committee such as the GAC, whereas the GAC principle indicates that the concern of an individual government be considered by the ICANN board before making a decision on a new gTLD. In the discussion, several considerations came to light:

- The GAC principle does not specifically relate to the new gTLD dispute process under review but to the consideration given by the ICANN Board to issues raised by an individual government. In some respects, this is a restatement of the common respect that the ICANN board should give to any appeal it receives. It is also an extension of the ICANN Board's obligation under its bylaws to consider the advice and concerns of the GAC.
- While the GAC principle may not directly relate to the dispute process being defined by the new gTLD PDP process as it addresses board behavior, one of the guiding scalability principles of that PDP process is that, to the maximum extent possible, the process should provide a predictable and transparent method for approving new gTLDs that does not rely on the Board having to handle each and every dispute.
- On the other hand, the same scalability principle requires that the disputes be filtered before reaching the dispute process. A concern has been expressed by some members of the subgroup that it is very likely that a great number of candidate gTLDs might be controversial in the view of some individuals, groups or individual countries. It is for this reason that the original RN working group recommended that the threshold for a dispute be set at the consensus level for an ICANN advisory committee or supporting organization.
- There was, however, some concern raised that it may not be appropriate for a GNSO process to set the internal criteria for a decision made by the GAC or another Advisory group. It was acknowledged that it may be advisable to modify the original RN working groups recommendation to read:
  - o *A label that is applied for would be considered Controversial if during the Public Comment phase of the new gTLD application process the label becomes disputed by a formal notice of a consensus or other formally supported decision process position from an ICANN Advisory Committee or ICANN Supporting Organization, and otherwise meets the definition of Controversial Names as defined above.*
- It was discussed that in the event the proposal being recommended in this report is accepted, each of the Advisory Committees and Supporting Organizations would need to develop a process, appropriate to its organizational constraints, to allow it to initiate disputes.

- As part of the discussion over who could initiate a dispute, several other concerns were raised with how organizations external to ICANN could raise disputes concerning controversial names.
- Again, applying the principles of scalability there was some concern expressed that the dispute process could not be open to any and all who might dispute a candidate gTLD.
- Recognizing that the constituency and advisory groups of ICANN are, in principle, responsible for representing all of the stakeholders involved in the allocation and use of TLDs, it was considered by some in the subgroup sufficient that all of the supporting organizations, composed of the constituencies and other stakeholders, and advisory groups be empowered to initiate dispute actions on potentially controversial TLDs. One value of using the Advisory Groups and Supporting Organizations for such purpose was that these groups were optimally placed to understand both the concerns of the participating stakeholders and the processes of ICANN.
- There was a concern expressed that perhaps all stakeholders were not adequately represented by the current ICANN structures and that in this case these individuals and other stakeholders would not have adequate access to the dispute process. This issue, however, was larger than the scope of the subgroup and it is already the subject of other remedial processes within ICANN.
- There was also an option expressed in the subgroup for allowing any organizational entity with standing to initiate a dispute using the CN-DRP process. Under this formulation, the definition of 'standing' would require further work.
- There was also an option expressed for allowing any individual or organization to initiate a dispute. In order to support process scalability, a fee could be charged for initiating a dispute. A concern raised about this option concerned the financial barrier to disputes this might create. One possibility mentioned (in private conversations) was that this option could be combined with the option that allowed ICANN Advisory Committees to also initiate disputes.

#### b. Consult with the GAC

It was considered by the subgroup that the general consultation held with the GAC on 16 April 2007, was adequate to the subgroup's needs. The subgroup does, however, look forward to discussing any of the recommendations made in this report with the Advisory Committees or their members.

#### c. Consider the possibility of creating a disputed name list

The subgroup supported the idea that a disputed name list would be created as a result of the dispute process. This was not, however, to be considered a reserved name list, and the names on the list could still be approved in future allocations. For discussion purposes<sup>[66]</sup>:

- The gTLD .god (or even .g-d) might be disputed as controversial
- The CN-DRP might agree with the case for controversy brought forward and might decide to refuse the application and to put the name on the disputed name list.
- During a separate application round another application, perhaps even including the previous applicants, might apply with the backing of the World Council of Religions and many of the

world's religions. In such a case, the CN-DRP might recommend removing the name from the disputed name list and assigning it to the applications.

d. Restate recommendations in RN-WG report for possible use in the New gTLD evaluation process, not as reserved names

This report includes a restatement of the proposal for creation of a CN-DRP dispute evaluation process and the creation of a disputed name list.

e. Describe process flow

The purpose is to consider and to propose procedural options and concepts that could be used as a basis for the development of a standing panel to handle objections on the basis of 'controversial names' for binding dispute resolution.

The ICANN RSTEP process was used as a model for this proposal.

Some of the recommended elements of a proposed Controversial Names - Dispute Resolution Panel (CN-DRP) include:

1. Establish a 'standing group' with identified 'experts' and a procedure for the selection of such experts. This could be by selection of existing service providing organizations such as WIPO, CPR, NAF or others. Alternatively a group could be appointed by public tender based on recognized qualifications.
2. Identify a senior individual, e.g., a retired judge, to act as chair, but establish two or more, vice-chairs with expertise in other areas who are well respected, and senior members with different kinds of expertise.
3. Use the Chair and vice chairs as a standing committee of 3-4 people, whose task it is to help to identify 'neutral experts' to act as panelists. Chair and vice-chairs, in particular, must not have current relationships with ICANN and should be highly respected and credible individuals. The concern here is to avoid any perception that the dispute process may not be independent and to avoid even the perception that insiders can be influenced and decisions politicized.
4. For Panelists as well, great care should be taken to ensure neutrality, and avoid conflicts of interests or the perception of a conflict of interest. An initial list of participants in 'panels' can be pre-qualified to act, on an invited basis, when a name is disputed as controversial. The role of the chair would function much like the chair of the RSTEP. The chair could appoint knowledgeable experts from areas, such as culture, to advise the 'panel' on language, or cultural, or technical issues with a particular controversial string.
5. An initial list of panelists could be developed, with the understanding that additions will be possible, depending on the categories of names that are referred to the CN-DRP.
6. Each dispute shall be determined and accompanied by a decision with reasoned grounds. The report of the decision will be published, as part of the routine publication of the application.
7. Further work needs to be done on drafting, with the help of expert advice, a set of procedural rules to govern the decision process of the CN-DRP. It is important going forward to avoid lists of examples, categories or any other attempt to list and predict in

advance what is controversial as this will inevitably become entrenched. Avoiding such entrenchment and pre-determined lists is key to the recommendation in the first report of the Reserved Names WG.

8. The CN-DRP's decisions are binding. One issue under discussion was whether further work is needed to develop an appeals process.
9. The CN-DRG will have access to legal counsel external to ICANN that it may consult for questions of national law, etc.
10. Where the CN-DRP review team or the ICANN staff identify that a name brought to the CN-DRP might also have other stability or stability concerns, all other comment period challenges and reserved name evaluations must occur prior to evaluation by the CN\_DRP.

#### 11. Funding

- i. Reimbursement: Create a compensation framework that would pay a retainer to the chair and vice chairs to be available on a 'standing basis'. Develop a compensation fee schedule, to be developed by the Chair, working with ICANN staff and administered by the chair/staff manager, with a flat amount for an estimated number of hours devoted to the consideration, documentation, etc. by the Panel members.

- ii. Initially, since there is no experience in what the fees might be, task the chair and vice chairs, supported by ICANN operational staff, to develop an 'interim budget' and fee schedule.

- iii. Applicants should expect that the cost of ICANN fees will include the cost of convening the Panel.

- iv. Consistent with the overall fee structure established for new gTLDs, the fees established should include a cost recovery element that supports the additional costs that ICANN incurs.

#### 12. Further work for creation of the CN-DRP includes, but is not limited to:

- i. Development of criteria for the background of the chair, vice chairs and panelists

- ii. Further development of what might constitute transparent and predictable criteria/guidance to the panels

- iii. Whether it is possible to have a 'quick look' by the chair/vice chairs to determine whether to accept a referral or not, and what appeal of that would be available, if any

- iv. Under consideration of how to recoup the fees for providing the dispute procedure, discussion of who should fund the procedure should include whether the applicant pays or whether the costs are shared by the entity filing the dispute, etc.

- v. Further work is needed in scoping and scaling the anticipated number(s) of possibly controversial applications and what time frame should be established to give a panel an assignment, research/discuss/reach a decision,

and whether and what documentation would be expected from the applicant and the entity that files the dispute.

3. Summary of Relevant Information Sources

- Previous discussion and work related to controversial names done by the New gTLD Task force can be found in the current version of the GNSO new TLDs Committee Draft Final Report at:

<http://gns0.icann.org/drafts/pdp-dec05-draft-fr.htm>

- The GAC Principles regarding New gTLDs can be found at:

<http://gac.icann.org/web/communiqués/gac27com.pdf>

- The original Controversial Names Subgroup report contains much additional information that was not duplicated in this report. It is in Appendix J of the original RN-WG report at:

<http://gns0.icann.org/drafts/rn-wg-fr19mar07.pdf>

**ANNEX EIGHT -- Alphabetical Listing of Recommended Reserved Names**

The tables below are intended to be brief summaries of all names that the RN-WG recommends be reserved, ordered alphabetically by name where possible in the first table and alphabetical by category in the second table. These tables are provided for convenience only; please refer to the recommendations provided in Section One for complete reservations recommended. The names listed are not case-sensitive.

ASCII			IDN		
Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level	Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level
0	AFRINIC	AFRINIC	All Unicode versions of 'Example'	All Unicode versions of 'Example' **	All Unicode versions of 'Example'
1	APNIC	APNIC			
2	ARIN	ARIN			
3	ASO	ASO			
4	ccNSO	ccNSO			
5	Example	Example			
6	GNSO	GNSO			
7	gTLD-servers	gTLD-servers			
8	IAB	IAB			
9	IANA	IANA			
a	iana-servers	iana-servers			
AFRINIC	ICANN	ICANN			
APNIC	IESG	IESG			

ASCII			IDN		
Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level	Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level
ARIN	IETF	IETF			
ASO	Internic	Internic			
b	IRTF	IRTF			
c	ISTF	ISTF			
ccNSO	LACNIC	LACNIC			
d	LATNIC	LATNIC			
e	NIC*	NIC*			
Example	rfc-editor	rfc-editor			
f	RIPE	RIPE			
g	root-servers	root-servers			
GNSO	Whois*	Whois*			
gTld-servers	www*	www*			
h					
i					
IAB					
IANA					
iana-servers					
ICANN					
IESG					
IETF					
Internic					
IRTF					
ISTF					
j					
k					
l					
LACNIC					
LATNIC					
m					

ASCII			IDN		
Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level	Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level
n					
NIC					
o					
p					
q					
r					
rfc-editor					
RIPE					
root-servers					
s					
t					
u					
v					
w					
Whois					
www					
x					
y					
z					

\* For use by registry operators only.

\*\* Do not try to translate 'example' into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries.

#### Reserved Names Summary by Category

RN	ASCII			IDN		
	Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level	Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level
Controversial	No	No	No	No	No	No
Geographic & Geopolitical	No	No	No	No	No	No

RN	ASCII			IDN		
	Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level	Top Level	2 <sup>nd</sup> Level	3 <sup>rd</sup> Level
gTLDs at the 2 <sup>nd</sup> & 3 <sup>rd</sup> Level	N/A	No	No	N/A	No	No
ICANN & IANA related	Yes	Yes	Yes	No*	No*	No*
NIC, Whois, www	Yes	Yes**	Yes**	No	No	No
Single Letter, Single Digit Combinations	No	No	No	N/A	N/A	N/A
Single Characters	Yes	No	No	No***	No	No
Symbols	Yes <sup>#</sup>	Yes <sup>#</sup>	Yes <sup>#</sup>	N/A	N/A	N/A
Tagged	Yes	Yes	Yes	N/A	N/A	N/A
Two Digits	Yes	No	No	N/A	N/A	N/A
Two IDN Characters	N/A	N/A	N/A	No***	No	No
Two Letters	Yes <sup>##</sup>	No	No	N/A	N/A	N/A

\* Except for Unicode versions of 'example'.

\*\* For use by registries only.

\*\*\* At the top level, requested strings should be analyzed on a case by case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS.

# Except for the use of the hyphen (-) where allowed.

## For ccTLD use only.

## ANNEX NINE -- PARTICIPATION DATA: RN-WG Meeting Dates & Locations

p = present rp = remote participation aa = absent apologies noted Tel = teleconference MdR = Marina del Rey

Location:	Tel	Tel	Tel	MdR	Tel	Tel	Tel	Tel	Tel	Tel	Lisbon
Name Date:	1/25	2/8	2/15	1/24	3/1	3/5	3/7	3/8	3/12	3/15	3/24
Alistair Dixon	p	p	p	rp	p	p	p	p	aa	p	rp
Bilal Beiram										p	
Neal Blair	p	p	p	p	p	p	p	p	p	p	p
Marilyn Cade	p	p	p	p	p	p	p	p	aa	p	p
Mike Rodenbaugh		aa	p	p	p			p	aa	p	p
Avri Doria	p	p	p	p	p	p	p	p	p	p	p

Sophia Bekele				p	p	p	p	p		p	p
Dan Dougherty	p	p	p	p	p	p	p	p		p	
Gregory S. Shatan	p	p	p	p	p	p	p	p	p	p	
Lucila King											
Tamara Reznik	p		p	rp	p	p	p	p	p	p	
Mawaki Chango											p
Victoria McEvedy					p	p	p	p	p	p	p
Jonathon Nevett	p	p	p	p	p			p	p	p	p
Seth Jacoby	p				p						
Tim Ruiz	p	p	aa		p	p	p	p	p	p	p
Edmon Chung				aa	p	p	p	p		p	p
Caroline Greer	p	p	aa	rp	aa	p	aa				
Ray W. Fassett				p							p
Chuck Gomes	p	aa	p	p	p	p	p	p	p	p	p
Michael D. Palage	p	aa	p	p	p	p	p	p	p	p	p
Minjung Park											
Dr. Kung-Chung Liu											
Timothy Denton		p	p	p	p	p	p	p	p	p	rp
Denise Michel	p			p							p
Glen de Saint Géry	p	p	p	rp	p	p	p	p	p	p	p
Liz Williams	p		aa	p							p
Tina Dam				p							
Dan Halloran				p							
Patrick Jones	p	p	p	p	p	p	p	p	p	p	p
Ram Mohan				p							
Cary Karp				rp							

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[1] Posted at <http://www.ietf.org/rfc/rfc952.txt>

[2] Posted at <http://www.ietf.org/rfc/rfc1123.txt>

[3] Posted for the Lisbon meeting at <http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf>

[4] Posted at <http://forum.icann.org/lists/gnso-rn-wg/msg00476.html>

[5] Agenda posted at <http://gnso.icann.org/meetings/agenda-12apr07.shtml>

[6] Posted at <http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf>

[7] The following RFCs require that domain names must begin with a letter or a digit so the use of the hyphen as a top level domain or the use of names beginning or ending with a hyphen at any level is not allowed: RFC 952, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc952.txt.pdf>. This RFC was later modified by RFC 1123, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1123.txt.pdf>.

[8] This is notwithstanding two letter TLDs will be allowed only as ccTLDs, when added to the ISO-3166 list, and as such all two letter ASCII strings will remain reserved at the top level and second level of a domain name, although registries may propose release of two letter LDH strings at the second level provided that measures to avoid confusion with any corresponding country codes are implemented.

[9] The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter names at the top level. IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk of collisions between any interim allocations, and ISO 3166 assignments which may be desired in the future.

[10] The existing gTLD registry agreements provide for a method of potential release of two-character LDH names at the second level. In addition, two character LDH strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimises the potential for confusion with the ccTLDs."

[11] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[12] Internet Draft IDNAbis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt>(J. Klensin), Section 3.1.1.1

[13] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[14] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[15] With its recommendation, the sub-group takes into consideration that justification for potential user confusion (i.e., the minority view) as a result of removing the contractual condition to reserve gTLD strings for new TLDs may surface during one or more public comment periods.

[16] Note that this recommendation is a continuation of the recommendation in the original RN-WG report, modified to synchronize with the additional work done in the 30-day extension period.

[17] The full list of registry agreements is found at <http://www.icann.org/registries/agreements.htm>.

[18] Posted at <http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf>.

[19] Note that these work tasks are only a prerequisite for the Introduction of New gTLDs if the requirement to reserve single letter names is not included in new gTLD registry agreements.

[20] The following RFCs require that domain names must begin with a letter or a digit so the use of the hyphen as a top level domain or the use of names beginning or ending with a hyphen at any level is not allowed: RFC 952, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc952.txt.pdf>. This RFC was later modified by RFC 1123, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1123.txt.pdf>.

[21] This is notwithstanding two letter TLDs will be allowed only as ccTLDs, when added to the ISO-3166 list, and as such all two letter ASCII strings will remain reserved at the top level and second level of a domain name, although registries may propose release of two letter LDH strings at the second level provided that measures to avoid confusion with any corresponding country codes are implemented.

[22] The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter names at the top level. IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk of collisions between any interim allocations, and ISO 3166 assignments which may be desired in the future.

[23] The existing gTLD registry agreements provide for a method of potential release of two-character LDH names at the second level. In addition, two character LDH strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimises the potential for confusion with the ccTLDs."

[24] The gTLD registry agreements provide a mechanism for release of two-character labels at the second level. "The reservation of a two-character label string shall be released to the extent that the Registry Operator reaches agreement with the government, country-code manager, or the ISO 3166 maintenance agency, whichever appropriate. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes." See Appendix 6, .ASIA Registry Agreement, <http://www.icann.org/tlds/agreements/asia/appendix-6-06dec06.htm>.

[25] RFC 952, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc952.txt.pdf>. This RFC was later modified by RFC 1123, <ftp://ftp.rfc-editor.org/in-notes/pdf/rfc1123.txt.pdf>.

[26] ICANN Board Resolutions 00.77-00.80, 25 September 2000, <http://www.icann.org/minutes/minutes-25sep00.htm>.

[27] GAC Principles on New gTLDs (28 March 2007), <http://gac.icann.org/web/communiques/gac27com.pdf>.

[28] A recording of the 16 April 2007 GAC-GNSO conference call is available at <http://gnso-audio.icann.org/gtld-gac-20070416.mp3>.

[29] Please note that RFC 1123 (October 1989) updated the host name convention relaxing the restriction on the first character to allow either a letter or digit.

[30] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[31] Internet Draft IDNAbis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt>(J. Klensin), Section 3.1.1.1

[32] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[33] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[34] See "Comparison of gTLD Registry Reserved Names" prepared for the RN-WG and ICANN Registry Agreements located at (<http://www.icann.org/registries/agreements.htm>).

[35] ICANN ccTLD Agreements located at (<http://www.icann.org/cctlds/agreements.html>).

[36] .AU ccTLD Sponsorship Agreement, Attachment F, <http://www.icann.org/cctlds/au/sponsorship-agmt-atf-25oct01.htm>. The identical provision appears in the other 11 ccTLD agreements.

[37] <http://www.ietf.org/rfc/rfc3490.txt?number=3490> (P. Faltstrom and P. Hoffman)

[38] <http://www.ietf.org/rfc/rfc3492.txt?number=3492>(A. Costello)

[39] <http://gnso.icann.org/issues/idn-tlds/issues-report-28may06.htm>

[40] <http://www.ietf.org/rfc/rfc4690.txt?number=4690> (J. Klensin, P. Faltstrom, C. Karp)

[41] <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-00.txt> (J. Klensin)

[42] IDNAbis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt> (J. Klensin)

[43] <http://www.icann.org/minutes/minutes-10sep01.htm>. It is also noteworthy that the passage of the resolution by the ICANN Board was far from unanimous (11 in favor, 7 in opposition).

[44] <http://www.wipo.int/amc/en/processes/process2/report/html/report.html>

[45] Paragraph 237, Second WIPO Internet Domain Process II

[46] See Paragraph 55,

[47] As the Second WIPO Internet Domain Process acknowledges "the list of names of places in the world that may have been registered as domain names is virtually limitless" See Paragraphs 256, Second WIPO Internet Domain Process.

[48] Geographical indications refer to "indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin." See Paragraph 217, Second WIPO Internet Domain Name Process. Examples of Geographical Indicators include Champaign, Napa Valley, Cognac

[49] See Paragraphs 262 thru 263 of the WIPO II Process.

[50] See <http://gac.icann.org/web/communiqués/gac10com.htm>

[51] Although other proof of concept registry strings had already been added to the root, i.e. .BIZ, no other proof of concept registry were allowing domain name registrants to register resolving names at the time of the GAC communiqué.

[52] Paragraph 237, Second WIPO Internet Domain Process II

[53] Paragraph 238, Second WIPO Internet Domain Process II

[54] Paragraphs 246 thru 248, Second WIPO Internet Domain Process II

[55] Paragraph 287, Second WIPO Internet Domain Process II

[56] Paragraphs 206, Second WIPO Internet Domain Process II.

[57] Paragraph 207, Second WIPO Internet Domain Process II.

[58] Paragraph 210, Second WIPO Internet Domain Process II.

[59] Paragraph 211, Second WIPO Internet Domain Process II.

[60] Paragraph 213, Second WIPO Internet Domain Process II.

[61] Paragraph 219, Second WIPO Internet Domain Process II.

[62] See *J. Crew International, Inc. v. crew.com*, a WIPO UDRP decision that discusses both in a majority and minority opinion the limitations involving trademark principles and rights in [gross.http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0054.html](http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0054.html)

[63]With its recommendation, the sub-group takes into consideration that justification for potential user confusion (i.e., the minority view) as a result of removing the contractual condition to reserve gTLD strings for new TLDs may surface during one or more public comment periods.

[64]Ray Fassett served as the Chair of this sub-group.

[65]Note that this recommendation is a continuation of the recommendation in the original RN-WG report, modified to synchronize with the additional work done in the 30-day extension period.

[66] Although the SOW asked for specific examples, there was an opinion expressed within the group that in the case of allegedly controversial names, citing examples or even categories of examples, was potentially dangerous as even the mention of an example created a future presumption of controversy.

**EXHIBIT JJN-41**



**PROTECTING THE RIGHTS OF OTHERS  
WORKING GROUP (PRO WG)  
FINAL REPORT**

**Working Group Chair: Kristina Rosette  
ICANN Staff: Liz Williams**

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## 1. SUMMARY

1. This is the Final Report of the Protecting the Rights of Others (PRO-WG) Working Group. The PRO-WG was formed as a sub-group of the GNSO's Committee for the Introduction of New Top-Level Domains to consider issues that related to the registration of names at the second level in new TLD registries. The GNSO Council considered the request to form a Working Group at its 1 February 2007 meeting<sup>1</sup> and ratified the Statement of Work at its 15 March 2007 meeting<sup>2</sup>, the minutes of which are posted on the GNSO's website<sup>3</sup>.
2. There are six substantive sections to this Report that map directly to the Statement of Work in addition to the Annexes which contain background information<sup>4</sup>. This Report will be used as further input into the new TLDs Final Report which is due to be released in early June 2007.
3. The Statement of Work included the background and rationale for the work<sup>5</sup>. "There is a new gTLD committee of the GNSO that is developing policy recommendations with respect to the introduction of new gTLDs. In addition to policy recommendations, the committee is also considering guidelines that may assist the ICANN staff in preparing an application process, and also creating a framework agreement for registry operators. The current registrar accreditation agreement requires that Registered Name Holders represent that, to the best of the Registered Name Holder's knowledge and belief,

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<sup>1</sup> Agenda posted at <http://gnso.icann.org/meetings/agenda-01feb07.shtml>

<sup>2</sup> Agenda posted at <http://gnso.icann.org/meetings/agenda-15mar07.shtml>

<sup>3</sup> Minutes posted at <http://gnso.icann.org/meetings/minutes-gnso-15mar07.shtml>

<sup>4</sup> On 15 March 2007 two decisions were made which are recorded in the minutes. Decision 2: The GNSO Council approved the [revised charter for the working group on "Protecting the rights of others"](#) and Decision 3: The Council extended the timeline for the working group on the Protection of the Rights of Others from the end of April to May 17, in order for the report to be considered at the GNSO Council meeting on 24 May 2007. This deadline was not met as the group needed more time to agree on the substantive recommendations.

<sup>5</sup> A full set of the proposed recommendations and implementation guidelines (as at 30 May 2007) are found in Annex Four. These provide the context for this work.

neither the registration of the Registered Name, nor the manner in which it is directly or indirectly used, infringes the legal rights of any third party. ICANN also has a Consensus Policy called the Uniform Dispute Resolution Policy (UDRP) that is intended for resolving disputes between the registrant and any third party over the registration and use of an Internet domain name. In past new gTLD rounds, applicants for new gTLDs have been required to implement measures that discourage registration of domain names that infringe intellectual property rights; reserve specific names to prevent inappropriate name registrations; minimize abusive registrations; comply with applicable trademark and anti-cyber squatting legislation; and provide protections (other than exceptions that may be applicable during the start-up period) for famous name and trademark owners. There have been a range of approaches used which vary in terms of both cost to registrants and third parties affected by registration, and effectiveness. As part of the new gTLD committee's deliberations, there has been some discussion about what additional protections beyond the current terms in the registration agreement and existing dispute resolution mechanisms should be in place to protect the legal rights of others during the domain name registration process, particularly during the initial start up of a new gTLD where there is contention for what Registrants perceive as the "best" names."

4. The Statement of Work then described the purpose of the work. "The purpose of the working group is to: (1) Document the additional protections implemented by existing gTLD operators beyond the current terms in the registration agreement and existing dispute resolution mechanisms to protect the legal rights of others during the domain name registration process, particularly during the initial start up of a new gTLD where there is contention for what Registrants perceive as the "best" names. The documentation should identify the problems that the protections were intended to solve. The working group should establish definitions of terms used in this document to ensure a

common understanding amongst members of the working group. These definitions would only be in the context of the document, and without prejudice to the meaning of these terms in other legal contexts. In addition, the work will “(2) Determine whether to recommend to Council a best practices approach to providing any additional protections beyond the current registration agreement and UDRP policy for the legal rights of others during the domain name registration process, particularly during the initial start up of a new gTLD where there is contention for what Registrants perceive as the "best" names. A best practices document could be incorporated into the material for the application process for new gTLD applicants. The GNSO could elect in future to use the policy development process (PDP) to create a Consensus Policy in this area”.

5. The work was conducted using teleconferences and one face-to-face meeting that coincided with ICANN’s March 2007 meeting in Lisbon. The Working Group had a relatively diverse membership but patchy and inconsistent representation from some constituencies and none from the Internet Service Providers Constituency. The full set of participation data is found in Annex Two. In addition, MP3 recordings of the meetings can be found here <http://gns0.icann.org/calendar/#may>.
6. The GNSO PRO WG did not conclude its work on the Terms of Reference as specified by the GNSO Council. This report also provides a written summary of areas in which broad agreement and support were not reached and for which the PRO WG believes additional time is necessary. The WG discussed various approaches to providing additional protections beyond the current registration agreement and UDRP policy for the legal rights of others during the domain name registration process for new TLDs, but was unable to reach consensus on whether to recommend a "best practices" approach to providing such protections. The group was unable to agree on a common approach because of a wide variety of registry services business models and

the diverse objectives of the working group participants. In addition, WG members who opposed recommending “best practice” guidelines stated a concern that, if “best practices” were developed and incorporated into the new TLDs implementation plan, there could be negative implications for new registry operators that chose not to implement them.

7. The WG was able to develop a list of draft principles that various WG members believe should be considered as policy statements for TLD operators to implement, but has yet to fully engage in discussion of that list of draft principles.

## 2. DEFINITIONS

The table below sets out the definitions for some key terms which were developed by the Working Group.

Abusive Registration	Abusive Registration means a Domain Name which either: i . was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to another's Legal Rights; OR ii. has been used in a manner which took unfair advantage of or was unfairly detrimental to another's Legal Rights.
Authentication Agent	An Authentication Agent is the person or entity authorized by a new TLD registry to authenticate the Legal Rights claimed by a domain name applicant or to authenticate the identity of a domain name applicant.
Authentication of Legal Rights	Authentication of Legal Rights is the process performed by the Authentication Agent to confirm that the claimed Legal Rights are prima facie authentic based on documentary evidence and of a nature and class accepted by the TLD registry for its Rights Protection Mechanisms. Authentication of the Legal Rights has no bearing on their validity which is a matter for courts of competent jurisdiction.
Authentication of Applicant	Authentication of Applicant is a service conducted by the Authentication Agent to confirm the identity of the domain name applicant claiming a Legal Right in a Rights Protection Mechanism
Charter Eligibility Dispute Resolution Policy (CEDRP)	The CEDRP followed by certain TLDs (such as .aero, .biz, .coop, .museum, .name, .pro, and .travel), provides a mechanism for challenging a domain name registration on the grounds that the registrant does not meet the eligibility requirements set forth in the TLD charter. Any person or entity may bring such a challenge under the CEDRP.
Defensive Registrations	Defensive Registrations are domain name registrations by holders of Legal Rights primarily for the purpose of preventing third parties from registering strings that include names identical to or similar to their Legal Rights.
First Come First Served (FCFS)	FCFS is an allocation policy adopted by a TLD registry where a domain name registration is awarded to the first registrant that successfully submits a valid registration request for the requested string to the registry through its registrar.

IP Claim Service	An IP Claim Service is a service that permits a registrant to submit an Intellectual Property Claim (“IP Claim”), based on asserted Legal Rights. (NeuLevel, which used an IP Claim process for the .biz TLD, restricted the bases for IP Claims to registered or common-law trademarks.) Filing of an IP Claim does not automatically entitle the holder of that claim to registration of the domain name corresponding to the IP Claim; rather, the filing ensures that any potential applicant for a domain name registration corresponding to the IP Claim would be (1) notified of the IP Claim and (2) have to affirmatively agree to proceed with its application after such notification. The holder of an IP Claim may challenge any potential applicant through the Start-up Trademark Opposition Process (“STOP”).
Land Rush	Land Rush is the commencement of the “go live” period of a new TLD launch where the registry begins accepting live domain registrations from registrants through registrars.
Legal Rights	Legal Rights are rights of a nature and class recognized by a TLD as, subject to Authentication, entitling owners to participate in a Rights Protection Mechanism. Legal Rights have included registered national and regional unitary marks and, in so far as recognized by the law of the nation state where they are held, unregistered trademarks, trade names, business identifiers, company names, geographical names and designations of origin and distinctive titles of protected literary and artistic works.
Name String Notification	A Name-String Notification is a paid subscription function where the owner of a Legal Right can be notified by a registry of an application to register a new domain name which includes the monitored name-string.
<i>Protecting the commons<sup>6</sup></i>	<i>Language itself is not property and as such belongs to the commons available for free and unencumbered use by all people. While many legal entities are placing trademarks on common natural words when used in specific commercial contexts, these trademarks may not affect the rights of individuals to use these words or to register them as domain names. Within ICANN this can be taken to mean that these names are to remain available for registration according to the regular procedures, for example, first come first served or as determined by the registry, as long as the registrant is not in violation of provisions of the UDRP.</i>

<sup>6</sup> This definition, provided by Nominating Committee Representative Avri Doria, was not agreed upon by the Working Group but was used to illustrate differing points of view.

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Rights Protection Mechanisms	<p>RPM</p> <p>Rights Protection Mechanisms are processes or mechanisms adopted and implemented by TLD registries for the purpose of protecting Legal Rights by discouraging or preventing registration of domain names that violate or abuse a participant's Legal Rights. Rights Protection Mechanisms are in addition to the protection afforded through the UDRP and Registration Agreement.</p>
<i>Rights of Others</i> <sup>7</sup>	<p><i>Rights of Others are the rights of the public to use descriptive and generic words, including where permitted by the law of the nation state where they reside, to use words which may be subject to Legal Rights in particular classes of the Nice Classification System—outside those classes. In relation to unregistered Legal Rights, they include the right to use words that are not subject to protection in their nation state or where no goodwill or reputation arises in their nation state in relation to such a word. They include the right to make fair and legitimate use of words in which others may claim Legal Rights.</i></p>
Start-Up Trademark Opposition Policy (STOP)	<p>Start-Up Trademark Opposition Policy is a policy available only to an IP Claimant who properly claimed Legal Rights through the IP Claim Service. STOP is a unique dispute resolution process, similar to the UDRP, and put in place for dealing with disputes between IP Claimants and potential registrants. An IP Claimant shall prevail over the potential registrant in a STOP proceeding where it demonstrates that a TLD was either (1) registered in bad faith or (2) used in bad faith,</p>
Sunrise Process	<p>A process in which owners of Legal Rights have the opportunity to register domain names before the Landrush process open to the public. Registries that used a Sunrise Process identified the Legal Rights on which a Sunrise Process registration could be based.</p>
Uniform Domain-Name Dispute Resolution Policy (UDRP)	<p>ICANN-accredited registrars in all gTLDs have adopted UDRP. Under the UDRP, dispute proceedings arising from alleged abusive registrations of domain names (for example, cyber squatting) may be initiated by a holder of trademark rights. The UDRP is a policy between a registrar and its customer and is included in registration agreements for all ICANN-accredited registrars.</p>

<sup>7</sup> This definition, provided by the NCUC, was not approved by the Working Group but is provided here as a reflection of the discussion.

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The tables illustrate the kinds of mechanisms which are used in a variety of registries – sponsored, generic and country code – to further explain the context for the work. See below for charts that set out the current proposals for the introduction of new top-level domains from the GNSO Committee.

### **TLD Eligibility and Name Selection**

TLD Eligibility Requirements	TLD-Specific Eligibility Identification Number	Name Selection Requirements	Eligibility Challenge Mechanism
.aero	.aero	.museum	.aero
.cat	.museum	.travel	.museum
.coop	.travel		.name
.eu			
.museum			
.pro			
.travel			

### **Rights Bases and Validation**

Rights Bases Tied to National Law	Rights Bases Other Than/In Addition to Registered Trademarks of National Effect	Validation by Registry of Claimed Rights	Online National Trademark Office Database(s) Used for Rights Verification
.cat	.cat	All – .cat, .eu, .us	.eu
.dk	.coop	Only if competing applications – .dk	.us
.eu	.dk	For limited purpose – .coop	
	.eu	Random selection – .mobi	

### **Rights Claim and Blocking Registration Mechanisms**

Applicant Informed of Rights Claim and Required to Confirm Intent to Register Name	“Defensive” Blocking Registrations
.biz	.cat
.dk	.name
.name	.pro

### **Sunrise**

First come, first served allocation	Phased Registration	Challenge Mechanisms
.cat	.cat	.eu
.coop	.eu	.info
.eu	.mobi	.mobi
		.us

### Watch Service and Category-Specific Processes

Watch Service	Place Name Process	Generic Terms Process
.name	.coop	.museum
	.museum	.mobi
	.travel	

### 3. RECOMMENDATION SUMMARY

		Supported by (see table below)
1	That there is no universal rights protection mechanism (RPM).	VMcE, TR, KR, JN, AD, KWS, EC
2	That each new gTLD should adopt and implement a dispute mechanism under which a third party could challenge another's use of that gTLD's RPM that results in obtaining a domain name registration.	VMcE, KR, PGO, KWS, EC, MR
3	That the Legal Rights on which a party bases its participation and seeks to protect in a RPM should be subject to actual authentication, at least if the authenticity of such rights is challenged.	VMcE, KR, JN, PGO, KWS, EC, MR
4	That if a new gTLD elects to use a Sunrise Process as its RPM, it should restrict eligible Legal Rights in such a manner as to discourage abusive registration.	VMcE, TR, KR, JN, PGO, AD, KWS,
5	That regardless of other authentication of Legal Rights, all new gTLDs should institute measures to deter abuse of the RPMs and clearly false submissions. These measures could be automated or conducted on an ad hoc basis to focus on RPM submissions that are nonsensical or likely to be false (e.g., registration number is 12345, date is 00/00/00, name is John Doe).	VMcE, TR, KR, JN, PGO, AD, KWS, MR
6	That all Legal Rights to be protected in an RPM must be capable of being authenticated.	VMcE, TR, KR, JN, PGO, AD, KWS, EC, MR

Abbreviation	Name	Constituency
AD	Avri Doria	Nom Com
EC	Edmon Chung	Registry
JeffN	Jeff Neuman	Registry
JN	Jon Nevett	Registrar
KR	Kristina Rosette	IPC
KWS	Kelly W Smith	IPC
MR	Mike Rodenbaugh	Business
PGO	Peter Gustav Olsen	IPC
TR	Tim Ruiz	Registrar
VMcE	Victoria McEvedy	NCUC

## 4. DISCUSSION

1. The introduction of new top-level domains (TLDs) in 2000 (.aero, .biz, .coop, .museum, .name and .pro) included the introduction of several rights protection mechanisms which aimed to protect trademark and other rights from third party domain name registrations that may have violated those rights. These methods varied as did their complexity and ultimate success.<sup>8</sup>
2. In 2007, as ICANN considers the introduction of additional TLDs, the rights protection mechanisms used in the past are instructive but raise questions concerning the necessity and adequacy of such mechanisms. The PRO-WG was chartered to provide a report to the GNSO Committee on the Introduction of New Top-Level Domains with a view to assessing further steps to take, including the possible need for the creation of a Policy Development Process (PDP) on rights protection mechanisms beyond the protections embodied in the current Registration Agreement and the Uniform Domain Name Dispute Resolution Policy.
3. The GNSO Council provided the PRO-WG with the following Statement of Work:

(1) Document the additional protections implemented by existing gTLD operators beyond the current terms in the registration agreement and existing dispute resolution mechanisms to the protect the legal rights of others during the domain name registration process, particularly during the initial start up of a new gTLD where there is contention for what Registrants perceive as the "best" names. The documentation should identify the problems that the protections were intended to solve. The working group should establish definitions of terms used in this document to ensure a common understanding amongst members of the working

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<sup>8</sup> See Evaluation of the New gTLDs: Policy and Legal Issues, by Summit Strategies International, <http://www.icann.org/tlds/new-gtld-eval-31aug04.pdf>.; Registry Proof of Concept Reports, <http://www.icann.org/registries/poc/>.

group. These definitions would only be in the context of the document, and without prejudice to the meaning of these terms in other legal contexts.

(2) Determine whether to recommend to Council a best practices approach to providing any additional protections beyond the current registration agreement and UDRP policy for the legal rights of others during the domain name registration process, particularly during the initial start up of a new gTLD where there is contention for what Registrants perceive as the "best" names. A best practices document could be incorporated into the material for the application process for new gTLD applicants. The GNSO could elect in future to use the policy development process (PDP) to create a Consensus Policy in this area.

4. To determine the answers to the questions posed in the Statement of Work, the Working Group used several different work methods. The first was an analysis of existing registry operations. Those summaries are found in full in Annex One, the majority of which were completed by WG members. In addition, some ccTLD registries were included in the summaries to see whether there were additional lessons to be learnt from the ccTLD environment. The Working Group also developed a questionnaire which posed a range of questions that were developed by the Working Group during a teleconference and refined through the mailing list. The questionnaire was distributed in both Word format and was posted using on-line polling software. The full results of the survey are found in Annex Two and the results are used throughout this work. The url for the poll results is <http://www.bigpulse.com/pollresults?code=3bSZ4z3AQauWM7Ukrige>. Finally, the Working Group utilized the expertise within the Group<sup>9</sup>.
5. The Working Group was tasked to provide a report to the GNSO Council and conclude its work by 17 May 2007 to provide sufficient time for its report to be incorporated into the Final Report of the GNSO New gTLDs Committee.

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<sup>9</sup> It was brought to our attention, after the poll closed, that the online poll did not offer the full listing of countries from which respondents may have come. This was a deficiency in the proprietary software and respondent were also able to respond using email and a Word document attachment.

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Kristina Rosette of the GNSO Intellectual Property Constituency was elected Chair by the Working Group members.

6. Working Group members were encouraged to review the following five documents, in line with the Terms of Reference:
  - a. [Draft Recommendations from the New gTLD PDP Committee](#)
  - b. [December 2003 new sTLD Application Form, Part B](#)
  - c. [IPC Evaluation Chart for Proposed TLDs \(October 2000\)](#)
  - d. [Registry Proof of Concept Reports](#)
  - e. [Evaluation of the New gTLDs: Policy and Legal Issues, Summit Strategies International, July 2004](#)
7. WG members recognized that any rights protection mechanism may be:
  - a. controversial
  - b. costly and complex for registries and registrars to operate
  - c. costly and time consuming for registrants
  - d. open to comprehensive and automated gaming
8. In addition, WG members recognize that registry and registrar business models may be different and that the introduction of IDN TLDs may present further layers of complexity which require deeper examination.

## 5. OUTCOMES

1. The PRO WG discussed various approaches to protecting the rights of others including whether to provide additional protections beyond the current registration agreement and UDRP policy in new top-level domains. The Working Group was unable to reach consensus on whether to recommend a "best practices" approach to providing such protections.
2. The WG was able to develop a list of draft principles that some WG members believe should be considered as possible principles for new TLD operators to consider in their implementation plans but the Working Group has yet to fully engage in discussion of that list of draft principles.
3. The first table below set out where there is agreement on the approach. The second table illustrates where there is some support (either with or without alternative language). Section 6 sets out where additional work may be considered by the GNSO Council for future examination.
4. For the purposes here "agreement" means that there is broad agreement within the Working Group (largely equivalent to "rough consensus" as used in the IETF). The PRO-WG did not use the word "consensus" because that term has a particular meaning as used by the GNSO Council. An "alternative view" means that a differing opinion has been expressed, without getting enough following within the Working Group to merit either "agreement" or "support". The WG used the RFC 2119 (<ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt>) as the basis for determining where the words "should", "must" and "may" ought to be used.
5. The on-line questionnaire provides some interesting results which may have assisted the Working Group in their deliberations. Forty responses were received online with two others submitted by email. More than 50% of the online respondents (there were two offline respondents who identified themselves as IP rights owners or representatives) identified themselves as either IP rights owners or representatives. Thirteen respondents identified themselves as civil society representatives. Five respondents identified themselves as either a registrar or

registry. There was a 50:50 split between respondents who answered the question about whether “IP owners need new or enhanced protection rights”. Most respondents indicated, for each of the TLDs identified, that the rights protections mechanisms were not applicable to them. Of those that did respond, the majority said that the rights protection mechanism provided by the registry operator met their needs. Most respondents used either an IP claim or a sunrise registration to protect their rights. A large proportion of respondents indicated that they did own defensive registrations even in registries where there were sponsored or chartered restrictions on domain name registrations. Respondents indicated varying percentages of defensive registrations in their portfolios.

6. The overview of the results needs to be read in the context of a limited response rate and a statistically insignificant random sample from which the responses could be drawn. In addition, the questionnaire did not meet best practice survey methodology but was rather intended to get a general sense of direction from some interested stakeholders.
7. In summary, the PRO-WG reached agreement on the following areas:

1	That there is no universal rights protection mechanism.
2	That each new gTLD should adopt and implement a dispute mechanism under which a third party could challenge another’s use of that gTLD’s RPM that results in obtaining a domain name registration.
3	That the Legal Rights on which a party bases its participation and seeks to protect in an RPM should be subject to actual authentication, at least if the authenticity of such rights is challenged.
4	That if a new gTLD elects to use a Sunrise Process as its RPM, it should restrict eligible Legal Rights in such a manner as to discourage abusive registration.
5	That regardless of other authentication of Legal Rights, all new gTLDs should institute measures to deter abuse of the RPMs and clearly false submissions. These measures could be automated or conducted on an ad hoc basis to focus on RPM submissions that are nonsensical or likely to be false (e.g., registration number is 12345, date is 00/00/00, name is John Doe).
6	That all Legal Rights to be protected in an RPM must be capable of being authenticated.

**Agreed Proposals 1**

8. Alternative views which had some support are included in the following tables. “Support” is defined as “there is some gathering of positive opinion but competing positions may exist and broad agreement has not been reached. An “alternative view” indicates that a differing opinion has been expressed without getting enough following with the Working Group to merit either “agreement” or “support”.

1	<p>That all new gTLDs must provide an RPM.</p> <p>Alternative view: That all new TLDS may provide an RPM</p>
2	<p>Each gTLD applicant MUST describe in its application (a) the RPM(s) it intends to provide and; and (b) how that RPM/those RPMs will protect the rights of others and discourage abusive registrations.</p> <p>Alternative view: That each gTLD applicant MUST describe in its application the methods they will employ to protect the rights of others.</p> <p>Alternative view: That each TLD applicant MUST describe in its application the methods, if any, they will employ to protect the rights of others.</p>
3	<p>That if a new gTLD elects to adopt and implement an RPM that consists of eligibility or membership verification requirements and second-level name selection criteria (such as those used by the .museum, .aero, and .travel TLDs), an additional RPM MAY NOT be necessary.</p> <p>Alternative view that if a new gTLD elects to adopt a description that includes eligibility or membership verification requirements and second-level name selection criteria (such as those used by the .museum, .aero, and .travel) TLDs or another similar set of criteria, a RPM SHALL NOT be necessary.</p>
4	<p>That if a new gTLD elects to use a Sunrise Process as its RPM and second-level names are not awarded on a First-Come, First-Served basis, then competing applicants MAY be provided with an opportunity to reach an allocation decision between/among themselves.</p>
5	<p>That to the extent a gTLD is intended for/targeted to a particular geographic region, the Legal Right on which the owner or claimant bases its participation in the RPM SHOULD originate from the laws that apply to a country in the region or, in the case of a gTLD intended for/targeted to a region within a country, the laws that apply to the region.</p>

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6	<p>That the creation of “Approved Model RPMs” (to be developed later) SHOULD be available at the registry’s sole discretion to select, which standardizes the RPM across a registry/registrar to minimize the costs of implementation, and eliminates the need for ICANN to scrutinize this aspect of an application during the new TLD process. A registry applicant that fails to pick an “Approved Model RPM” MUST not be prejudiced in any way if it elects not to use a “Approved Model PRM” as this is purely a voluntary standard that is meant to make the launch of new TLDs more efficient. The list of Approved Model RPMs MAY be updated from time to time.</p> <p>Alternative view that “Approved Model RPMs” (to be developed later) SHOULD be utilized by the new registry, unless there are reasonable grounds for non-use in the particular registry. Such use of a standardized RPM MAY minimize the costs of implementation for all interested parties, and would lessen the need for ICANN to scrutinize this aspect of an application during the new TLD process. The list of Approved Model RPMs could be updated from time to time.</p> <p>Alternative view that the Supported principle is acceptable subject to the substitution of “and may eliminate the need for ICANN to scrutinize this aspect of an application during the new TLD process” for “and eliminates the need for ICANN to scrutinize this aspect of an application during the new TLD process.”</p>
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**Supported Proposals 1**

## 6. OUTSTANDING WORK

1. Some members of the Working Group have identified some proposals for principles which have not been fully discussed. Significant discussion took place on the mailing list and within the teleconferences about the scope and applicability of the Working Group's remit. Leaving that discussion aside, the following areas were identified as perhaps warranting more detailed analysis.

1	All potential registrants have legal rights. gTLD operators should not consider the legal rights of IP holders as superior to of the legal rights of others to register and use a domain name.
2	The Rights Protection Mechanisms used by gTLD operators should not presume that a registrant intends to infringe on or violate the legal rights of others simply by the act of registering a domain name.
3	All potential registrants should have an equal opportunity to register common words, phrases, labels or strings as domain names.
4	All principles relating to RPMs should equally apply to both ASCII/LDH TLDs and IDN TLDs.
5	Rights protection mechanisms for second level names SHOULD also apply to third and higher level names made available for general registration by the TLD operator.

### Outstanding Work 1

2. In addition, some members of the WG proposed principles regarding fee-related aspects of RPMs. All such principles have been segregated into this section and no levels of support have been developed for any of them.

1	New gTLDs should accept payment for participation in RPMs by means other than credit cards.
2	The fees charged by a gTLD for participation in its RPM should be reasonable and each gTLD applicant MUST identify in its application the basis of its fee calculation.
3	The fees charged by a gTLD for participation in its RPM must be reasonably close to their actual or expected costs.
4	The fees associated with the use of Rights Protection Mechanisms must be established at the sole discretion of the gTLD operator.

### RPM Fee Related Aspects Principles 1

3. Several members of the WG proposed new RPMs or RPM features. These proposals are listed below. The WG has not yet developed levels of support.

These proposals should be considered among the WG's Outstanding Work, but are identified separately for ease of reference.

1	<p>Centralized Mechanism for Authentication of Legal Rights by Multiple Providers. Owners of Legal Rights would identify the Legal Rights on which they would rely in an RPM, would submit the documents required to authenticate such Legal Rights, and would designate the RPM in which they desired to participate. Once authenticated, the providers would convey the confirmed authentication to the registry or registrar. A Legal Rights owner could select among/between more than one provider. Legal Rights owners would be required to affirm periodically, most likely annually, that their Legal Rights remain valid and subsisting. Legal Rights claims that were not affirmed would be deleted from the database.</p>
2	<p>Standard Sunrise Mechanism. To adequately protect Legal Rights, owners of "Existing Names" should have - in addition to the traditional Sunrise Process which accompanies the launch of a new TLD - two new methods of combating abusive registrations, namely "Defensive Removals" and "Name-String Notification". The "sunrise" itself should be outsourced to an organisation which will provide sunrise registrations and defensive removals for all new TLDs.</p>
3	<p>Outsourced Sunrise: A "Standard Sunrise Service Provider" (SSSP) would administer all future sunrise processes. The SSSP should be an internationally qualified and respected NGO or not-for-profit corporation. The SSSP would provide a website where relevant data can be collected and recycled in the future. The collection of such sunrise data involves providing input access and data storage of "official" domain name-related correspondence and documentation. Thus ICANN or WIPO would appear to be an ideal candidate for SSSP. ICANN has the advantage that it already has contractual relations with accredited registrars, and could use these to control input, avoid abuse and to track problems.</p> <p>The SSSP will provide a standardised sunrise website at <b>tld.sunrise.sssp.org</b>. The information provided to the SSSP website is standard contact information, the type of "Existing Name" and the possibility of uploading a PDF showing the existence of the name. The owner of the "Existing Name" will indicate whether the domain name at issue is to be a used, i.e. traditional sunrise application, or whether the domain name should be permanently removed from the pool of available names. Thus at the completion of the sunrise period, the SSSP will provide to the TLD two lists: one for the sunrise names which should be registered and function, and another list of names which should be permanently removed.</p> <p>The SSSP will produce the list at an at-cost basis and provide it to the new TLD in digital format such that the new TLD can "plug it in" to its registration function. The price of such a defensive removal would thus be inexpensive, probably in the neighbourhood of 1 U.S. dollar. As long as the prospective new TLD is aware at the outset that a number of domain names will be permanently removed from the pool of available domain names, and does not base its business model on the registration and renewal of cybersquatted domains, then these permanently removed domain names have no value to the TLD.</p>

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4	<p>A "Defensive Removal" is the permanent removal of specific domain name from the pool of available domain names. An unlimited number of domain names may be removed as Defensive Removals based on the existence of a single Existing Name. In that the names are permanently removed, there is no administration and no need for renewal fees. The eligibility requirements would be the recognized Early Name rights from previous sunrises, including 1) Organisation names, 2) Public body names, 3) Geographical Indications 4) Registered trademarks, and 5) Other recognized commercial signs such as company names. Due to the possibility of challenging such defensive removals, there is no need to apply strict eligibility requirements. The basis of the removal would be a .pdf documenting the existence of the Existing Name, timely filed with the Standard Sunrise Service Provider (SSSP)</p> <p>Defensive Removals can also be made after the launch of the TLD, but there would be higher costs involved. The permanence of the defensive removal could be changed, either by the party who originally requested it, or by a Third Party Challenge (see below).</p> <p>It would not be possible to make a blanket Defensive Removal covering all new TLDs, but the SSSP would notify the owners of Existing Names by e-mail of the launch of new TLDs, and offer to reuse the existing documentation for new defensive removals. It can be anticipated that the choice of defensive removals will vary from TLD to TLD. For example, in the event that dot-xxx was a reality, an organisation like ICANN might have wanted to defensively remove</p> <p>icann.xxx icanngirls.xxx icann-girls.xxx icannbabes.xxx icann-babes.xxx etc. from the dot-xxx pool of available names.</p>
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5	<p>Name-String Notification. Name-String Notification (NSN) is a paid subscription function whereby the owner of Legal Rights can be notified of an application to register a new domain name which includes the name-string, and given the opportunity to file a Protest within a short timeframe, e.g. 20 days. For example, if ICANN were notified of the following: hot-icann-girls.xxx or tammicannotsayno.xxx they might find only the first of these to be a problem and file a protest.</p> <p>If the NSN subscriber filed the protest, the applicant would be asked to confirm that the domain name application should proceed, despite the existence of the Legal Rights, and the domain name would be sent to a UDRP-like function. Each party (the owner of the Existing Name and the domain name applicant) would pay full price for a one-person UDRP, i.e. a full double payment, such that the winner would receive a refund, paid by the loser. If the domain name applicant did not pay the UDRP price (US \$ 1500 at WIPO), the domain name would not be registered, and conversely, if the subscriber/protestor did not pay the UDRP price within the specified time, the domain name would be registered. The onus would be on the domain name applicant to demonstrate that the domain name could be used without infringing the Existing Name, as set forth below. It can be assumed that the "loser pays US \$ 1500" will discourage both abusive registrations and overzealous rights owners.</p> <p>The NSN would be fully automated and e-mail based, and thus relatively inexpensive. To be most effective, it would have to be in place prior to the launch of the traditional sunrise. It should be administered by the TLD (though if this also could be centralised and outsourced like the sunrise, this would be an advantage for all involved).</p> <p>For the duration of the NSN process, the domain name will not function. If the NSN subscriber does not utilize the opportunity to lodge a protest, the he or she can still initiate a UDRP or other proceedings at a later date.</p>
6	<p>Challenge. It is well settled that to be successful in a UDRP proceeding, the complainant must demonstrate that all three of the following conditions are met:</p> <p>(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) the respondent has no rights or legitimate interests in respect of the domain name; and (iii) the respondent's domain name has been registered and is being used in bad faith.</p> <p>If the UDRP complainant fails on any one of these 3 elements, the UDRP Complaint should fail. Thus in a Challenge process, either under NSN or to challenge a Defensive Removal, the domain name applicant has to prove that one or more of the following elements is present:</p> <p>(i) the domain name is not identical or confusingly similar to a trademark or service mark in which the complainant has rights; or (ii) the respondent has rights or legitimate interests in respect of the domain name; or (iii) the respondent's domain name will be used in good faith.</p> <p>In other words that a regular UDRP brought against this domain name applicant would fail.</p>

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7	<p>Traditional sunrise: The traditional sunrise, whereby owners of Existing Names get an opportunity to register domain names before the "land rush", will be available, but due to the availability of the defensive removals and the name-string notification, this will be effectively limited to the new domain names which the owners actually intend to use. No validation need take place as a general rule, but only in the case of conflict. Traditional sunrise and defensive removals can be made at the same time, on the SSSP website mentioned above.</p> <p>Conflicts can arise in several situations:</p> <ol style="list-style-type: none"><li>1) Two or more parties request defensive removals, no sunrise: here there is no conflict. All are interested in not having the domain name be registered. Both parties should be noted as having this defensively removed, which means that if one of them changes their mind, or if the removal is challenged, both will be heard. If the one party who removed the domain name now wants to use and register it, the parties can either agree, or the UDRP-type function with loser pays described above will apply. Again, it will be up to the new applicant to show that its registration of the domain name will not be harmful to the owner of the Existing Name. Thus it is unlikely that a abusive registration with a bogus Existing Name could first remove icann.xxx and thereafter activate it by registration, if ICANN had also established a defensive removal of the same name.</li><li>2) One or more parties want the domain name defensively removed and one or more parties want it registered under the sunrise. Firstly the parties should be given an opportunity to discuss this among themselves, given a one-month deadline, extendible at the joint request of all parties. If there is no agreement, the UDRP-type function with loser pays described above will apply.</li><li>3) No defensive removals, but two or more sunrise applications. Firstly the parties should be given an opportunity to discuss this among themselves, given a one-month deadline, extendible at the joint request of all parties. If there is no agreement, the parties will firstly have to validate their rights (self validation). If both parties validate their rights, there will be an auction, where the new TLD retains the proceeds. The UDRP-type function with loser pays described above will also apply.</li></ol>
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8	<p>Principles for resolving conflicts: As regards competing rights owners who seek different goals, there are as I see it four main scenarios:</p> <ol style="list-style-type: none"><li>1) two competing genuine rights of about the same size (like United Airlines and United Van lines)</li><li>2) two competing genuine rights of very different sizes (like WENDY'S chain of restaurants and a single WENDY's hair salon)</li><li>3) two competing rights, where one can be considered in bad faith (e.g. GOOGLE from Palo Alto on the one hand and a Uzbeki registration from 2006 for GOOGLE for clothing; the bad faith could also be generic, e.g. APPLE for computers on the one hand and a Benelux registration from 2006 for APPLE for paints on the other hand)</li><li>4) two competing bad faith rights (e.g. any two of the more than 200 Benelux, Danish and other registrations for SEX in various classes that were competing for SEX.EU)</li></ol> <p>Guiding principles should be</p> <ol style="list-style-type: none"><li>1) first let the parties try to sort it out, much like the "cooling-off" period of the CTM, e.g. within two months (extendible at the joint request of both parties).</li><li>2) mediation, e.g. WIPO Arbitration and Mediation Center with UDRP panelists. Here the mediators would be given wide latitude to take all aspects of the matter into consideration, such as the size of the each rights owner, the TLD, languages etc., and may either find for one party or end in a draw. For instance for WENDYS.ASIA, the mediator might find for the restaurant chain that had over 1000 restaurants in Asia; but if the new TLD was WENDYS.HAIR, the mediator might find for the hair salon. UNITED.[TLD] would end in a draw (but the parties would probably have sorted this out themselves, probably agreeing that one of them would register the domain name and that neither would use this and similar domains during the "cooling-off" period). It is difficult to consider a scenarios where a mediator reasonably could find for the Uzbeki GOOGLE registration, but it could be GOOGLE.[TLD meaning "clothes" in Uzbeki]. The parties split the cost of the mediation.</li><li>3) auction: in the case of a draw, the parties can bid for the domain name.</li></ol>
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9	<p>Name-String Watch Service and Notification (modeled on .biz IP Claim and .name Name Watch Service): Name-String Watch Service and Notification (NSWSN) is a paid subscription function whereby the owner of an authenticated Legal Right will receive notification of every applied-for domain name that matches the watched name-string. The domain name applicant would receive notification that its name had matched a watched string and information about the watched-string right basis and claimant. The domain name applicant would then be required to confirm that it wished to proceed with registering the domain name. The Legal Rights owner would receive notification of the registrant's intention to proceed and would be provided a relatively short (not more than 30 days) period within which to initiate a proceeding to block the name's registration.</p> <p>To prevail in a challenge, the Legal Rights owner would be required to show that (a) the applied-for name is identical or confusingly similar to its authenticated right; (b) the applicant has no right or legitimate interest in the applied-for name; and (c) the applicant has registered or seeks to use the name in bad faith. [Alternative requirements noted above.] The Legal Rights Owner would be required to pay the dispute resolution fee. However, the applicant would be required to pay a small fee (USD 50) as a "bond." If the applicant did not submit the bond, the proceeding would not go forward, the dispute resolution provider would not issue a decision, and the applicant's registration would be blocked. If the applicant submitted the bond, the proceeding would go forward to resolution. [If the applicant prevailed, it would be refunded the bond amount.] An unsuccessful challenge would have no preclusive effect on the Legal Rights owner's right to later initiate a UDRP proceeding.</p> <p>The applied-for domain name would not resolve until any proceeding challenging the name was decided. Multiple Legal Rights owners could participate in NSWSN for the identical string, and multiple Legal Rights owners could challenge the applied-for domain name. Multiple challenges would be consolidated into one proceeding, the filing fee would be divided among/between the Legal Rights owners on a pro rata basis, and only one applicant bond would be required. Any one successful Legal Rights owner would be required to block the name.</p> <p>The NSWSN would be automated and e-mail based. All proceedings would be filed and conducted solely electronically; paper filings would not be permitted.</p>
10	<p>Rapid Suspension Procedure. Registries should institute a rapid suspension procedure in which a response team of independent experts (qualified UDRP panelists) will be retained to make determinations shortly after they receive a short and simple statement of a claim involving a well-known or otherwise inherently distinctive mark and a domain name clearly used in bad faith, or for which no conceivable good faith basis exists. Such determinations MUST result in an immediate suspension of resolution of the domain name, but will not prejudice either party's election to pursue another dispute mechanism. The claim and procedural requirements SHOULD be modeled after the <i>Digital Millennium Copyright Act</i>.</p>

**Proposals: Not discussed 1**

## **ANNEX ONE – REGISTRY SUMMARIES**

A key piece of the analysis was to look at previous rights protection mechanisms from other top-level domains.

The tables below include all the summaries that were completed by members of the Working Group or constituencies represented in the Working Group. Note that there is a mix of generic, sponsored and country code registries.



**Internet Corporation for Assigned Names and Numbers**

.aero (prepared by Paul D. McGrady, Jr. (IPC Member) and Kristina Rosette)

**Part A**

<b>TLD Eligibility</b>	<b>Mechanism Type (Sunrise, IP Claim, Other, None)</b>	<b>Rights Bases Requirements</b>	<b>Submission Process</b>	<b>Submission Cost</b>
<p>An Aviation Community Membership (“ACM”) ID is a necessary prerequisite for registering or maintaining a .aero domain name registration.</p>	<p>In addition to the UDRP, the .aero domain name is governed by the Eligibility Reconsideration Policy (“ERP”) and the Charter Eligibility Dispute Resolution Policy (“CEDRP”).</p>	<p>Societe Internationale de Telecommunications Aeronautiques SC (SITA), the .aero sponsor, restricts registration to members of the aviation community. SITA recognizes 18 registrant categories including, for example, aerospace, airlines and commercial operators, airports, and pilots.</p>	<p>When .aero first launched, a two-step process applied. First, the applicant was required to obtain an ACM ID. Once issued, the applicant could then apply for registration of .aero domain names through one of about a dozen registrars. SITA later introduced a consolidated process in which an applicant could apply simultaneously for both the ACM ID and the desired .aero domain name.</p>	<p>There is no submission cost for applying for the ACM ID. There are registrar costs associated with the actual registration, which costs vary by registrar.</p>

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**Part B**

<b>Application Verification/Authentication Process</b>	<b>Challenge Mechanism (Yes/No)</b>	<b>Challenge Mechanism Cost &amp; Arbiter</b>	<b>Challenge Mechanism Requirements (to Prevail)</b>	<b>No. of Challenges</b>
<p>SITA implemented an applicant eligibility verification process. After supporting documentation was reviewed, the ACM ID was either issued or the application was rejected. By way of example, an applicant seeking to demonstrate its eligibility as a member of the “pilots” registrant subgroup could submit a copy of a website; a copy of a Pilot’s license; or the date on which the applicant’s Pilot’s license issued.</p> <p>For the majority of categories, SITA verifies once an application is submitted online.</p>	<p>Yes</p>	<p>WIPO; its website does not list filing fees for CEDRP.</p>	<p>ERP: The applicant seeking reconsideration must identify the registrant group(s) in which it claims membership, identify the ACM ID and domain name for which reconsideration is sought, and specify how it meets the Eligibility Requirements or, as applicable, the manner in which the domain name complies with the .aero Domain Management Policy.</p> <p>CEDRP: The Registered Name violated the Eligibility Requirements.</p>	<p>None. No published decisions.</p>

**Part C**

<b>Successful Challenges (Number &amp; %)</b>	<b>Total No. Registered Names</b>	<b>No. of Mechanism Registrations/Claims</b>	<b>References</b>

Electronic documents, once printed, are uncontrolled and may become outdated.  
Refer to the electronic document at <http://gns0.icann.org/issues/>\_\_\_\_\_ for the current revision.

Doc. No.:

Date:

1 June 2007

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<b>Successful Challenges (Number &amp; %)</b>	<b>Total No. Registered Names</b>	<b>No. of Mechanism Registrations/Claims</b>	<b>References</b>
n/a (no challenges)	unknown	n/a	<ul style="list-style-type: none"><li>• <a href="#">.aero website</a></li><li>• <a href="#">WIPO registry-specific procedures for .aero</a></li><li>• Unpublished manuscript prepared by Paul D. McGrady, Jr., Esq.</li></ul> <p>Summary submitted to SITA for review, but no comments were received before the final report deadline.</p>

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**.cat (prepared by Tim Ruiz)**

**Part A**

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
<p>Sponsored TLD.</p> <p>Prospective registrants may be located anywhere in the world but they must demonstrate a relationship with Catalan linguistic and cultural community.</p> <p>It is estimated that worldwide 10 million speak the Catalan language, of which 9 million live in Spain.</p>	<p>Three phase Sunrise.</p> <p><u>Phase I – Feb 13 through Apr 21, 2006.</u>                      Businesses, institutions, public bodies, and others engaged in the promotion of the Catalan language and/or culture.</p> <p>Applicants also needed to be included in third-party identified lists, registries or databases. So the listings of schools, universities, members of writers' associations, cultural associations, etc. were checked to verify eligibility.</p> <p><u>Phase II – Feb 20 through Apr 21, 2006.</u></p>	<p><u>Phase I</u> – Applicants had to be prepared to demonstrate their eligibility and agree to cancellation of their domain name if they were later found not to qualify.</p> <p><u>Phase II</u> – Applicants had to provide a URL to a website that was at least partially in Catalan.</p> <p><u>Phase III</u> – These Entities were pre-determined and if had to request an authorization code from the registry to register their names.</p> <p><u>Defensive Registrations</u> – The Entity must provide the mark, registration number, date of issue, and country where the trademark was issued. Defensive registrations may not have name servers assigned to them and so cannot be live sites.</p>	<p>Applications were taken by ICANN Accredited registrars and submitted through the EPP SRS.</p>	<p><u>Phases I and II</u>                      €75 first year + €25 second year (but two years minimum, so €100).</p> <p><u>Phase III</u>                      Entities of any kind: same as above.                      Individuals: €10</p>

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TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
	<p>Entities proving prior online presence and communications in Catalan.</p> <p><u>Phase III – Feb 27 through Apr 21, 2006.</u>            Entities who were involved in the support and/or establishment of the .CAT gTLD.</p> <p>Applicants were required to have provided their formal support and contact details beforehand in the campaign official Web site. They were then provided with corresponding codes needed to register a name.</p> <p><u>Defensive Registrations – Feb 13 through Apr 21, 2006.</u>            Entities that do not qualify to apply during any of the three</p>			

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TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
	Sunrise Phases but are able to prove rights in a string through trademark registration.  If there is a Phase I application for the same string, the Phase I applicant has priority.			

Part B

Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbitrator	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>Applications were verified as they arrived. Phase I applicants had priority.</p> <p>No applications in Phase II or Phase III were considered or verified until after review and conclusion of all Phase I applications.</p> <p>In all Phases, after validation, names were assigned on a first come first served basis.</p> <p>puntCAT reserved the right to cancel a registration at any time for non-compliance.</p>	<p>Yes</p>	<p>ERDRP: €1300 (Eligibility Requirements Dispute Resolution Policy)</p> <p>Mediation: €1000 (This is a non-binding option to the ERDRP or UDRP. None have been started to date.)</p>	<p>This ERDRP is available to whoever thinks that a .cat domain name (or a defensive registration) has been registered improperly and not honoring the .cat eligibility requirements and may want to ask for its cancellation.</p> <p>The policy does not intend to substitute for the UDRP, nor the decisions of any judge or court. It is intended to complement them, offering a way to cancel (and if required, transfer) registrations made not complying the .cat requirements.</p> <p>Sunrise applicants were obliged to participate in the process and comply with its result. The ERDRP is a mediation process intended to be a tool to reach good will agreements by means of experienced professionals.</p>	<p>1</p>

Part C

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References/Observations

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Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References/Observations
Successful – 0 (only 1 filed)	22,100  (As of April 18, 2007)	<u>Names Applied For All Phases</u> – 11,400  (An additional 86 names were applied during the Defensive Registrations phase.)  <u>Successful Registrations All Phases</u> – 9,247 plus 9 pending for various reasons.  <u>Challenges</u> – 1	The following documents and materials were referenced:  The .CAT out of the Bag by Amadeu Abril i Abril / Werner Staub: <a href="http://www.dotcym.org/dogfennau/cat-Studienkreis06v2.pdf">http://www.dotcym.org/dogfennau/cat-Studienkreis06v2.pdf</a>  .CAT Registry Agreement Appendix S: <a href="http://www.icann.org/tlds/agreements/cat/cat-appendixS-22mar06.htm">http://www.icann.org/tlds/agreements/cat/cat-appendixS-22mar06.htm</a>  domini puntCAT Website: <a href="http://www.domini.cat/en_index.html">http://www.domini.cat/en_index.html</a>  Data verified by Jordi Iparraguirre (puntCAT) and Amadeu Abril I Abril.

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**.coop (prepared by Victoria McEvedy)**

**Part A**

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
<p>Applicant can bring itself within one of the following seven categories, member of the National Cooperative Business Association (NCBA);</p> <ul style="list-style-type: none"> <li>i. member of the International Co-operative Alliance (ICA);</li> <li>ii. association of cooperatives;</li> <li>iii. cooperative that is committed to the seven cooperative principles (voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for community) and whose status as a cooperative has been verified by a designated verification partner of dotCoop;</li> <li>iv. company that is an affiliate of a cooperative (a) falling within categories (i) or (ii) above or (b)</li> </ul>	<p>Sunrise for Founders</p> <p>During pre- launch period (7/01-01/02), members of Founder organizations (that were all eligible), were able to register names prior to general registration on a first come, first served basis.</p>	<p>Phase 1. Founders are the organizations that provided specific monetary and functional support to dotCoop during the pre-launch period. Founders continue to provide .coop with valuable input on business and functional aspects of the TLD post-launch. These organizations have made .coop available to cooperatives world-wide with their support.</p> <p>Phase 2. First come, first served subject to two special classes:                      (a) registration of geographic and geopolitical names under the Community Names program, which allows apex organizations or</p>	<p>The pre-launch process was a registry-based registration process. All names were migrated to accredited registrars after registrar-based services were implemented. The Community Names program is described on the registry site at <a href="http://www.nic.coop/information.asp">http://www.nic.coop/information.asp</a>. Each registrant must provide, in essence a proposal with information on the following:</p> <ol style="list-style-type: none"> <li>1. Information on the cooperatives focus, sector and interest in .coop.</li> <li>2. a list or description of the features proposed for the .coop Community Names site.</li> </ol> <p>Provide information about the history of cooperatives in [location or sector].</p>	<p>Pre-launch costs were the same as those immediately following launch. No premium although Founders contributed to start-up costs.</p> <p>Registration fees were \$160 for a 2-year registration during pre-launch and until registrar services were introduced. At that time the average DNY cost became \$99. Registry</p>

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<p>whose status has been verified in accordance with (iv);</p> <p>v. entity whose operations are dedicated to serving cooperatives, as determined by dotCoop or as verified by a designated verification partner of dotCoop; or</p> <p>vi. a registrant whose use of a .coop domain name, in the opinion of the DotCoop Board of Directors, would advance the interests of the cooperative sector in general or would assist in the development of cooperatives worldwide.</p>		<p>leading co-ops in a country or geopolitical area to register these domain names.</p> <p>(b) the “Brandsafe” program which allows trademark holders to reserve a domain name even though they are not eligible to use the domain name based on the Charter.</p>	<ol style="list-style-type: none"> <li>1. Provide a directory of cooperatives in [location or sector].</li> <li>2. Provide links to the web sites of cooperatives in [location or sector], government agencies related to cooperatives, and to the main cooperative organizations in [location] and the world as appropriate for the [sector.]</li> <li>3. Provide information about cooperative laws and legislative projects that may affect cooperatives in [location or sector].</li> <li>4. Publish a calendar of cooperative activities of the [location or sector.]</li> <li>5. Publish an online version of the [location or sector publications.]</li> <li>6. Provide statistics about the cooperative movement in [location or sector.]</li> <li>7. Discussion of relevant issues in [location or sector.]</li> <li>8. Provide access to the portal with all appropriate [location or sector] cooperatives so they can be identified within the community.</li> </ol> <p>3. Information on how access to the site will be determined.</p> <p>4. Proposed date of site activation.</p>	<p>charges remained the same at \$64/DNY,</p> <p>Community names originally required a 5 year registration but that requirement was dropped. These names were sold at the standard rate.</p> <p>The Brandsafe program originally required a 5 year minimum but that was dropped. These were originally \$2000 for a 5-year registration but the cost was dropped to \$500. This</p>
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			<p>The Brandsafe program requires either:</p> <ol style="list-style-type: none"><li>1. Documentary evidence of a registered trademark being registration certificates. This will be sufficient to extend the reservation to the mark and close variants.</li><li>2. In the case of unregistered marks and trade names, documentary evidence of letterhead and other evidence of actual use of the name in trade over a period.</li></ol>	<p>was the price to the registrar.</p> <p>.Coop currently requires the standard 1-year initial registration.</p>
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Part B

Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>(1)DotCoop validated that all registrants met the eligibility criteria as agreed to in the Charter using information from the Internet, the Sponsors, the Verification Partners and co-operative organizations around the world to verify the eligibility of registrants. dotCoop has a verification process that uses input from outside sources to assist in verification.</p> <p>Verification Sponsors are organizations or individuals that are supplied by the registrant that can confirm the eligibility of the registrant for the domain name. Verification Partners are organizations that dotCoop has contracted with in locations around the world that agree to be contacted by dotCoop for verification assistance for registrations from particular countries.</p> <p style="text-align: center;"><b>Statistical Verification</b></p>	<p>Yes</p>	<p>Charter Eligibility Dispute Resolution Process (CEDRP) (any evidence submitted by third party challengers is considered and respondent must establish its eligibility under any of the 7 criteria in the first box in A of this table)</p>	<p>Evidence that the organization falls within one of the following seven categories (see eligibility requirements above), and demonstration of rights or legitimate interests to the domain name for purposes of Paragraph 4(a) (see below).</p>	<p>No CEDRP or DCDRP challenges to date.</p>

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>1. Registrations of names by a new registrant are statistically selected based on the Country information contained on the registration transaction that is received by the registry. This sampling is not related to the registrar that submitted the registration. Verifications do not imply that the registration is suspect - it is just part of the verification process to check for compliance with the eligibility requirements of the TLD. The registration is marked "Pending."</p> <p>2. An e-mail is sent to the Registrant alerting them that eligibility for registration is being reviewed and that they will be notified within five (5) days of the result of the process. It is also noted that dotCoop may contact the Sponsors that they noted in their registration for verification of eligibility. They are instructed to contact dotCoop at <a href="mailto:verification@communicate.coop">verification@communicate.coop</a></p>			<p>As to Prior Rights and Legitimate Interests: Any</p>	

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbitrator	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>with specific questions on the process.</p> <p>3. At the same time, an e-mail is sent to the appropriate Verification Partner providing the information about the registrant, including the contact information for the Verification Sponsors. Verification Partners have signed agreements that all information on registrants, including the names that are being registered, is confidential. Verification Partners are asked to respond within the time specified in their agreement with a recommendation based on the information they have about the registrant or that they can elicit from the Verification Sponsors.</p> <p>4. Based on the recommendation for the Verification Partner and additional research performed by dotCoop, plus any response that may have been provided by the registrant, a preliminary determination of eligibility is made by dotCoop.</p> <p>5. If the registrant is eligible, then</p>			<p>of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(b)(ii):</p> <ul style="list-style-type: none"> <li>i. before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services, or as part of the operations of a cooperative; or</li> <li>ii. you have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or</li> <li>iii. you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.</li> </ul>	

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>the registrant is Verified and the domain names can then be activated.</p> <p>6. If dotCoop cannot confirm the registrant as eligible, then the registrant is sent another e-mail that notifies them that they have 30 days in which to provide information to help confirm their eligibility. First, they should supply other Verification Sponsors that might be able to provide verification confirmation. Secondly, they can fax or e-mail various documents that would demonstrate their co-operative status such as:</p> <ul style="list-style-type: none"> <li>a. A copy of the organization's bylaws,</li> <li>b. A copy of the organization's most recent annual report or the most recent past two years of audited financials</li> <li>c. Financial statements provided to members over the past five years,</li> <li>d. A listing of the organization's board of directors with contact</li> </ul>				

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>information,                      e. A sample of the organization's membership application forms and/or membership materials,                      f. Promotional, sales or informational material that reference the organizations status as a cooperative,                      g. A list of members of the applicant.                      h. A copy of the cooperative act in the country of origin or other legal definition of a cooperative of the jurisdiction in which the applicant operates and to which it conforms.</p> <p>7. If dotCoop does not get a response to the e-mail request for information within the 30 days, an attempt is made to contact the registrant via telephone. Both valid e-mail and telephone numbers are required at time of registration. If these are not provided, then it is a breach of the registration agreement with dotCoop.</p> <p>8. If additional information is supplied, then dotCoop will re-</p>		<p>For other matters the DotCoop Domain</p>		

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbitrator	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>evaluate the eligibility decision. Again, if it is decided that the registrant is eligible, then the name(s) can be activated and the registrant is marked as Verified. An e-mail that provides a confirmation of this finding is sent to the registrant.</p> <p>9. If the registrant is still determined by dotCoop to be ineligible, then the name is revoked with no refund of registration fees irregardless of any other grace period. An e-mail notifying the registrant of the revocation is sent to the e-mail address supplied at the time of registration.</p> <p>10. Once the registrant is revoked, the registrant record is marked as deleted and the names that were registered by that registrant are available for registration by others.</p> <p><b>Manual Verification</b></p> <p>1. Registrations can be selected for verification after they have been</p>		<p>Name Dispute Resolution Policy (DCDRP). (similar to UDRP)</p> <p>(WIPO) has been selected by dotCoop to provide dispute resolution services to .coop domain name holders. WIPO conducts a formal, independent Administrative Proceeding in which the two parties present their respective views of a conflict to a neutral and impartial third party - the WIPO Panel. The Panel hears the parties' claims in conformity with ICANN's UDRP <a href="http://www.icann.org/udrp">www.icann.org/udrp</a>, the CEDRP (Attachment A), ICANN's Rules, and WIPO's Supplemental</p>		

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>accepted into the registry system even if they have not been selected for verification by the statistical sampling process of the system. These registrations are called Manual or "Spot Check" verifications. The registry can do a manual verification for any reason but typically these are related to incomplete or inconsistent date in the registration. The registry can also do a manual verification in response to a query concerning eligibility of a registrant from a third-party. An example of this is when a co-op wants to register a name that is already registered by someone else. The third party may not be able to tell from the .coop WHOIS whether the registrant is an eligible organization and may bring this concern to the attention of dotCoop. In any case of manual verification, dotCoop does a preliminary determination using immediately available information before taking any action on the system. If, after a reasonable effort is made using the information provided at the time of registration, eligibility cannot be</p>		<p>Rules.</p>		

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>confirmed. dotCoop will mark the registrant as "Under Investigation." A process with similarities to the statistical process ensues.</p> <p>1. Community Names – Anyone registering a community name is well known by contacts at the International Co-operative Alliance in Geneva or at the National Cooperative Business Association in the US.</p> <p>2. Brandsafe – requires the documentary evidence dealt with above as to registered and unregistered trade marks and names.</p>				

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges

Part C

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References

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<b>Successful Challenges (Number &amp; %)</b>	<b>Total No. Registered Names</b>	<b>No. of Mechanism Registrations/Claims</b>	<b>References</b>
As to the number of CEDRP and DCDRP challenges that succeeded- There were none. All issues were resolved informally.	Currently registered – approximately 6,000. Over 10,000 have been registered ITD.	Nil CEDRP and DCDRP claims to date.	See Proof of Concept Report at: <a href="http://www.icann.org/tlds/agreements/coop/poc-dcllc-102602.pdf">www.icann.org/tlds/agreements/coop/poc-dcllc-102602.pdf</a>

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.dk (prepared by Peter Gustav Olsen)

Part A – IDNs introduction

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
<p>None. The expansion of Danish letters Æ, Ø, Å, Ä, Ë, Ö, Ü and É to the .dk character set was open to anyone, anywhere, worldwide. However, the letters can only readily be written with a Danish (or Swedish or Norwegian keyboard) and the words were mostly understood by Scandinavians, so the market was <i>de facto</i> limited to the Scandinavian countries (Denmark, Norway and Sweden)</p>	<p>IP Claim.</p>	<p>"Special Rights", which included                      1) a right to a surname                      2) a trademark [including registered as well as unregistered rights]or                      3) a statutory exclusive right to use a given designation [such as a company name]]</p>	<p>In the 30-days prior to the general landrush, anyone could file an application for a new specific domain name containing an IDN character. On the pre-launch application form, it was possible to indicate that the applicant had a "special rights" by checking the appropriate box. All filers during this 30 day period were given the same filing date, namely February 1, 2004. If more than one applicant had filed for the same domain name, all applicants were informed of any applicants which had declared that they had a special right to a domain name, and were asked to confirm (by accessing a secure website) that they wished to proceed despite the assertion of the special right. If more than one applicant confirmed, all applicant's remaining were required to deposit DKK 5000 (about US\$ 850). If more than one applicant paid DKK 5000, the remaining applicants were all asked to pay a further DKK 5000. This</p>	<p>DKK 75 (about US\$ 13), the standard application price. However, if an auction/lottery took place the price could rise to about US\$ 2550.</p>

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			<p>"auction" went on for three rounds. If more than one applicant paid a total of DKK 15000 (about US 2550), there was a lottery among the remaining applicants.</p> <p>The domain name was locked for 60 days during which any party could challenge the validity of the registration via the Danish DRP. In case the challenger was successful, the deposit paid by the successful applicant (up to US\$ 2550), could be used to offset the challengers attorney's fees.</p>	
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**Part B**

<b>Application Verification/Authentication Process</b>	<b>Challenge Mechanism (Yes/No)</b>	<b>Challenge Mechanism Cost &amp; Arbiter</b>	<b>Challenge Mechanism Requirements (to Prevail)</b>	<b>No. of Challenges</b>
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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbitrator	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>There was no pre-conflict validity of asserted "special rights". This meant that if one asserted a special right, and the other applicants withdrew, the domain name was registered with no validation whatsoever. In the event of a conflict, such rights were "validated" or rather tried by the trier of fact.</p>	<p>Yes</p>	<p>DKK 500 (about US\$ 85), refunded if the challenge is successful.                      Arbitration at the DIFO Complaints Board for Domain Names.</p>	<p>Challenger must show that the registration of the domain name was "in contravention of Danish law". This intentionally broad and open-ended policy includes all Danish legislation, including legislation concerning Personal Names, Unfair Competition, Contracts and Trademarks, as well as "general legal principles".                      The first Challenger to win received the domain name registration.</p>	<p>Approximately 23,000 domain names comprising the IDNs were registered during the first year. Checking now with DK-Hostmaster whether there are statistics</p>

Part C

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References

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<b>Successful Challenges (Number &amp; %)</b>	<b>Total No. Registered Names</b>	<b>No. of Mechanism Registrations/Claims</b>	<b>References</b>
Checking now with DK-Hostmaster	About 23,000 Danish .dk domain names comprising IDNs were added during the first six months	Checking now with DK-Hostmaster	DK-Hostmaster Terms and Conditions, see <a href="http://www.dk-hostmaster.dk/fileadmin/filer/pdf/generelle_vilkaar/General_conditions_under_DK_ver-02.pdf">http://www.dk-hostmaster.dk/fileadmin/filer/pdf/generelle_vilkaar/General_conditions_under_DK_ver-02.pdf</a> , in particular section 12.2 (this is in English)  For statistics, see DK-Hostmaster: <a href="http://www.dk-hostmaster.dk/index.php?id=209">http://www.dk-hostmaster.dk/index.php?id=209</a>

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eu (prepared by Margie Milam)

Part A

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
(i) undertaking having its registered office, central administration or principal place of business within the EU; (ii) organization established within the EU; or (iii) natural person resident within the EU	Sunrise-  During Sunrise, names were awarded first come first serve, for rights holders, subject to validation by PWC  Each registrar was given one connection to the registry, which resulted in the significant numbers of registrars accredited.	Phase 1: <ul style="list-style-type: none"> <li>▪ registered National and Community Trademarks</li> <li>▪ geographical indications or designations of origin, public bodies</li> </ul> Phase 2: <ul style="list-style-type: none"> <li>▪ Unregistered trademarks</li> <li>▪ Trade names</li> <li>▪ Business identifiers</li> <li>▪ Company names</li> <li>▪ Family names</li> <li>▪ Distinctive titles of protected literary and artistic works</li> </ul> Note: <ul style="list-style-type: none"> <li>▪ Figurative Design marks allowed only if the general impression of the word is apparent, without any possibility of misreading the characters</li> <li>▪ Exact match of domain name to the characters of the prior right, with the following exceptions: (1) characters of</li> </ul>	For Sunrise submissions, there were two processes involved:  #1. Submission of the requested name to EURid through standard EPP protocol.  #2. Submission of documentary evidence (either electronic or physical) to appointed validation agent for EURid (PWC), required within 40 days of application (due to EC Regulation (874/2004))  Note: Strict Compliance with documentary rules required, with no ability to correct errors.  Specific Documentary Rules: <ul style="list-style-type: none"> <li>• Signed Coversheet requiring Bar Code, and language of documentary evidence</li> <li>• Applicant must match the holder of the prior right (licensees were only allowed with Declaration of License)</li> <li>• Copies of prior right documentation required from</li> </ul>	- 10 EUR for domain submission  - 45 EUR for registered TM holders (30 EUR refunded back if application not reviewed)  - 85 EUR for registered TM holders (70 EUR refunded back if application not reviewed)

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TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
		punctuation not allowed in domains can be transcribed, omitted or replaced with hyphen, and (2) names in otherwise standard latin script used generally accepted transliteration standards	official databases <ul style="list-style-type: none"><li>• No staples, folds allowed, letter size, printed only on one side</li></ul>	

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Part B

Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>Phase 1:  - Copy of trademark / renewal certificate  - Extract from official trademark register  - Print out from the official online trademark register (if available)</p> <p>Phase 2:  - All of Phase 1 for registered TMs  - Varying requirements based on type of prior right claimed and country in which such rights are being asserted.</p> <p>Multiple applications were allowed for the same name and validation was done in order...if the first applicant was denied, the second would have their evidence reviewed, etc, etc...</p>	<p>Yes</p>	<p>Alternative Dispute Resolution process put in place for challenges AFTER a decision was rendered by the registry. No other challenge mechanism in place.</p> <p>Czech Arbitration Court oversees the .eu ADR process</p> <p>Costs start at 1,850 EUR for one panelist handling 1-2 domain names up to 5,020 EUR for three panelists handling up to 9 domains.</p>	<p>-the complainant must be the holder of a right that is recognised or established by national and/or Community law;</p> <p>-the name for which complainant holds a right must be identical or confusingly similar to the name for which complainant holds such a right;</p> <p>-the domain name has been registered by its holder (i) without rights or legitimate interest in the name, or (ii) in bad faith, or the domain name is being used in bad faith.</p>	<p>~540 (as of 3/7/07)</p>

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Part C

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/ Claims	References/Observations
19% of Sunrise Challenges were successful	~2.5 million	~300,000 Sunrise names and 398 Sunrise decisions rendered via the ADR process	<p>Materials referenced in the collection of this data were:</p> <ul style="list-style-type: none"> <li>≡ <a href="http://www.eurid.eu">www.eurid.eu</a></li> <li>≡ <a href="http://www.adr.eu">www.adr.eu</a></li> <li>≡ “Validation Services for EURid; Rules and Procedures for Dot-eu Sunrise” presentation provided by PriceWaterHouse Coopers</li> <li>≡ <a href="http://www.pwc.com/Extweb/service.nsf/docid/D854DA8844872EF880256FA20035C724/\$file/web.pdf">http://www.pwc.com/Extweb/service.nsf/docid/D854DA8844872EF880256FA20035C724/\$file/web.pdf</a></li> <li>≡ <a href="http://www.eurid.eu/images/Documents/Sunr_Presentation/general-presentation-eurid_f[1].pdf">http://www.eurid.eu/images/Documents/Sunr_Presentation/general-presentation-eurid_f[1].pdf</a></li> </ul> <p>Observations:</p> <ul style="list-style-type: none"> <li>● Rules complex and convoluted</li> <li>● Expedited Benelux trademarks allowed numerous generic names to be registered without requirement of usage of marks</li> <li>● No correction mechanism available</li> <li>● Good transparency in sunrise procedures through Eurid’s publication of queues with WHOIS info and submission dates, allowing challenges where appropriate</li> <li>● Strict Compliance with documentary evidence requirements resulted in significant numbers of sunrise names failing validation</li> </ul>



**Internet Corporation for Assigned Names and Numbers**

.info (prepared by Damian Broadley (International Trademark Association Internet Committee Member))

Part A

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
No restriction – open gTLD.	.info had an IP sunrise and uses the UDRP to protect trademark rights post the start-up period.	<p>Trademarks registered before 2 October 2000.</p> <p>The nationality and number of the trademark had to be provided in the sunrise application.</p> <p>The textual element of the trademark had to be identical to the domain name, but stylized marks were accepted.</p> <p>There was a sunrise challenge period during which third parties could challenge the applicant’s basis for their sunrise claim. WIPO was appointed to determine these challenges. If challenged, an applicant had to file evidence of their trademark.</p>	<p>Sunrise claims had to be filed between 25 July and 27 August 2001. Apart from the additional trademark detail, the applications were typical of a domain name registration.</p> <p>Competing sunrise claims were prioritized using a randomized round robin queuing system.</p>	There was no additional cost for a sunrise application, but there was a minimum 5 year registration period and a 180 non-transfer period.

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### Part B

Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>There was no formal verification in .info. However, there was a sunrise challenge mechanism and the registry itself challenged many names in what were known as 'Challenges of Last Resort.'</p> <p>In addition, the registry reportedly cancelled 7000 Sunrise registrations when the registrants failed to respond to registry inquiries for trademark information.</p>	<p>Yes</p>	<p>Sunrise challenges could be filed from 28 August to 26 December 2001.</p> <p>Challengers had to pay a non-refundable \$75 fee and if more than one challenge was filed to a name they were ranked in order of priority. The 'priority challenger' then had to pay \$225. The applicant had to pay \$295 to defend their sunrise claim.</p> <p>The arbiter was WIPO.</p>	<p>If more than one challenge was filed against a sunrise application the challenges were ranked in order of priority.</p> <p>The challenger needed to show:</p> <ul style="list-style-type: none"> <li>• At the time of registration of the domain name, no current trademark or service mark registration was issued in the registrant's name.</li> <li>• The domain name registered is not identical to the textual or word elements of the trademark or service mark that is registered</li> <li>• The registration of the trademark or service mark registered is not of national effect or was not issued prior to October 2, 2000.</li> </ul> <p>There were no other grounds for challenging a sunrise application.</p>	<p>15172 challenges were filed, but 13593 of these were Challenges of Last Resort filed by the registry itself. Only 1579 were 'regular' challenges.</p>

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Part C

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References
<p>Of the total 15172 challenges, the outcome was as follows:  88.6% name cancelled,  5.1% name transferred.  5.4% challenge terminated  0.9% challenge dismissed</p> <p>For the 1579 Regular challenges, the outcome was as follows:  26.5% name cancelled,  49.2% name transferred.  20.8% challenge terminated  3.5% challenge dismissed</p> <p>For the 13593 Challenges of Last Resort, the outcome was as follows:  95.8% name cancelled,  3.6% challenge terminated  0.6% challenge dismissed</p>	<p>The 4 millionth .info name was registered in March 2007.</p>	<p>51,764 names were registered during the Sunrise registration period.</p>	<p>WIPO did a report on its involvement in the .info sunrise challenges:  <a href="http://www.wipo.int/amc/en/domains/reports/info-sunrise/report/index.html">http://www.wipo.int/amc/en/domains/reports/info-sunrise/report/index.html</a></p> <p>Summary submitted to Afiliat for review, but no comments were received before the final report deadline.</p>

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.jobs (prepared by Mike Rodenbaugh)

Part A

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
.Jobs reserves all domain names at the second level to ensure fair and equitable treatment for all employers to acquire their legal or commonly known trade name at the point in time they desire to do so.	Other ("Trade Name Period")	Legal or commonly known trade names.	Initial 60-day "Trade Name Period" for companies to apply for registration with equal standing whether submitted on Day One or Day Sixty.	No cost additional to registration fee.

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Part B

Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
All applications were validated by the registry, to ensure domains would be used by companies with legal or other commonly known names corresponding to requested domain name.	Yes.	No cost.	At the close of the Trade Name Period, registry examined the duplicate applications and based upon various criteria to determined a clear differentiator (criteria based upon the best interests of the community, i.e. one IBM employs 10,000 people and none of the others employed more than 10). If registry could not determine a clear differentiator, with one of the mechanisms allowing the parties to work out amongst themselves if they wanted to, it simply went to a coin flip.	Only one name was contested to a coin flip.

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### Part C

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References
All but one contended string was resolved through registry validation or consent of competing parties.			Via email correspondence with Ray Fassett, manager of .jobs registry.  Numerical data was requested from the registry, but was not received before the final report deadline.



**Internet Corporation for Assigned Names and Numbers**

**.mobi (prepared by Tim Ruiz)**

**Part A**

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
<p>Sponsored TLD.</p> <p>DotMOBI domain name registrants that have websites accessible through port 80 must agree to implement the mandatory registrant rules listed in the dotMOBI Switch On! Web Developer Guide. Note that dotMOBI registrants are not required to have a website accessible through port 80.</p> <p>In summary, the mandatory elements of the current version of the Switch On! Web Developer Guide are:</p> <p>Valid XHTML Mobile Profile:</p> <p>Requests for URIs consisting only of "example.mobi" or</p>	<p>Two phase Sunrise.</p> <p><u>Phase I – Limited Industry Sunrise.</u> This initial phase ran for one week and was reserved for participating mobile/wireless Trade Associations. The participating associations were:</p> <ul style="list-style-type: none"> <li>• AMTA</li> <li>• CTIA</li> <li>• CWTA</li> <li>• GSMA</li> <li>• MMA</li> <li>• MEF</li> <li>• NZWF</li> <li>• RCA</li> </ul> <p><u>Phase II – General Trademark Sunrise.</u> This phase ran for 10 weeks and was open to all holders of trademarks and service marks whose</p>	<p>During both Phases, mark holders were required to provide the following information:</p> <ul style="list-style-type: none"> <li>• Trademark name (must be three or more ASCII characters).</li> <li>• Trademark identification number.</li> <li>• Date of Trademark application (this date must be before July 11th 2005).</li> <li>• Date of granting of trademark (this date cannot be in the future).</li> <li>• Country of trademark registration.</li> </ul> <p>Trademark Name Criteria</p> <p><b>Insert the textual or word elements of the trademark here. (For example, “Cadbury Creme Egg” or “AT&amp;T”.) This field can accept ASCII letters and numbers, spaces, and these characters: ., &amp;#(-)~`!@\$%^*+={ } [ ] ; &lt; &gt; ? ^ " &lt; / . Other characters are not allowed (for example: ö, è, Ø, Σ, etc.).</b></p>	<p><u>Phase 1 – Limited Industry Sunrise.</u>                      Applications were taken by ICANN Accredited registrars and submitted through the EPP SRS from 22 May through 29 May 2006.</p> <p>This Phase of submissions was followed by a quiet period from 30 May through 11 June 2006.</p> <p><u>Phase II – General Trademark Sunrise.</u>                      Applications were taken by ICANN Accredited registrars and submitted through the EPP SRS from 12 June through 21 August 2006.</p> <p>This Phase of submissions was followed by a quiet period until Landrush and General Registration began on 28 August 2006.</p>	<p>Both Phases                      \$100 per year.                      2 year minimum.</p>

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TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
<p>"www.example.mobi" must result in a response that is encoded in a format the device supports or valid XHTML-Mobile Profile 1.0 or later released version [XHTMLMP], where "example" stands for any domain name.</p> <p>If the site provides its home page by redirection then all intermediate pages that are delivered in the course of the redirection must comply with this rule.</p>	<p>marks qualified under the rules.</p>	<p>Trademark Country Criteria</p>		
		<p><b>This is the country or national jurisdiction in which the trademark was registered. Use "EU" for European Union trademarks, "BX" for Benelux trademarks, or "OT" for other trademarks of national effect.</b></p>		
<p>Second-Level Domain Site:</p>		<p>Trademark Number Criteria</p>		
<p>Domains that operate a site at www.example.mobi must also implement a site at example.mobi.</p>		<p><b>Insert the trademark's REGISTRATION number here. Note that a trademark application number may be different from the trademark's actual registration number. This field can accept ASCII letters and numbers, spaces, and these characters: ., &amp; # ( ) - ' ~ ! @ \$ % ^ * + = { } [ ] ; : &lt; &gt; ? \ / " &lt; /</b></p>		
<p>Use of Frames:</p>		<p>Date Trademark Applied Criteria</p>		
<p>Do not use frames</p>	<p><b>Insert the date that the trademark office received or logged in the application. Many trademark offices call this the "Filing Date."</b></p>			

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TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
(standard or inline) unless the target client is known to support them.		<b>If not listed on the trademark certificate, the information should be available from the trademark office, especially if it offers an online database. This date must be prior to July 11, 2005.</b>		
		Date Trademark Registered Criteria <b>Insert the date that the trademark office formally granted the trademark. Many trademark offices call this the "Registration Date." This date cannot be in the future.</b>		

Part B

Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>Applications were randomly checked for accuracy and compliance. Otherwise, mTLD relied on the Sunrise Challenge procedure to resolve compliance challenges.</p> <p>mTLD reserved the right to cancel a registration at any time for non-compliance.</p>	<p>Yes</p>	<p>\$750 WIPO</p>	<p>dotMobi is provided a service for the resolution of disputed domain names registered during either Phase of the Sunrise Registration Period. This service was available during the Sunrise Registration Challenge period which began on 28 August 2006 and continued until 15 December 2006.</p> <p>Dispute resolution services were provided exclusively by the World Intellectual Property Organisation (WIPO); and challenges had to be submitted directly to WIPO. WIPO made guidelines, forms, and lists of cases available on its website.</p> <p>The only bases for a valid challenge to a Sunrise Registration was any one or more of the following conditions:</p> <ul style="list-style-type: none"> <li>• At the time of the Respondent's registration of the Domain Name, no current (non-expired) trademark or service mark registration was registered in the Respondent's name.</li> <li>• The Domain Name was not identical to the textual or word elements of the trademark or service mark registration on which the registration of the Respondent's Domain Name was based.</li> <li>• The trademark or service mark registration on which the registration of the Respondent's Domain Name was based</li> </ul>	<p>18</p>

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
			was not of national effect. <ul style="list-style-type: none"> <li>The trademark or service mark on which the registration of the Respondent's Domain Name was based was not registered or applied for, prior to July 11, 2005, with the trademark authority with which the mark is registered.</li> </ul>	

Part C

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References/Observations

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Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References/Observations
Of the eighteen challenges filed:  Successful – 9 (50%) Canceled – 2 (11%) Terminated – 7 (39%)	443,149 (19/3/07)	<u>Registrations</u> Phase I – 1,706 Phase II – 13,081 Total – 14,787  <u>Claims/Challenges</u> 18	The following documents and materials were referenced:  .mobi Switch On! Web Developer Guide (v1.0 Final Version) <a href="http://pc.mtld.mobi/documents/dotmobi_Switch_On_Web_Developer_Guide3.html">http://pc.mtld.mobi/documents/dotmobi_Switch_On_Web_Developer_Guide3.html</a>  Overview of Dispute Resolution on mTLD's Website: <a href="http://pc.mtld.mobi/switched/sr_dispresolution.html">http://pc.mtld.mobi/switched/sr_dispresolution.html</a>  .mobi Sunrise Challenge Policy <a href="http://pc.mtld.mobi/documents/Sunrise-Challenge-Policy.pdf">http://pc.mtld.mobi/documents/Sunrise-Challenge-Policy.pdf</a>  .mobi Sunrise Challenge Rules <a href="http://pc.mtld.mobi/documents/dotmobi-Sunrise-Challenge-Rules.pdf">http://pc.mtld.mobi/documents/dotmobi-Sunrise-Challenge-Rules.pdf</a>  Summary reflects comments and information received from Caroline Greer, mTLD Top Level Domain Ltd.

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**.museum (prepared by Kelly W. Smith)**

**Part A**

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
<p>Sponsored TLD.</p> <p>Eligibility for .museum names is restricted to museums, professional associations of museums, and individual members of the museum profession.</p> <p>“Museum” is defined as “a non-profit making, permanent institution in the service of society and its development, and open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, material evidence of people and their environment.”</p>	<p>Other.</p> <p><u>Rights-based Name Selection.</u> MuseDoma (Museum Domain Management Association) restricts name selection to a .museum name that is “clearly and recognizably derived from the name by which the entity to which it is assigned is otherwise widely known” and that “specifically designates the entity to which it is assigned.”</p> <p><u>Generic Terms/Place Names.</u> Generic terms, and country, city or other geographic identifiers, are not able to be registered without additional descriptive terms (e.g.</p>	<p><u>Name Selection.</u> Eligible applicants may only register a name that is “clearly and recognizably derived from the name by which the entity to which it is assigned is otherwise widely known” and that “specifically designates the entity to which it is assigned.”</p>	<p>All applicants are required to undergo an authentication process to confirm their eligibility for a .museum name. Applicants must apply to the Eligibility and Name Selection (ENS) Service for a “Community ID” before seeking to register a .museum name. To obtain a Community ID, applicants can submit a membership number of ICOM (International Council of Museums) or another professional museum organization or detailed info regarding the nature/scope of museum activities.</p> <p>MuseDoma awards all .museum names on a “first come, first served” basis to the first qualified and eligible applicant.</p> <p>Phase 0: June 30, 2001 – April 1, 2002. Naming Convention Development and Demonstration Period.</p> <p>Phase 1: April 1, 2002 – December 31, 2002. Formal start-up period.</p>	<p>ENS Service fee: \$100 USD (as of 2004, MuseDoma will waive if authentication is straightforward and requires no dialogue with applicant (e.g. if based on ICOM membership number)).</p> <p>Domain name registration: Wholesale cost \$60 USD, Average retail cost \$100 USD (annually)</p>

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	"whitney.art.museum.").			
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**Part B**

Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
Yes, MuseDoma uses an authentication process. Applicants must apply to the Eligibility and Name Selection (ENS) Service for a "Community ID" before seeking to register a .museum name. To obtain a Community ID, applicants can submit a membership number of ICOM (International Council of Museums) or another professional museum organization or detailed info regarding the nature/scope of museum activities. Applicant has one year to satisfy MuseDoma that it qualifies. At the end of one year, MuseDoma will ask applicant to address outstanding issues or will refer the matter to ICOM or an independent expert panel.	No  Note: Formal concerns about a registrant's eligibility may be resolved through the Charter Eligibility Dispute Resolution Policy (CEDRP).	N/A	N/A	N/A

**Part C**

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Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References	Comments
N/A.	2,665 (as of 2004).	N/A	Registry website: <a href="http://www.museum">http://www.museum</a>  .museum TLD Sponsorship Agreement: <a href="http://www.icann.org/tlds/agreements/museum/">http://www.icann.org/tlds/agreements/museum/</a>  Evaluation of the New gTLDs: Policy and legal Issues (prepared for ICANN July 10, 2004): <a href="http://www.icann.org/tlds/new-gtld-eval-31aug04.pdf">http://www.icann.org/tlds/new-gtld-eval-31aug04.pdf</a>	Adoption and implementation of strict eligibility and name selection requirements obviated the need for alternative protection mechanisms.  Requested information from MuseDoma as to the current number of registered names.

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**.name (prepared by Martin Schwimmer (IPC member) and Kristina Rosette**

**Part A**

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
<p>Identity to personal name or name by which a person is commonly known.</p> <p>Owners of trademarks and service marks may purchase 10-year defensive registrations (DRs) to block a particular name.</p>	<p>Sunrise, Other</p>	<p>The registrant can register their legal name, or a numeric addition to their legal name (JOHN.SMITH55.NAME), or a name by which the person is commonly known, or a fictional name if they own rights to that name (HARRY.POTTER.NAME).</p> <p>These defensive registrations (DR) did not resolve. DRs could block at the second level (various.block), third level (block.various), or both (block.block). A Standard DR (SDR), targeted at the second- or third-level, would block a name only at the purchased level and not all levels. If a trademark owner wished to block a name at both levels, a Premium DR was necessary. Multiple persons or entities could obtain identical or overlapping DRs upon payment by each of the relevant registration fee.</p>	<p>Online registration, no verification of compliance.</p> <p>Phase I for DRs (start December 1, 2001): Applicants were required to identify the mark to which the DR corresponded, the mark's registration date, the country of registration, and registration number.</p> <p>Phase I requirements did not apply after Phase I. After June 13, 2002, any person could register a DR.</p> <p>DRs would not be granted if the DR conflicted with a prior Personal Name Registration or other reserved word or string.</p> <p>If applicant applied for name protected by DR, it would receive a notice of the DR. The applicant could seek consent from the DR holder or challenge the DR holder's eligibility for the name under the Eligibility Requirements Dispute Resolution Policy (ERDRP). If the</p>	<p>1 year minimum for personal name registrations</p> <p>\$1000 (wholesale price to registrars) for PDR for 10-year term</p>

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		<p>During Phase I, DRs had to match the textual element of the relevant mark, the mark had to be of national effect, and its registration was required to have issued before April 16, 2001. These requirements did not apply during Phase II.</p>	<p>applicant won an ERDRP challenge, it could register the name and the DR received a "strike." DRs were cancelled after three strikes.</p> <p>Name Watch Service notified subscribers (generally trademark owners) if third party registers a particular domain name. Name Watch Service did not prevent the third-party registration, but notified the subscriber to allow the subscriber to challenge the name under ERDRP.</p>	
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Part B

Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbitrator	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbitrator	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
n.a.	Yes.  ERDRP (general and for DRs).	WIPO and NAF were approved arbitrators. Fees were standard WIPO and NAF fees.	ERDRP: Challenger had to establish that the registrant did not meet eligibility requirements and that the challenger itself was eligible for the name.  UDRP: Usual three-prong test.	WIPO identified 6 .NAME UDRPs out of approx. 19,000, and 5 ERDRPS.

Part C

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References

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<b>Successful Challenges (Number &amp; %)</b>	<b>Total No. Registered Names</b>	<b>No. of Mechanism Registrations/Claims</b>	<b>References</b>
No data	There were over 92,000 .name registrations as of February 2003.	Unknown.	Edelman, .NAME registrations not conforming to .NAME Registration Restrictions at <a href="http://cyber.law.harvard.edu/people/edelman/name-restrictions/">http://cyber.law.harvard.edu/people/edelman/name-restrictions/</a> .  WIPO Press Release March 2007, Appendix A at <a href="http://www.wipo.int/export/sites/www/pressroom/en/articles/2007/docs/wipo_pr_2007_479a.pdf">http://www.wipo.int/export/sites/www/pressroom/en/articles/2007/docs/wipo_pr_2007_479a.pdf</a>  <a href="#">.name Registry Proof of Concept Reports</a>  Summary reflects review by and information from Hakon Haugnes and Asbjorn Mikkelsen of Global Name Registry.

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**.pro (prepared by Lance Griffin)  
Part A**

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
<p>Non-Sponsored TLD  Persons/entities  credentialed to provide  professional services;  currently limited to  medical, legal,  accounting and  engineering  professionals in U.S.,  Canada, Germany and  U.K.</p>	<p>Sunrise Period  allowing for four types  of Defensive  Registrations: (1)  ProGuard: blocks all  identical third level  registrations in one  third level domain  (smith.law.pro); (2)  ProBlock: blocks all  current and future third  level domains  (smith.law.pro,  smith.med.pro, etc.);  (3) ProDefense:  blocks registrations in  second level domains  (smith.pro); (4)  ProReserve:  professional outside  U.S. can block second  or third level. All four  are non-resolving.</p>	<p>(1/2/3)  ProGuard/ProBlock/ProDefense:  Owners of trademark/servicemark  of national effect registered prior to  September 30, 2003; Supplemental  or State/Province registrations not  accepted; registration must cover  identical ASCII text/word (may  include design elements).   (4) ProReserve: potential  registrants, no basis requested for  blocking.</p>	<p>ProGuard/ProBlock/ProDefense:  Must attest to ownership of right and  provide information on trademark,  date of registration, country of  registration and registration number.  Click-through agreement.   ProReserve: No submission of  trademark information required.  (process at domainpeople.ca)</p>	<p>Four year term:  ProGuard \$896  ProBlock: \$2,699  ProDefense:  \$3,499  ProReserve: \$896  (retail prices at  domainpeople.ca)</p>

**Part B**

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbitrator	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
Checking with Registry	Yes	\$500 WIPO Arbitration and Mediation Center	Must prove existence of active trademark registration at time of IP Defensive Registration, and specifically show; textual or word elements are identical to domain name; registration has national effect; for IP Defensive registrations during Sunrise Period, registration was achieved prior to 09/30/2003.	Checking with Registry

Part C

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<b>Successful Challenges (Number &amp; %)</b>	<b>Total No. Registered Names</b>	<b>No. of Mechanism Registrations/Claims</b>	<b>References</b>
Checking with Registry	Checking with Registry		Registration Agreement, specifically Appendix G, L and M: <a href="http://www.icann.org/tlds/agreements/pro/">http://www.icann.org/tlds/agreements/pro/</a> .  RegistryPro web site: <a href="http://www.Registrypro.com">www.Registrypro.com</a>  Current registration process and retail pricing at <a href="http://www.domainpeople.ca">www.domainpeople.ca</a> and <a href="http://www.domainsite.com/pro/">http://www.domainsite.com/pro/</a> .

Final Report PRO WG

**.travel (prepared by Kristina Rosette)**

**Part A**

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
<p>Sponsored TLD.</p> <p>Eligibility for .travel names was restricted to ‘people, organizations, associations, and private, governmental and non-governmental agencies in the travel and tourism industry.’ Illustrative eligible industry categories include airlines; attractions/theme parks; bed &amp; breakfast houses; bus/taxi/limousine operators; camp facility operators; car rental companies/airport specialty car park companies; computer reservation/travel technology provider; convention &amp; visitor’s bureaus; cruise lines; ferries; hotels/resorts/casinos;</p>	<p>Other.</p> <p><u>Rights-based Name Selection.</u> Tralliance restricted name selection to the .travel names corresponding to names and marks owned or used by the applicant. After an Authentication Provider authenticated the applicant’s eligibility for .travel names, the applicant was provided with a list of .travel names that, based on its eligibility application, it was entitled to register.</p> <p><u>Place Names:</u> Tralliance created a list of country and place (city, county, continental regional,</p>	<p><u>Name Selection.</u> .Travel name choices were limited to the names an applicant owned or used. Each .travel applicant received a Names List of names it was eligible to register based on information it provided during the authentication process. Documentation of use or registration of each name was required. The illustrative list of “name types” consists of :</p> <ul style="list-style-type: none"> <li>• “doing business as” names, trade names, or “usual” business names;</li> <li>• usual business name used in URL;</li> <li>• trademark (registered, applied for, or used);</li> <li>• service mark (registered, applied for, or used);</li> <li>• product name (registered or used);</li> <li>• division name;</li> <li>• subsidiary name (wholly owned or controlled);</li> <li>• promotion or venture name;</li> <li>• partnership name (registration or</li> </ul>	<p>All applicants are required to undergo an authentication process to confirm their eligibility for a .travel domain name. Once authenticated, the applicant receives a Unique Identifying Number (“UIN”) and a Names List of names for which the applicant is eligible to apply for based on the Name Selection Data it provided. The UIN and Names List for each applicant is posted to a database and made accessible to both the applicant and its Authentication Provider. Applicant selects a .travel accredited registrar and submits its .travel name registration application(s). Tralliance matches applicant name, UIN and applied-for .travel name against database. All three elements must match for registration to be successful.</p> <p>Tralliance awarded all .travel names except place names and reserved names on a “first come,</p>	<p>Unable to determine. Accredited registrars charge different prices.</p>

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TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
<p>national tourism offices; passenger rail lines; restaurants; tour operators; travel agents; travel media; travel consumer and market research organizations; ravel insurance; and travel training institutes.</p>	<p>state, province, and territory) names, and initially reserved those names for registration by the governmental authority that holds a right to the name based on use or location.</p>	<p>use)</p> <ul style="list-style-type: none"> <li>• club name;</li> <li>• competition, games or event name (registered, applied for or used);</li> <li>• transport vessel name;</li> <li>• acronyms of eligible name as long as three letters ore more.</li> </ul> <p><u>Place Names.</u> Priority granted to governmental authority, agency, board or bureau with demonstrable rights to name. Policy indicates documentation is required.</p>	<p>first served" basis to the first qualified and eligible applicant.</p> <p><u>Pre-Authentication (July 1, 2005-September 29, 2005):</u>        Authentication available on a rolling basis for members or affiliates of Authentication Providers. Initial phase ended five days before Limited Launch. Applicants authenticated during this period could register immediately upon opening of Limited Launch. First phase started on Limited Launch start date and ran for 25 days. Applicants authenticated during this phase could register starting on second month of Limited Launch. Second phase of Pre-authentication started on 31st day of Limited Launch and ran for 25 days. Applicants authenticated during this phase could register during the third month of Limited Launch.</p> <p><u>Limited Launch (Oct. 3, - December 26, 2005):</u> Registration open to all entities that had undergone Pre-authentication.</p>	

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TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
			<p><u>Open Launch</u> (January 2, 2006): Authentication and registration sequentially in real time.</p> <p><u>Place Names Reserved List (ended Sept. 25, 2005)</u>: Entities had an initial window to notify Tralliance that a relevant Place Name was not on the Place Names Reserved List.</p> <p><u>Place Name Priority Rights</u> (Oct. 1, 2005-December 31, 2006): Eligible entities were required to send a letter to Tralliance on letterhead stationery that set forth the .travel names they wished to claim from the Place Names Reserved List. Tralliance applied a “larger population” priority right under which the larger population entity had priority to a place name or a smaller population entity (e.g., Paris, France had priority over Paris, Texas).</p>	

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**Part B**

Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>Yes, Tralliance used an authentication process, which was implemented by authorized Authentication Providers. Travel association members could be authenticated by their association or by third-party Authentication Provider. A travel association that is an Authentication Provider can authenticate only its own members.</p> <p>Applicants submitted their Identification Data, Contact Data, and Name Selection Data to an Authentication Provider. The Identification and Contact Data were used to authenticate eligibility; the Name Selection Data was used to generate the Names List for the applicant.</p> <p>An applicant could appeal to Tralliance the Authentication Provider's denial of eligibility as long as it did so within 30 days of denial. All denials are</p>	<p>No.</p>	<p>N/A</p>	<p>N/A</p>	<p>None.</p>

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Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
archived in a central database to prevent "Authentication Provider-shopping."				

Part C

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References/Observations

Final Report PRO WG

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References/Observations
0	27033 as of April 15, 2007	One appeal to TTPC denial review panel was rejected. One appeal to UDRP was rejected.	<p>The following documents and materials were referenced.</p> <ul style="list-style-type: none"> <li>• <a href="#">.travel New sTLD RFP Application</a></li> <li>• <a href="#">.travel Sponsored TLD Registry Agreement</a></li> <li>• <a href="#">Appendix S to .travel Sponsored TLD Registry Agreement</a></li> <li>• <a href="#">.travel press release, November 28, 2006</a></li> <li>• <a href="#">.travel Guide to Pre-Authentication, June 2005</a></li> <li>• <a href="#">.travel - Policies</a></li> <li>• <a href="#">Tralliance Corporation - Nations' Priority Right Advisory - Update, September 8, 2005</a></li> </ul> <p>Observations/comments</p> <ul style="list-style-type: none"> <li>• Initial examination suggests that adoption and implementation of strict eligibility and name selection requirements obviated the need for alternative protection mechanisms. <ul style="list-style-type: none"> <li>• TTPC, the .travel sponsor, sought public comment on the reservation and public auction of premium names. The public comment period is over and now TTPC is scheduled to take up the issue at its next board meeting.</li> <li>• Summary reviewed and quantitative data for numbers of registered names and mechanism registrations/claims provided by Cherian Mathai, Tralliance Corporation.</li> </ul> </li> </ul>

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.us (prepared by Jon Nevett)

Part A

TLD Eligibility	Mechanism Type (Sunrise, IP Claim, Other, None)	Rights Bases Requirements	Submission Process	Submission Cost
.US	Sunrise	Owners of existing or pending US trademarks (must have been applied for prior to 7/27/01)	Application Required data: -- requested .US name; -- exact trademark; -- TM date of application; -- TM date of registration (if applies) -- TM application number -- TM registration number (if applies) -- TM international industry code -- contact info of registrant, admin, tech & billing contacts; -- nameservers & IP addresses	No fee to apply 5-yr registration term minimum (\$40-100 total)

Part B

Final Report PRO WG

Application Verification/Authentication Process	Challenge Mechanism (Yes/No)	Challenge Mechanism Cost & Arbiter	Challenge Mechanism Requirements (to Prevail)	No. of Challenges
<p>All .US Sunrise applications were checked by the Registry Operator (NeuStar) against the U.S. Patent &amp; Trademark Office (USPTO) database.</p>	<p>No</p>	<p>NeuStar provides a 30-day "hold" period so the registrant can prove his eligibility; otherwise the name is deleted with no refund available</p>		<p>NeuStar reports there were zero (0) Sunrise challenges as they verified each of the registrations with the USPTO.</p>

Part C

Final Report PRO WG

Successful Challenges (Number & %)	Total No. Registered Names	No. of Mechanism Registrations/Claims	References
<p>NeuStar reports that there were zero (0) Sunrise Period challenges since all applications were verified against the USPTO database before registration proceeded.</p>	<p>1,205,834</p>	<p>Zero (0). NeuStar reports there were no complaints or allegations of fraud, and the Sunrise process operated without any flaws.</p>	<p><a href="http://www.DomainTools.com">www.DomainTools.com</a> (as of 3/9/07)                      Email from Jeff Neuman, Sr. Director, NeuStar</p>

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Internet Corporation for Assigned Names and Numbers

## ANNEX TWO – PARTICIPATION DATA

Participants	Affiliation	Dates															
		20-Feb	27-Feb	6-Mar	13-Mar	20-Mar	25-Mar	3-Apr	10-Apr	17-Apr	24-Apr	2-May	9-May	14-May	16-May		
Philip Sheppard	CBUC	aa	p	aa	aa	aa	p	aa									
Mike Rodenbaugh	CBUC	p	p	p	aa	p	p	p	p	p					p	p	
Alistair Dixon	CBUC												aa				
Frank Schilling	CBUC	p	p														
Kelly Smith	IPC	p	p	aa	p	p		p	p	p		p	p	p	p	p	
Lance Griffin	IPC	p	p	p	p	p		p	p	p	p	p	p	p	p	p	
Kristina Rosette	IPC	p	p	p	p	p		p	p	p	p	p	p	p	p	p	
Ute Decker	IPC							p									
Peter Gustav Olson	IPC	p	p	p	p	p			p	p	p	aa	p	p	p	p	
Victoria McEvedy	NCUC			p	p	aa		p	p		p			p		p	
Margie Milam	Registrar		p	p	p	p		p	p	p	p			p	p	p	
Jon Nevett	Registrar		p		p	p			aa	aa	p	p	aa		p	p	
John Berryhill	Registrar	p	p		p			p									
Tim Ruiz	Registrar	p	p		p	p		p		p	p		aa			p	
Jeff Neuman	gTLD Registries	p	p	p	p				aa	aa	aa	aa			p	p	
Michael Palage	gTLD Registries	p	p	p	aa	p	p			p						p	
David Maher	gTLD Registries	p	p		p	p	p	p	p	p	p	p	p	p	p		
Edmon Chung	gTLD Registries			p						p	p						
Avri Doria	NomCom app Coun			p	p	aa	p			p	p	p	p	p	p	p	
Jon Bing	NomCom app Coun	p		p	p	aa	p			p	p	p	p				
Eun-Joo Min	WIPO observer			p	p		p				p	p		p		p	
<b>Staff</b>																	
Liz Williams	Sen. Policy Coun	p	aa	p	p	p	p	p	p	p				p	p	p	
Glen de Saint Géry	GNSO Sec	p	p	p	p	p	p	p	p	p	p	p	p	p	p	p	
<b>Participants</b>		<b>Affiliation</b>		<b>Dates</b>													
Patrick Jones	Registry Liaison Manager																

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### Lisbon Observers

Tricia Drakes

Alan Greenberg ALAC

Colin Adams Global Strategy

Matt Selin MarkMonitor

Bill Jacobs MarkMonitor

Chris Bounds MarkMonitor

Steve DelBianco CBUC

Legend: p - present; a - absent; aa - absent apologies

Notes: ISPCP did not participate in this Working Group

## ANNEX THREE – QUESTIONNAIRE RESULTS

The results are online at  
<http://www.bigpulse.com/pollresults?code=3bSZ4z3AQauWM7Ukrige>

The following screen shot of the poll results pages provides a guide.

### Poll Results

Poll menu: New gTLDs PRO-WG

Report date: Tue 22 May 2007 11:48 BST

Country: All

1. Please categorize yourself (check all that apply):

As at: Sat 05 May 2007 07:59 BST

Number of voters: 40

Ranked by votes

Rank	Opinion	Votes	%
1	Rights owner representative	19	47.50
2	Intellectual Property Rights Owner	17	42.50
3	Civil society (non-profit or similar)	13	32.50
3	Registrant	13	32.50
3	Registrant representative	13	32.50
6	Other	4	10.00
7	Registrar	3	7.50
8	Registry	2	5.00
9	Government	0	0.00

2. Do IP owners need new intellectual property rights or enhanced protection of rights in cyberspace compared to the protection that exists in the real world?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 40

Ranked by votes

Rank	Opinion	Votes	%
1	Yes	19	47.50
1	No	19	47.50
3	No opinion	2	5.00

3. Should registries be mandated to provide such enhanced protections during the introduction of new top-level domains?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 22

Ranked by votes

## Final Report PRO WG

Rank	Opinion	Votes	%
1	Yes	18	81.82
2	No	2	9.09
2	No opinion	2	9.09

4. Please list all TLDs in which you have participated in a rights protection mechanism (such as a sunrise pre-registration period for the launch of a new top-level domain).

As at: Fri 04 May 2007 23:59 BST

Number of voters: 31

Ranked by votes

Rank	Opinion	Votes	%
1	.biz	18	58.06
1	.eu	18	58.06
1	.info	18	58.06
4	.us	15	48.39
5	.mobi	13	41.94
6	Other	12	38.71
7	.name	10	32.26
8	.jobs	8	25.81
9	.pro	5	16.13
9	.tv	5	16.13
11	.travel	4	12.90
12	.aero	3	9.68
13	.cat	2	6.45
13	.museum	2	6.45
15	.coop	1	3.23

5. For each TLD in which you used or tried to use a rights protection mechanism, please identify if you believe your rights were adequately protected. First, in .aero?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 33

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	29	87.88
2	Yes	4	12.12
3	No	0	0.00

Were your rights adequately protected in .biz?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 32

Ranked by votes

Rank	Opinion	Votes	%
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## Final Report PRO WG

1	Not applicable	14	43.75
2	Yes	12	37.50
3	No	6	18.75

Were your rights adequately protected in .cat?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 30

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	28	93.33
2	Yes	2	6.67
3	No	0	0.00

Were your rights adequately protected in .coop?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 30

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	27	90.00
2	Yes	3	10.00
3	No	0	0.00

Were your rights adequately protected in .eu?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 31

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	13	41.94
2	No	10	32.26
3	Yes	8	25.81

Were your rights adequately protected in .info?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 31

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	15	48.39
2	Yes	9	29.03
3	No	7	22.58

Were your rights adequately protected in .jobs?

As at: Fri 04 May 2007 23:59 BST

## Final Report PRO WG

Number of voters: 31

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	23	74.19
2	Yes 6	19.35	
3	No 2	6.45	

Were your rights adequately protected in .mobi?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 31

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	18	58.06
2	Yes 9	29.03	
3	No 4	12.90	

Were your rights adequately protected in .museum?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 30

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	28	93.33
2	Yes 2	6.67	
3	No 0	0.00	

Were your rights adequately protected in .name?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 30

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	22	73.33
2	Yes 6	20.00	
3	No 2	6.67	

Were your rights adequately protected in .pro?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 30

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	24	80.00
2	Yes 5	16.67	
3	No 1	3.33	

## Final Report PRO WG

Were your rights adequately protected in .travel?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 30

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	25	83.33
2	Yes 3	10.00	
3	No 2	6.67	

Were your rights adequately protected in .tv?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 30

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	26	86.67
2	Yes 3	10.00	
3	No 1	3.33	

Were your rights adequately protected in .us?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 30

Ranked by votes

Rank	Opinion	Votes	%
1	Not applicable	16	53.33
2	Yes 10	33.33	
3	No 4	13.33	

Were your rights adequately protected in other TLDs?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 34

Ranked by votes

Rank	Opinion	Votes	%
1	Yes 13	38.24	
1	Not applicable	13	38.24
3	No 8	23.53	

6. For any TLD in which you have participated in a rights protection mechanisms, please tick the right(s) protection mechanisms you used:

As at: Fri 04 May 2007 23:59 BST

Number of voters: 30

Ranked by votes

Rank	Opinion	Votes	%
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## Final Report PRO WG

1	IP claim	20	66.67		
2	Sunrise registration	19	63.33		
3	Sunrise challenge	6	20.00		
3	Premium name	6	20.00		
3	Other	6	20.00		
6	Start up	5	16.67		
6	Start up opposition proceedings	5	16.67		
8	Place name	1	3.33		

7. For any TLD in which you have participated in a rights protection mechanism, please tick below the right(s) you sought to protect.

As at: Fri 04 May 2007 23:59 BST

Number of voters: 33

Ranked by votes

Rank	Opinion	Votes	%
1	Registered trademark	28	84.85
2	Entity name	20	60.61
3	Unregistered trademark	16	48.48
4	Personal name	7	21.21
5	Other	5	15.15

8. Do you believe rights protection mechanisms should protect rights others than those listed above?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 35

Ranked by votes

Rank	Opinion	Votes	%
1	No	24	68.57
2	Yes	11	31.43

9. Are rights protection mechanisms necessary in the introduction of new top level domains?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 36

Ranked by votes

Rank	Opinion	Votes	%
1	Yes	29	80.56
2	No	7	19.44

10. Should domain name registration rights protection mechanisms protect other things such as literary titles, geographic designations, protection of the commons?

As at: Fri 04 May 2007 23:59 BST

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Number of voters: 37

Ranked by votes

Rank	Opinion	Votes	%
1	No	19	51.35
2	Yes	18	48.65

11. Could the dispute have been resolved in a different way?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 29

Ranked by votes

Rank	Opinion	Votes	%
1	Yes	15	51.72
2	No	14	48.28

12. Which rights protection mechanism(s) could be used?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 18

Ranked by votes

Rank	Opinion	Votes	%
1	IP claim	11	61.11
2	Sunrise registration	7	38.89
2	Sunrise challenge	7	38.89
2	Other	7	38.89
5	Start up opposition proceedings	5	27.78
6	Place name	4	22.22
7	Start up	3	16.67
8	Premium name	2	11.11

13. Suggest other alternatives, if any.

As at: Fri 04 May 2007 23:59 BST

Number of voters: 15

Ranked by votes

Rank	Opinion	Votes	%
1	No	12	80.00
2	Further information	3	20.00

14. Do you own any defensive registrations?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 37

Ranked by votes

Rank	Opinion	Votes	%
1	Yes	19	51.35
2	No	18	48.65

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15. How many defensive registrations do you own in each TLD? First .aero:

As at: Fri 04 May 2007 23:59 BST

Number of voters: 22

Ranked by votes

Rank	Opinion	Votes	%
1	0-10 19	86.36	
2	11-25 2	9.09	
3	51-100 1	4.55	
4	26-50 0	0.00	
4	100+ 0	0.00	

How many defensive registrations do you own in .biz?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 21

Ranked by votes

Rank	Opinion	Votes	%
1	0-10 9	42.86	
2	11-25 5	23.81	
3	51-100 3	14.29	
4	26-50 2	9.52	
4	100+ 2	9.52	

How many defensive registrations do you own in .cat?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 20

Ranked by votes

Rank	Opinion	Votes	%
1	0-10 19	95.00	
2	100+ 1	5.00	
3	11-25 0	0.00	
3	26-50 0	0.00	
3	51-100 0	0.00	

How many defensive registrations do you own in .coop?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 19

Ranked by votes

Rank	Opinion	Votes	%
1	0-10 18	94.74	
2	100+ 1	5.26	
3	11-25 0	0.00	
3	26-50 0	0.00	

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3 51-100 0 0.00

How many defensive registrations do you own in .eu?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 22

Ranked by votes

Rank	Opinion	Votes	%
1	0-10 10	45.45	
2	100+ 5	22.73	
3	11-25 4	18.18	
4	26-50 2	9.09	
5	51-100 1	4.55	

how many defensive registrations do you own in .info?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 22

Ranked by votes

Rank	Opinion	Votes	%
1	0-10 8	36.36	
2	26-50 6	27.27	
3	100+ 5	22.73	
4	11-25 3	13.64	
5	51-100 0	0.00	

How many defensive registrations do you own in .jobs?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 21

Ranked by votes

Rank	Opinion	Votes	%
1	0-10 18	85.71	
2	11-25 2	9.52	
3	100+ 1	4.76	
4	26-50 0	0.00	
4	51-100 0	0.00	

How many defensive registrations do you own in .mobi?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 23

Ranked by votes

Rank	Opinion	Votes	%
1	0-10 17	73.91	
2	11-25 2	8.70	
2	51-100 2	8.70	

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4	26-50	1	4.35
4	100+	1	4.35

How many defensive registrations do you own in .museum?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 21

Ranked by votes

Rank	Opinion	Votes	%
1	0-10	20	95.24
2	100+	1	4.76
3	11-25	0	0.00
3	26-50	0	0.00
3	51-100	0	0.00

How many defensive registrations do you own in .name?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 22

Ranked by votes

Rank	Opinion	Votes	%
1	0-10	19	86.36
2	26-50	2	9.09
3	100+	1	4.55
4	11-25	0	0.00
4	51-100	0	0.00

How many defensive registrations do you own in .pro?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 20

Ranked by votes

Rank	Opinion	Votes	%
1	0-10	18	90.00
2	11-25	1	5.00
2	100+	1	5.00
4	26-50	0	0.00
4	51-100	0	0.00

How many defensive registrations do you own in .travel?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 22

Ranked by votes

Rank	Opinion	Votes	%
1	0-10	20	90.91
2	11-25	1	4.55

Doc. No.:

Date:

1 June 2007

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2	100+	1	4.55	
4	26-50	0	0.00	
4	51-100	0	0.00	

How many defensive registrations do you own in .tv?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 21

Ranked by votes

Rank	Opinion	Votes	%	
1	0-10	15	71.43	
2	11-25	2	9.52	
2	26-50	2	9.52	
2	100+	2	9.52	
5	51-100	0	0.00	

How many defensive registrations do you own in .us?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 22

Ranked by votes

Rank	Opinion	Votes	%	
1	0-10	12	54.55	
2	100+	5	22.73	
3	11-25	3	13.64	
4	26-50	2	9.09	
5	51-100	0	0.00	

How many defensive registrations do you own in other TLDs?

As at: Fri 04 May 2007 23:59 BST

Number of voters: 24

Ranked by votes

Rank	Opinion	Votes	%	
1	100+	9	37.50	
2	0-10	8	33.33	
3	51-100	5	20.83	
4	11-25	1	4.17	
4	26-50	1	4.17	

16. Please tick the percentage of your domain portfolio that consists of defensive registrations:

As at: Fri 04 May 2007 23:59 BST

Number of voters: 26

Ranked by votes

Rank	Opinion	Votes	%	
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1	Less than 10%	11	42.31
2	10-24%	4	15.38
2	25-49%	4	15.38
2	50-74%	4	15.38
5	75% or more	3	11.54

Section II. 1. For each mechanism you have checked above, please check below the capacity in which you were involved:

As at: Sat 05 May 2007 07:59 BST

Number of voters: 25

Ranked by votes

Rank	Opinion	Votes	%		
1	Sunrise reigstrant	17	68.00		
2	IP claimant	15	60.00		
3	STOP claimant	9	36.00		
4	Sunrise challenger	5	20.00		
5	Registrar	4	16.00		
5	Other 4	4	16.00		
7	Sunrise challenge defendant	3	12.00		
8	STOP defendant	2	8.00		
9	Dispute resolution provider	1	4.00		
10	Registry	0	0.00		

2. If you are a registrar or registry, was it necessary to perform technical work or allocate resources specifically in order to implement any rights protection mechanism process(es)?

As at: Sat 05 May 2007 07:59 BST

Number of voters: 28

Ranked by votes

Rank	Opinion	Votes	%		
1	Not applicable	22	78.57		
2	Yes 5	5	17.86		
3	No 1	1	3.57		

3. What type of technical work or resources was required as a percentage of the implementation of the new TLD?

As at: Sat 05 May 2007 07:59 BST

Number of voters: 25

Ranked by votes

Rank	Opinion	Votes	%		
1	Not applicable	16	64.00		
2	10-24%	4	16.00		
3	25-49%	2	8.00		
4	Less than 10%	1	4.00		

## Final Report PRO WG

4	50-74%	1	4.00	
4	75% or more	1	4.00	

4. If rights protection mechanisms were used in the introduction of new TLDs, should that process be standardized across all new TLDs?

As at: Sat 05 May 2007 07:59 BST

Number of voters: 30

Ranked by votes

Rank	Opinion	Votes	%
1	Yes	21	70.00
2	No	9	30.00

5. Should registry operators be allowed to propose rights protection mechanisms tailored to specific needs of their business model/community provided that certain base line criteria are met?

As at: Sat 05 May 2007 07:59 BST

Number of voters: 29

Ranked by votes

Rank	Opinion	Votes	%
1	Yes	20	68.97
2	No	9	31.03

6. What base line criteria should be met?

Comment box only

7. Would a sunrise registration process be a suitable rights protection mechanism for a TLD associated within a defined geographic region in which there is a centralized trademark database for the registry to verify trademark owner rights?

As at: Sat 05 May 2007 07:59 BST

Number of voters: 27

Ranked by votes

Rank	Opinion	Votes	%
1	Yes	20	74.07
2	No	7	25.93

8. Would a sunrise registration process be a suitable rights protection mechanism for a TLD if the TLD community is associated with the specific goods and services a specific international trademark classification, for example, .cars?

As at: Sat 05 May 2007 07:59 BST

## Final Report PRO WG

Number of voters: 28

Ranked by votes

Rank	Opinion	Votes	%
1	Yes	19	67.86
2	No	9	32.14

9. Should any rights protection mechanism provide priority or superior registration access among different categories of rights owners (for example, owners of nationally registered trademarks vs. owners of unregistered trademarks vs. owners of business names)?

As at: Sat 05 May 2007 07:59 BST

Number of voters: 29

Ranked by votes

Rank	Opinion	Votes	%
1	Yes	16	55.17
2	No	13	44.83

10. Any other comments?

Comment box only

## **ANNEX FOUR – NEW TLDS PROPOSED RECOMMENDATIONS & IMPLEMENTATION GUIDELINES**

### **NEW TLD PRINCIPLES, PROPOSED RECOMMENDATIONS AND IMPLEMENTATION GUIDELINES**

The following tables set out the principles, proposed recommendations and implementation guidelines from the GNSO Committee on the Introduction of New Top-Level Domains. They are included here to provide some detailed context for the deliberations of the PRO WG. The outputs from the PRO WG will be fed into the ongoing Committee deliberations.

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	<b><i>PRINCIPLE</i></b>	<b><i>MISSION OR CORE VALUE</i></b>
<b>A</b>	<b>New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.</b>	<b>M1 &amp; CV1 &amp; 2, 4-10</b>
<b>B</b>	Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.	M1-3 & CV 1, 4 & 6
<b>C</b>	The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity. <b>[Consistent with GAC Principle 2.6]</b>	M3 & CV 4-10
<b>D</b>	A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.	M1-3 & CV 1
<b>E</b>	A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meets its obligations under the terms of ICANN's registry agreement.	M1-3 & CV 1
<b>F</b>	<b>A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.</b>	<b>M1-3 &amp; CV 1</b>

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	<b>PROPOSED RECOMMENDATION</b>	<b>MISSION &amp; CORE VALUES</b>
1	<p>ICANN must implement a process that allows the introduction of new top-level domains.</p> <p>The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process. [GAC2.5]</p>	M1-3 & CV1-11
2	<p>Strings must not be confusingly similar to an existing top-level domain.</p> <p>In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced. [GAC2.4]</p>	M1-3 & C1-6-11
3	<p>Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.</p> <p>The process for introducing new gTLDs must make proper allowance for prior third party rights, in particular trademark rights as well as rights in the names and acronyms of inter-governmental organizations (IGOs). [GAC2.3]</p>	CV3
4	<p>Strings must not cause any technical instability.</p>	M1-3 & CV 1
5	<p>Strings must not be a Reserved Word.</p> <p>ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities. [GAC2.2]</p>	M1-3 & CV 1 & 3

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Final Report PRO WG

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6	<p>Strings must not be contrary to generally accepted legal norms relating to morality and public order.</p> <p>New gTLDs should respect:</p> <p>a) The provisions of the Universal Declaration of Human Rights which seek to affirm "fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women".</p> <p>b) The sensitivities regarding terms with national, cultural, geographic and religious significance. [GAC2.1]</p>	M3 & CV 4
7	<p>Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.</p>	M1-3 & CV1
8	<p>Applicants must be able to demonstrate their financial and organisational operational capability.</p> <p>An application will be rejected or otherwise deferred if it is determined, based on public comments or otherwise, that there is substantial opposition to it from among significant established institutions of the economic sector, or cultural or language community, to which it is targeted or which it is intended to support.</p>	M1-3 & CV1
9	<p>There must be a clear and pre-published application process using objective and measurable criteria.</p>	M3 & CV6-9
10	<p>There must be a base contract provided to applicants at the beginning of the application process.</p>	CV7-9
11	<p>Staff Evaluators will be used to make preliminary determinations about applications as part of a process which includes the use of expert panels to make decisions.</p>	CV7-9
12	<p>Dispute resolution and challenge processes must be established prior to the start of the process.</p>	CV7-9

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13	Applications must initially be assessed in rounds until the scale of demand is clear.	CV7-9
14	The initial registry agreement term must be of a commercially reasonable length.	CV5-9
15	There must be renewal expectancy.	CV5-9
16	Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.	CV5-9
17	A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.	M1 & CV1
18	If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.	M1 & CV1
19	Registries must use ICANN accredited registrars.	M1 & CV1

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	Proposed Implementation Guidelines	Mission & Core Value
IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	CV 2, 5, 6, 8 & 9
IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.  Application fees may differ for applicants.	CV 5, 6, 8 & 9

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IG C	ICANN will provide frequent communications with applicants and the public including comment forums which will be used to inform evaluation panels.	CV 9 & 10
IG D	A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary.  Applications will be time and date stamped on receipt.	CV 8-10
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	CV 9 & 10

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IG F	<p><b><i>If there is contention for strings, applicants may:</i></b></p> <ul style="list-style-type: none"><li data-bbox="683 373 980 573"><b><i>i) resolve contention between them within a pre-established timeframe</i></b></li><li data-bbox="683 594 1036 898"><b><i>ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application</i></b></li><li data-bbox="683 919 1036 1192"><b><i>iii) If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;</i></b></li><li data-bbox="683 1213 1036 1413"><b><i>iv) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.</i></b></li></ul>	CV 7-10
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IG G	<p><b><i>Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exception:</i></b></p> <p><b><i>i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application</i></b></p> <p>Under this exception, Staff Evaluators will devise criteria and procedures to investigate the claim.</p>	CV 7 - 10
IG H	External dispute providers will give decisions on complaints.	CV 10
IG I	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	CV 10
IG J	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	CV 4-10
IG K	ICANN should take a consistent approach to the establishment of registry fees.	CV 5

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IG L	The use of personal data must be limited to the purpose for which it is collected.	CV 8
IG M	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way which no longer requires all participants in the conversation to be able to read and write English.	CV 3 - 7
IG N	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	CV 3 - 7
IG O	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	CV 8 -10

**EXHIBIT JJN-42**



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- [Approval of Minutes \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113170\)](#)
- [GNSO Recommendations on New gTLDs \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113171\)](#)
- [IDNC / IDN Fast-track \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113172\)](#)

- [GNSO Recommendation on Domain Tasting \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113173\)](#)
- [Approval of Operating Plan and Budget for Fiscal Year 2008-2009 \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113174\)](#)
- [Update on Draft Amendments to the Registrar Accreditation Agreement \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113175\)](#)
- [Approval of PIR Request to Implement DNSSEC in .ORG \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113176\)](#)
- [ICANN Board of Directors' Code of Conduct \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113177\)](#)
- [Ratification of Selection of Consultant to Conduct Independent Review of the Board \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113178\)](#)
- [Appointment of Independent Review Working Groups \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113179\)](#)
- [Update on Independent Reviews of ICANN Structures \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113180\)](#)
- [Board Committee Assignment Revisions \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113181\)](#)
- [Approval of BGC Recommendations on GNSO Improvements \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113182\)](#)
- [Receipt of Report of President's Strategy Committee Consultation \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113183\)](#)
- [Selection of Mexico City for March 2009 ICANN Meeting \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#mexico\)](#)
- [Review of Paris Meeting Structure \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113184\)](#)
- [Board Response to Discussions Arising from Paris Meeting \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113185\)](#)
- [ICANN At-Large Summit Proposal \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113186\)](#)
- [Other Business \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en# Toc76113187\)](#)

- [Thanks to Steve Conte \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#\\_Toc76113188\)](/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#_Toc76113188)
- [Thanks to Sponsors \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#\\_Toc64597506\)](/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#_Toc64597506)
- [Thanks to Local Hosts, Staff, Scribes, Interpreters, Event Teams, and Others \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#\\_Toc76113190\)](/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#_Toc76113190)

## Approval of Minutes

Resolved (2008.06.26.01), the minutes of the Board Meeting of 29 May 2008 are approved. <<http://www.icann.org/minutes/prelim-report-29may08.htm> (/minutes/prelim-report-29may08.htm)>

| [back to top \(/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#top\)](/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#top) |

## GNSO Recommendations on New gTLDs

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

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

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

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

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

Whereas, the Board instructed staff to review the GNSO recommendations and determine whether they were capable of implementation.

Whereas, staff has engaged international technical, operational and legal expertise to provide counsel on details to support the implementation of the Policy recommendations and as a result, ICANN cross-functional teams have developed implementation details in support of the GNSO's policy recommendations, and have concluded that the recommendations are capable of implementation.

Whereas, staff has provided regular updates to the community and the Board on the implementation plan. <<http://icann.org/topics/new-gtld-program.htm> (/icann.org/topics/new-gtld-program.htm)>

Whereas, consultation with the DNS technical community has led to the conclusion that there is not currently any evidence to support establishing a limit to how many TLDs can be inserted in the root based on technical stability concerns. <<http://www.icann.org/topics/dns-stability-draft-paper-06feb08.pdf> (/topics/dns-stability-draft-paper-06feb08.pdf)>

Whereas, the Board recognizes that the process will need to be resilient to unforeseen circumstances.

Whereas, the Board has listened to the concerns about the recommendations that have been raised by the community, and will continue to take into account the advice of ICANN's supporting organizations and advisory committees in the implementation plan.

Resolved (2008.06.26.02), based on both the support of the community for New gTLDs and the advice of staff that the introduction of new gTLDs is capable of implementation, the Board adopts the GNSO policy recommendations for the introduction of new gTLDs  
<<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm> (<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>)>.

Resolved (2008.06.26.03), the Board directs staff to continue to further develop and complete its detailed implementation plan, continue communication with the community on such work, and provide the Board with a final version of the implementation proposals for the board and community to approve before the new gTLD introduction process is launched.

| [back to top](#) (/en/board-activities-and-meetings/materials/approved-resolutions-icanns-paris-meeting-26-06-2008-en#top) |

## **IDNC / IDN Fast-track**

Whereas, the ICANN Board recognizes that the "IDNC Working Group" developed, after extensive community comment, a final report on feasible methods for timely (fast-track) introduction of a limited number of IDN ccTLDs associated with ISO 3166-1 two-letter codes while an overall, long-term IDN ccTLD policy is under development by the ccNSO.

Whereas, the IDNC Working Group has concluded its work and has submitted recommendations for the selection and delegation of "fast-track" IDN ccTLDs and, pursuant to its charter, has taken into account and was guided by consideration of the requirements to:

- Preserve the security and stability of the DNS;
- Comply with the IDNA protocols;
- Take input and advice from the technical community with respect to the implementation of IDNs; and
- Build on and maintain the current practices for the delegation of ccTLDs, which include the current IANA practices.

Whereas, the IDNC Working Group's high-level recommendations require implementation planning.

Whereas, ICANN is looking closely at interaction with the final IDN ccTLD PDP process and potential risks, and intends to implement IDN ccTLDs using a procedure that will be resilient to unforeseen circumstances.

Whereas, staff will consider the full range of implementation issues related to the introduction of IDN ccTLDs associated with the ISO 3166-1 list, including means of promoting adherence to technical standards and mechanisms to cover the costs associated with IDN ccTLDs.

Whereas, the Board intends that the timing of the process for the introduction of IDN ccTLDs should be aligned with the process for the introduction of New gTLDs.

Resolved (2008.06.26.04), the Board thanks the members of the IDNC WG for completing their chartered tasks in a timely manner.

Resolved (2008.06.26.05), the Board directs staff to: (1) post the IDNC WG final report for public comments; (2) commence work on implementation issues in consultation with relevant stakeholders; and (3) submit a detailed implementation report including a list of any outstanding issues to the Board in advance of the ICANN Cairo meeting in November 2008.

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## **GNSO Recommendation on Domain Tasting**

Whereas, ICANN community stakeholders are increasingly concerned about domain tasting, which is the practice of using the add grace period (AGP) to register domain names in bulk in order to test their profitability.

Whereas, on 17 April 2008, the GNSO Council approved, by a Supermajority vote, a motion to prohibit any gTLD operator that has implemented an AGP from offering a refund for any domain name deleted during the AGP that exceeds 10% of its net new registrations in that month, or fifty domain names, whichever is greater.

<<http://gnso.icann.org/meetings/minutes-gnso-17apr08.shtml>  
(<http://gnso.icann.org/meetings/minutes-gnso-17apr08.shtml>)>

Whereas, on 25 April 2008, the GNSO Council forwarded its formal "Report to the ICANN Board - Recommendation for Domain Tasting"

<<http://gnso.icann.org/issues/domain-tasting/domain-tasting-board-report-gnso-council-25apr08.pdf> (<http://gnso.icann.org/issues/domain-tasting/domain-tasting-board-report-gnso-council-25apr08.pdf>)>, which outlines the full text of the motion and the full context and procedural history of this proceeding.

Whereas, the Board is also considering the Proposed FY 09 Operating Plan and Budget <<http://www.icann.org/financials/fiscal-30jun09.htm>  
([/financials/fiscal-30jun09.htm](http://www.icann.org/financials/fiscal-30jun09.htm))>, which includes (at the encouragement of

the GNSO Council) a proposal similar to the GNSO policy recommendation to expand the applicability of the ICANN transaction fee in order to limit domain tasting.

Resolved (2008.06.26.06), the Board adopts the GNSO policy recommendation on domain tasting, and directs staff to implement the policy following appropriate comment and notice periods on the implementation documents.

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## **Approval of Operating Plan and Budget for Fiscal Year 2008-2009**

Whereas, ICANN approved an update to the Strategic Plan in December 2007. <<http://www.icann.org/strategic-plan/> ([/strategic-plan](#))>

Whereas, the Initial Operating Plan and Budget Framework for fiscal year 2009 was presented at the New Delhi ICANN meeting and was posted in February 2008 for community consultation. <<http://www.icann.org/announcements/announcement-2-04feb08.htm> ([/announcements/announcement-2-04feb08.htm](#))>

Whereas, community consultations were held to discuss and obtain feedback on the Initial Framework.

Whereas, the draft FY09 Operating Plan and Budget was posted for public comment in accordance with the Bylaws on 17 May 2008 based upon the Initial Framework, community consultation, and consultations with the Board Finance Committee. A slightly revised version was posted on 23 May 2008. <<http://www.icann.org/financials/fiscal-30jun09.htm> ([/financials/fiscal-30jun09.htm](#))>

Whereas, ICANN has actively solicited community feedback and consultation with ICANN's constituencies. <<http://forum.icann.org/lists/op-budget-fy2009/> ([http://forum.icann.org/lists/op-budget-fy2009/](#))>

Whereas, the ICANN Board Finance Committee has discussed, and guided staff on, the FY09 Operating Plan and Budget at each of its regularly scheduled monthly meetings.

Whereas, the final FY09 Operating Plan and Budget was posted on 26 June 2008. <<http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf> ([/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf](#))>

Whereas, the ICANN Board Finance Committee met in Paris on 22 June 2008 to discuss the FY09 Operating Plan and Budget, and recommended that the Board adopt the FY09 Operating Plan and Budget.

Whereas, the President has advised that the FY09 Operating Plan and Budget reflects the work of staff and community to identify the plan of activities, the expected revenue, and resources necessary to be spent in fiscal year ending 30 June 2009.

Whereas, continuing consultation on the budget has been conducted at ICANN's meeting in Paris, at constituency meetings, and during the public forum.

Resolved (2008.06.26.07), the Board adopts the Fiscal Year 2008-2009 Operating Plan and Budget.

<<http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf> (</en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf>)>

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## **Update on Draft Amendments to the Registrar Accreditation Agreement**

(For discussion only.)

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## **Approval of PIR Request to Implement DNSSEC in .ORG**

Whereas, Public Interest Registry has submitted a proposal to implement DNS Security Extensions (DNSSEC) in .ORG.

<<http://icann.org/registries/rsep/pir-request-03apr08.pdf> (<http://icann.org/registries/rsep/pir-request-03apr08.pdf>)>

Whereas, staff has evaluated the .ORG DNSSEC proposal as a new registry service via the Registry Services Evaluation Policy <<http://icann.org/registries/rsep/> (<http://icann.org/registries/rsep/>)>, and the proposal included a requested amendment to Section 3.1(c)(i) of the .ORG Registry Agreement <<http://icann.org/tlds/agreements/org/proposed-org-amendment-23apr08.pdf> (<http://icann.org/tlds/agreements/org/proposed-org-amendment-23apr08.pdf>)> which was posted for public comment along with the PIR proposal.

Whereas, the evaluation under the threshold test of the Registry Services Evaluation Policy <<http://icann.org/registries/rsep/rsep.html> (<http://icann.org/registries/rsep/rsep.html>)> found a likelihood of security and stability issues associated with the proposed implementation. The RSTEP Review Team considered the proposal and found that there was a risk of a meaningful adverse effect on security and stability, which could be effectively mitigated by policies, decisions and actions to which PIR has expressly committed in its proposal or could be reasonably required to commit. <<http://icann.org/registries/rsep/rstep-report-pir-dnssec-04jun08.pdf> (<http://icann.org/registries/rsep/rstep-report-pir-dnssec-04jun08.pdf>)>

Whereas, the Chair of the SSAC has advised that RSTEP's thorough investigation of every issue that has been raised concerning the security and stability effects of DNSSEC deployment concludes that effective measures to deal with all of them can be taken by PIR, and that this conclusion after exhaustive review greatly increases the confidence with which DNSSEC deployment in .ORG can be undertaken.

Whereas, PIR intends to implement DNSSEC only after extended testing and consultation.

Resolved (2008.06.26.08), that PIR's proposal to implement DNSSEC in .ORG is approved, with the understanding that PIR will continue to cooperate and consult with ICANN on details of the implementation. The President and the General Counsel are authorized to enter the associated amendment to the .ORG Registry Agreement, and to take other actions as appropriate to enable the deployment of DNSSEC in .ORG.

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### **ICANN Board of Directors' Code of Conduct**

Whereas, the members of ICANN's Board of Directors are committed to maintaining a high standard of ethical conduct.

Whereas, the Board Governance Committee has developed a Code of Conduct to provide the Board with guiding principles for conducting themselves in an ethical manner.

Resolved (2008.06.26.09), the Board directs staff to post the newly proposed ICANN Board of Directors' Code of Conduct for public comment, for consideration by the Board as soon as feasible. [Reference to PDF will be inserted when posted.]

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### **Ratification of Selection of Consultant to Conduct Independent Review of the Board**

Whereas, the Board Governance Committee has recommended that Boston Consulting Group be selected as the consultant to perform the independent review of the ICANN Board.

Whereas, the BGC's recommendation to retain BCG was approved by the Executive Committee during its meeting on 12 June 2008.

Resolved (2008.06.26.10), the Board ratifies the Executive Committee's approval of the Board Governance Committee's recommendation to select Boston Consulting Group as the consultant to perform the independent review of the ICANN Board.

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## **Appointment of Independent Review Working Groups**

Whereas, the Board Governance Committee has recommended that several working groups should be formed to coordinate pending independent reviews of ICANN structures.

Resolved (2008.06.26.11), the Board establishes the following independent review working groups:

- ICANN Board Independent Review Working Group: Amadeu Abril i Abril, Roberto Gaetano (Chair), Steve Goldstein, Thomas Narten, Rajasekhar Ramaraj, Rita Rodin, and Jean Jacques Subrenat.
- DNS Root Server System Advisory Committee (RSSAC) Independent Review Working Group: Harald Alvestrand (Chair), Steve Crocker and Bruce Tonkin.
- Security and Stability Advisory Committee (SSAC) Independent Review Working Group: Robert Blokzijl, Dennis Jennings (Chair), Reinhard Scholl and Suzanne Woolf.

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## **Update on Independent Reviews of ICANN Structures**

(For discussion only.)

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## **Board Committee Assignment Revisions**

Whereas, the Board Governance Committee has recommended that the membership of several Board should be revised, and that all other committees should remain unchanged until the 2008 Annual Meeting.

Resolved (2008.06.26.12), the membership of the Audit, Finance, and Reconsideration committees are revised as follows:

- Audit Committee: Raimundo Beca, Demi Getschko, Dennis Jennings, Njeri Rionge and Rita Rodin (Chair).
- Finance Committee: Raimundo Beca, Peter Dengate Thrush, Steve Goldstein, Dennis Jennings, Rajasekhar Ramaraj (Chair), and Bruce Tonkin (as observer).
- Reconsideration Committee: Susan Crawford (Chair), Demi Getschko, Dennis Jennings, Rita Rodin, and Jean-Jacques Subrenat.

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## **Approval of BGC Recommendations on GNSO Improvements**

Whereas, Article IV, Section 4 of ICANN's Bylaws calls for periodic reviews of the performance and operation of ICANN's structures by an entity or entities independent of the organization under review.

Whereas, the Board created the "Board Governance Committee GNSO Review Working Group" (Working Group) to consider the independent review of the GNSO and other relevant input, and recommend to the Board Governance Committee a comprehensive proposal to improve the effectiveness of the GNSO, including its policy activities, structure, operations and communications.

Whereas, the Working Group engaged in extensive public consultation and discussions, considered all input, and developed a final report <<http://www.icann.org/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf> (/topics/gnso-improvements/gnso-improvements-report-03feb08.pdf)> containing a comprehensive and exhaustive list of proposed recommendations on GNSO improvements.

Whereas, the Board Governance Committee determined that the GNSO Improvements working group had fulfilled its charter and forwarded the final report to the Board for consideration.

Whereas, a public comment forum was held open for 60 days to receive, consider and summarize <<http://forum.icann.org/lists/gnso-improvements-report-2008/msg00033.html> (<http://forum.icann.org/lists/gnso-improvements-report-2008/msg00033.html>)> public comments on the final report.

Whereas, the GNSO Council and Staff have worked diligently over the past few months to develop a top-level plan for approaching the implementation of the improvement recommendations, as requested by the Board at its New Delhi meeting.

Whereas, ICANN has a continuing need for a strong structure for developing policies that reflect to the extent possible a consensus of all stakeholders in the community including ICANN's contracted parties.

Resolved (2008.06.26.13), the Board endorses the recommendations of the Board Governance Committee's GNSO Review Working Group, other than on GNSO Council restructuring, and requests that the GNSO convene a small working group on Council restructuring including one representative from the current NomCom appointees, one member from each constituency and one member from each liaison-appointing advisory committee (if that advisory committee so desires), and that this group should reach consensus and submit a consensus recommendation on Council restructuring by no later than 25 July 2008 for consideration by the ICANN Board as soon as possible, but no later than the Board's meeting in August 2008.

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## **Receipt of Report of President's Strategy Committee Consultation**

Whereas, the Chairman of the Board requested that the President's Strategy Committee undertake a process on how to strengthen and complete the ICANN multi-stakeholder model.

Whereas, the PSC has developed three papers that outline key areas and possible responses to address them: "Transition Action Plan," "Improving Institutional Confidence in ICANN," and "FAQ."

<<http://icann.org/en/announcements/announcement-16jun08-en.htm>  
(<http://icann.org/en/announcements/announcement-16jun08-en.htm>) >

Whereas, these documents and the proposals contained in them have been discussed at ICANN's meeting in Paris.

Whereas, a dedicated webpage has been launched to provide the community with information, including regular updates

<<http://icann.org/jpa/iic/> (<http://icann.org/jpa/iic/>)>.

Resolved (2008.06.26.14), the Board thanks the President's Strategy Committee for its work to date, and instructs ICANN staff to undertake the public consultation recommended in the action plan, and strongly encourages the entire ICANN community to participate in the continuing consultations on the future of ICANN by reviewing and submitting comments to the PSC by 31 July 2008.

## **Selection of Mexico City for March 2009 ICANN Meeting**

Whereas, ICANN intends to hold its first meeting for calendar year 2009 in the Latin America region;

Whereas, the Mexican Internet Association (AMIPCI) has agreed to host the meeting;

Resolved (2008.06.26.15), the Board accepts the AMIPCI proposal to host ICANN's 34th global meeting in Mexico City, in March 2009.

## **Review of Paris Meeting Structure**

(For discussion only.)

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## **Board Response to Discussions Arising from Paris Meeting**

(For discussion only.)

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## ICANN At-Large Summit Proposal

Whereas, at the ICANN meeting in New Delhi in February 2008, the Board resolved to direct staff to work with the ALAC to finalise a proposal to fund an ICANN At-Large Summit, for consideration as part of the 2008-2009 operating plan and budget process.

<<http://www.icann.org/minutes/resolutions-15feb08.htm>  
(/minutes/resolutions-15feb08.htm)>

Whereas, potential funding for such a summit has been identified in the FY09 budget. <<http://www.icann.org/financials/fiscal-30jun09.htm>  
(/financials/fiscal-30jun09.htm)>

Whereas, a proposal for the Summit was completed and submitted shortly before the ICANN Meeting in Paris.

Resolved (2008.06.26.16), the Board approves the proposal to hold an ICANN At-Large Summit as a one-time special event, and requests that the ALAC work with ICANN Staff to implement the Summit in a manner that achieves efficiency, including considering the Mexico meeting as the venue.

Resolved (2008.06.26.17), with the maturation of At-Large and the proposal for the At-Large Summit's objectives set out, the Board expects the ALAC to look to more self-funding for At-Large travel in the fiscal year 2010 plan, consistent with the travel policies of other constituencies.

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## Other Business

(TBD)

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## Thanks to Steve Conte

Whereas, Steve Conte has served as an employee of ICANN for over five years.

Whereas, Steve has served ICANN in a number of roles, currently as ICANN's Chief Security Officer, but also as a vital support to the Board and its work at meetings.

Whereas, Steve has given notice to ICANN that he has accepted a new position with the Internet Society (ISOC), and that his employment with ICANN will conclude at the end of this meeting.

Whereas, Steve is of gentle nature, possessed of endless patience and fierce integrity, a love of music, and great dedication to the Internet and those who nurture it.

Whereas, the ICANN Board wishes to recognize Steve for his service to ICANN and the global Internet community. In particular, Steve has tirelessly and with good nature supported the past 19 ICANN meetings and his extraordinary efforts have been most appreciated.

Resolved (2008.06.26.18), the ICANN Board formally thanks Steve Conte for his service to ICANN, and expresses its good wishes to Steve for his work with ISOC and all his future endeavors.

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## Thanks to Sponsors

The Board extends its thanks to all sponsors of this meeting:

L'Association Française pour le Nommage Internet en Coopération (AFNIC), France Télécom, Groupe Jutheau Husson, Stichting Internet Domeinregistratie Nederland (SIDN), Association Marocaine des Professionnels des Telecommunications (MATI), Afiliis Limited, Deutsches Network Information Center (DENIC), The European Registry of Domain Names (EURid), European Domain Name Registration (EuroDNS), INDOM, Toit de la Grande Arche Parvis de la Défense, Musee de L'informatique, NeuStar, Inc., Public Interest Registry, VeriSign, Inc., AusRegistry, Fundació puntCAT, Council of European National Top Level Domain Registries (CENTR), China Internet Network Information Center (CNNIC), Institut National de Recherche en Informatique et en Automatique (INRIA), InterNetX, Key-Systems GmbH, Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com, Nask, Nominet UK, The Internet Infrastructure Foundation (.SE), Registry ASP, Amen, DotAsia Organisation Ltd., Domaine FR, Golog, Iron Mountain Intellectual Property Management, Inc., Nameaction, Inc., NIC.AT Internet Verwaltungs und Betriebsgesellschaft m.b.H, UNINETT Norid A/S, IIT – CNR (Registro del ccTLD.it), Renater, Domaine.info, and ICANNWiki.

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## Thanks to Local Hosts, Staff, Scribes, Interpreters, Event Teams, and Others

The Board wishes to extend its thanks to the local host organizers, AGIFEM, its President Daniel Dardailler, Vice-President Pierre Bonis and CEO Sebastien Bachollet, as well as Board Members from Afnic, Amen, Domaine.fr, Eurodns, Indom, Internet Society France, Internet fr, Namebay, Renater, and W3C.

The Board would also like to thank Eric Besson, the Minister for Forward Planning, Assessment of Public Policies and Development of the Digital Economy for his participation in the Welcome Ceremony and the Welcome Cocktail.

The Board thanks the Au Toit de la Grande Arche , its president, Francis Bouvier, and Directeur, Philippe Nieuwbourg, and Bertrand Delanoë, Maire de Paris, and Jean-Louis Missika, adjoint au Maire de Paris for their hospitality at the social events at the ICANN Paris meeting.

The Board expresses its appreciation to the scribes Laura Brewer, Teri Darrenougue, Jennifer Schuck, and Charles Motter and to the entire ICANN staff for their efforts in facilitating the smooth operation of the meeting. ICANN would particularly like to acknowledge the many efforts of Michael Evans for his assistance in organizing the past eighteen public board meetings and many other smaller events for the ICANN community.

The Board also wishes to express its appreciation to VeriLan Events Services, Inc. for technical support, Auvitec and Prosn for audio/visual support, Calliope Interpreters France for interpretation, and France Telecom for bandwidth. Additional thanks are given to the Le Meridien Montparnasse for this fine facility, and to the event facilities and support.

The Board also wishes to thank all those who worked to introduce a Business Access Agenda for the first time at this meeting, Ayesha Hassan of the International Chamber of Commerce, Marilyn Cade, and ICANN Staff.

The members of the Board wish to especially thank their fellow Board Member Jean-Jacques Subrenat for his assistance in making the arrangements for this meeting in Paris, France.

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**EXHIBIT JJN-43**

## Applicant Guidebook

The information on this page is posted for archival purposes only.

The current information on the new gTLD program is available at: <http://newgtlds.icann.org/>

This page contains all the current and archived versions of the Applicant Guidebook and key documentation related to the proposed application process. Applicants will be able to apply via an online application system called TAS – TLD Application System. The details on how to apply for a gTLD through TAS will be available in the upcoming months.

See also:

- [Information Center](#)
- [Public Comments](#)

### Current Version of the Draft Applicant Guidebook

 [New gTLD Applicant Guidebook](#) [4.81 MB] (May 11)

 [14.02 MB] [العربية](#)

 [中文](#) [11.36 MB]

 [Français](#) [9.99 MB]

 [Español](#) [8.37 MB]

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- [Matrix presenting the Applicant Guidebook in full and by module along with Explanatory Memos and Supporting Documents](#)

### Archived Draft Applicant Guidebook Versions & Related Public Fora

#### 1. Applicant Guidebook – April 2011 Discussion Draft (Apr 11)

 [Applicant Guidebook – April 2011 Discussion Draft](#) [6.18 MB] (Apr 11)

- [Public Comment Forum](#) (Open 15 Apr – Closed 15 May)

 [Summary & Analysis](#) [1.1 MB] (30 May 11)

- [GAC comments on the Applicant Guidebook \(April 15th, 2011 version\)](#) [112 KB] (26 May 11)

#### 2. Proposed Final Applicant Guidebook (Nov 10)

 [Proposed Final Applicant Guidebook](#) [3.1 MB] (Nov 10)

- [Public Comment Forum](#) (Closed on 15 Jan 11)

 [Summary & Analysis](#) [709 KB]

 [986 KB] [العربية](#)

 [Español](#) [1.33 MB]

 [Français](#) [661 KB]

 [Русский](#) [841 KB]

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### 3. Draft Applicant Guidebook, version 4 (May 10)

 [Draft Applicant Guidebook, version 4](#) [4.67 MB] (May 10)

- [Public Comment Forum](#) (closed 21 Jul 10)

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### 4. Draft Applicant Guidebook, version 3 (Oct 09)

 [Full Draft Applicant Guidebook, version 3](#) [1.6 MB] (Oct 09)

- [Public Comment Forum](#) (closed on 22 Nov 09)  
*Note: this archived public forum also contains explanatory memoranda relating to version 3 of the Draft Applicant Guidebook.*

 [Summary & Analysis](#) [1.13 MB]

### 5. Excerpts Organized Per Module (May 09)

*Note: In May 2009, ICANN did not release a version 3 of the Draft Applicant Guidebook. Instead, ICANN released a series of Excerpts organized below per module.*

 Update to Module 2: String Requirement  
[Excerpt: String Requirements](#) [139 KB]

 Update to Module 2: Geographical Names  
[Excerpt: Geographical Names](#) [140 KB]

 Update to Module 2: Evaluation Criteria  
[Excerpt: Evaluation Criteria](#) [1.4 MB]

 Update to Module 3: Dispute Resolution Procedures  
[Excerpt: Dispute Resolution](#) [160 KB]

 Update to Module 4: Comparative Evaluation (Community Priority)  
[Excerpt: Comparative Evaluation Criteria](#) [212 KB]

 Updates to Module 5: Registry Agreement Specifications  
[Excerpt: Registry Specifications](#) [162 KB]

- [Public Comment Forum](#) (closed on 20 Jul 09)  
*Note: this archived public forum will also contain explanatory memoranda relating to this version of the Draft Applicant Guidebook.*

### 6. Draft Applicant Guidebook, version 2 (Feb 09)

 [Draft Applicant Guidebook, version 2](#) [1.46 MB]

 [Draft Applicant Guidebook, version 2 Redline](#) [1.6 MB]

 Draft Applicant Guidebook version 2  
[Public Comments Analysis Report](#) [1.52 MB]

- [Public Comment Forum](#) (closed on 13 Apr 09)  
*Note: this archived public forum also contains explanatory memoranda relating to version 2 of the Draft Applicant Guidebook.*

### 7. Draft Applicant Guidebook, version 1 (Oct 08)

 [Draft Applicant Guidebook, version 1](#) [1.24 MB]

 [Draft Applicant Guidebook, version 1 Public Comments Analysis Report](#) [589 KB] (Feb 09)

- [Public Comment Forum](#) (closed on 15 Dec 08)  
*Note: this archived public forum also contains explanatory memoranda relating to version 1 of the Draft Applicant Guidebook.*

**EXHIBIT JJN-44**



## The Internet Corporation for Assigned Names and Numbers

To All Prospective Applicants for New gTLDs –

Since ICANN's founding ten years ago as a not-for-profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, one of its foundational principles has been to promote competition in the domain-name marketplace while ensuring Internet security and stability.

We are now engaging the Internet community in agreeing a way forward to introduce new gTLDs in the domain name space. Such expansion is driven by the demand for more innovation, choice and change to the Internet's addressing system, now constrained by only 21 generic top-level domain names. In a world with 1.5 billion Internet users—and growing—diversity, choice and competition are key to the continued success and reach of the global network.

The launch of these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community. Representatives from a wide variety of stakeholders—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—completed its policy development work on new gTLDs and approved a set of recommendations. Major contributors to this policy work were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO) and Security and Stability Advisory Committee (SSAC). All this policy development work culminated with ICANN's Board of Directors deciding to adopt the community-developed policy at the ICANN Paris meeting in June 2008. You can see a thorough brief to the policy process and outcomes at <http://gns0.icann.org/issues/new-gtlds/>.

Please note that the Applicant Guidebook that follows this letter is a draft. Applicants should not rely on any of the proposed details of the new gTLD program, as the program remains subject to further consultation and revision. Also, some of the modules in this guidebook highlight areas of the process that remain under development. These areas will be made available for public consultation in the near future.

In addition to the Draft Applicant Guidebook, ICANN is posting a series of papers that serve as explanatory memoranda to assist the Internet community to better understand the implementation work.

ICANN expects to engage in a productive and robust dialogue with the Internet community through a consultative process. Comments will be used to revise and prepare the final Applicant Guidebook, to be released early in 2009.

The New gTLD Program enables the Internet community to open up the name space to new and innovative uses for top-level domains, and can meet some of the needs unmet by the current market. It has the potential to be one of the biggest influences on the future of the Internet.

Sincerely,

Paul Twomey  
President and CEO

# New gTLD Program: Draft Applicant Guidebook (Draft RFP)

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.



24 October 2008

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# *New gTLD Program: Applicant Guidebook*

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## *How to Use*

The Draft Applicant Guidebook (Request for Proposals) consists of a series of modules, each focused on specific topics within the application and evaluation process:

### **Module 1: Introduction to the Application Process**

*Provides an overview of the application process, documentation requirements, and fees*

### **Module 2: Evaluation Procedures**

*Describes the various reviews that occur during the evaluation process and criteria for approval of applications*

### **Module 3: Dispute Resolution Procedures**

*Contains the grounds for formal objection by third parties concerning gTLD applications submitted, and the dispute resolution procedure triggered by an objection*

### **Module 4: String Contention Procedures**

*Describes mechanisms for resolving contention when there is more than one qualified applicant for identical or similar gTLD strings*

### **Module 5: Transition to Delegation**

*Describes the final steps required of an applicant, including execution of a registry agreement and completion of pre-delegation tests*

### **Module 6: Terms and Conditions**

*Contains the terms and conditions applicable to all entities submitting an application*

### **Glossary**

*Contains definitions for terms used in the Applicant Guidebook*

ICANN is posting a series of explanatory memoranda to accompany this draft, to provide further details on the background work completed by ICANN. Links to these memoranda are noted within the relevant modules.

All materials contained in the Draft Applicant Guidebook are being presented for public comment. Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.



# Draft Applicant Guidebook

## Module 1

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 1

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## *Introduction to the gTLD Application Process*

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

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

For more about the origins, history and details of ICANN's policies on new gTLDs, please see <http://gns0.icann.org/issues/new-gtlds/>.

A glossary of relevant terms is included with the Draft Applicant Guidebook (Draft RFP).

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

### *1.1 Application Life Cycle and Timelines*

---

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

#### *1.1.1 Application Submission Dates*

---

The application submission period opens at [time] UTC [date].

The application submission period closes at [time] UTC [date].

Applications may be submitted electronically through ICANN's online application system.

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

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

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

### 1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. In Figure 1-1, the shortest and most straightforward path is marked with bold lines, while stages that may or may not apply in any given case are also shown. A brief description of each stage follows.

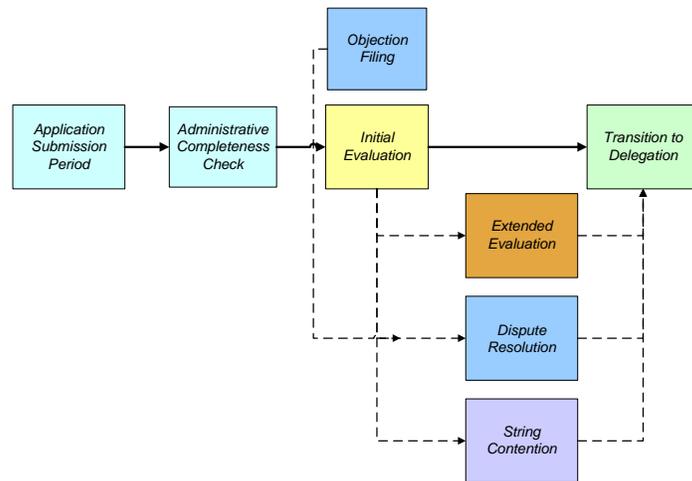


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

#### 1.1.2.1 Application Submission Period

At the time the application submission period opens, applicants wishing to apply for a new gTLD can become registered users of the online application system.

Through the application system, applicants will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.3 of this module must also be submitted through the application system.

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

Following the close of the application period, applicants can continue to use the application system as a resource to track the progress of their applications, although they may receive communications from ICANN through other means.

### ***1.1.2.2 Administrative Completeness Check***

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

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

ICANN will post a list of applications considered complete and ready for evaluation as soon as practical after the close of the application period. The status information for each application will also be updated in the online application system.

### ***1.1.2.3 Initial Evaluation***

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation.

There are two main elements of the Initial Evaluation:

- String reviews (concerning the applied-for gTLD string); and
- Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services).

Applicant reviews include a determination of whether the applicant has the requisite technical and financial capability to operate a registry.

- Panels of independent evaluators will perform these reviews based on the information provided by each applicant in its responses to the application form.
- There may be one round of questions and answers between the applicant and evaluators to clarify information contained in the application. Refer to Module 2 for further details on the evaluation process.

Evaluators will report whether the applicant passes or fails each of the parts of the Initial Evaluation. These reports will be available in the online application system.

At the conclusion of the Initial Evaluation period, ICANN will post a notice of all applications that have passed the Initial Evaluation. Depending on the volume of applications received, ICANN may post such notices in batches over the course of the Initial Evaluation period.

#### **1.1.2.4 Objection Filing**

Formal objections to applications can be filed on any of four enumerated grounds by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in paragraph 1.1.2.2. Objectors will file directly with dispute resolution service providers (DRSPs). Refer to Module 3, Dispute Resolution Procedures, for further details.

The objection filing phase will close following the end of the Initial Evaluation period (refer to paragraph 1.1.2.3). Objections that have been filed during the objection filing phase will be addressed in the dispute resolution phase, which is outlined in paragraph 1.1.2.6 and discussed in detail in Module 3.

All applicants should be aware that third parties have the opportunity to file objections to any application during this period. Applicants whose applications are the subject of a formal objection will have an opportunity to file a response according to the dispute resolution service provider's rules and procedures (refer to Module 3).

An applicant wishing to file a formal objection to another application that has been submitted would do so within

the objection filing period, following the objection filing procedures in Module 3.

#### **1.1.2.5 Extended Evaluation**

*Extended Evaluation applies only to applicants that do not pass Initial Evaluation.*

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

An Extended Evaluation may also be required if the applied-for gTLD string or one or more proposed registry services raise technical issues that might adversely affect the security and stability of the DNS. The Extended Evaluation period provides a time frame for these issues to be investigated. Applicants will be informed if such reviews are required at the end of the Initial Evaluation period. Evaluators and any applicable experts consulted will communicate their conclusions at the end of the Extended Evaluation period. These reports will be available in the online application system.

At the conclusion of the Extended Evaluation period, ICANN will post all evaluator reports from the Initial and Extended Evaluation periods.

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

#### **1.1.2.6 Dispute Resolution**

*Dispute resolution applies only to applicants that are the subject of a formal objection.*

Where formal objections are filed and filing fees paid during the objection filing phase, dispute resolution service providers will initiate and conclude proceedings based on the objections received. The formal objection procedure exists to provide a path for those who wish to object to an application that has been received by ICANN. Dispute resolution service providers provide the fora to adjudicate the proceedings based on the subject matter and the needed expertise.

As a result of the proceeding, either the applicant will prevail (in which case the application can proceed to the next stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure). Refer to Module 3, Objection and Dispute Resolution, for detailed information. Applicants will be notified by the Dispute Resolution Service Provider of the results of dispute proceedings. The online application system will also be updated with these results.

#### 1.1.2.7 String Contention

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

String contention refers to the scenario in which there is more than one qualified applicant for the same gTLD or for gTLDs that are so similar that they create a probability of detrimental user confusion if more than one is delegated. ICANN will resolve cases of string contention either through comparative evaluation or through an alternative mechanism for efficient resolution of string contention.

In the event of contention between applied-for strings that represent geographical names, the parties may be asked to follow a different process to resolve the contention.

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

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

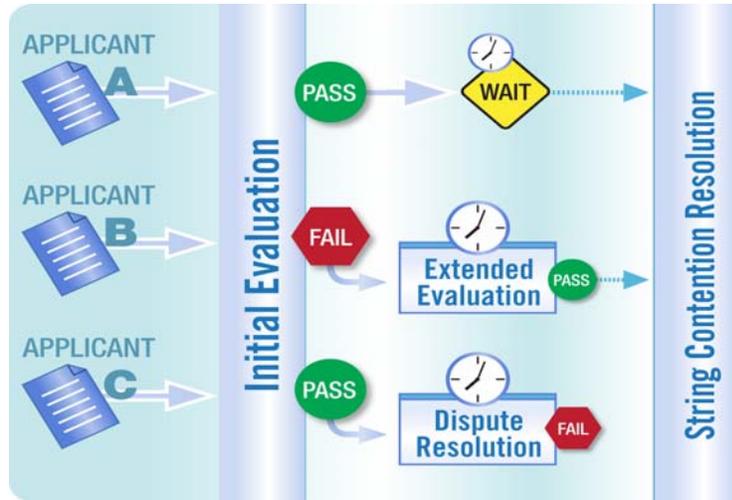


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

Applicants prevailing in a string contention resolution procedure will proceed toward delegation of applied-for gTLD strings. The online application system will be updated with the resolution of the string contention procedures.

#### 1.1.2.8 Transition to Delegation

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

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

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

### *1.1.3 Accounting for Public Comment in the Evaluation of Applications once the New gTLD Process is Launched*

---

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

In the new gTLD application process, public comments will be a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications. ICANN will open a public comment forum at the time the applications are publicly posted on ICANN's website (refer to paragraph 1.1.2.2), which will remain open through the application round.

Public comments received will be provided to the evaluators during the Initial and Extended Evaluation periods. Evaluators will have discretion to take the information provided in these comments into consideration as deemed necessary. Consideration of the applicability of the information submitted through public comments will be included in the evaluators' reports.

Public comments may also be relevant to one or more objection grounds. (Refer to Module 3, Dispute Resolution Procedures, for the objection grounds.) ICANN will provide all public comments received to DRSPs, who will have discretion to consider them.

A distinction should be made between public comments, which may be relevant to ICANN's task of determining whether applications meet the established criteria, and formal objections that concern matters outside this evaluation. ICANN created the formal objection process to allow a full and fair consideration of objections based on subject areas outside ICANN's mission and expertise. A party contacting ICANN to pursue an objection will be referred to the formal objection channels designed specifically for resolving these matters in the new gTLD space. More information on the objection and dispute resolution processes is available in Module 3.

### 1.1.4 Sample Application Scenarios

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

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Raised	String Contention	Approved for Subsequent Steps
1	Pass	N/A	None	No	Yes
2	Fail	Pass	None	No	Yes
3	Pass	N/A	None	Yes	Yes
4	Pass	N/A	Applicant prevails	No	Yes
5	Pass	N/A	Objector prevails	N/A	No
6	Fail	Quit	n/a	N/A	No
7	Fail	Fail	n/a	N/A	No
8	Fail	Pass	Applicant prevails	Yes	Yes
9	Fail	Pass	Applicant prevails	Yes	No

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

**Scenario 2 – Extended Evaluation, No Objection, No Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are raised during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation.

**Scenario 3 – Pass Initial Evaluation, No Objection, Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are raised during the objection period, so there is no dispute to resolve and no appeal. However, there are

other applications for the same or a similar gTLD string, so there is contention. In this case, one application wins the contention resolution, and the other contenders are denied their applications, so the winning applicant can enter into a registry agreement and the application can proceed toward delegation.

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

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

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

**Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation**  
In this case, the application fails one or more steps in the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the application fails Extended Evaluation also. The application does not proceed.

**Scenario 8 – Extended Evaluation, Win Objection, Pass Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection period, one valid objection is raised by an objector with standing. The objection is heard by a dispute resolution service provider

panel that rules in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the applicant prevails over other applications in the contention resolution procedure, the applicant can enter into a registry agreement and the application can proceed toward the delegation phase.

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

**Transition to Delegation** – After an application has completed Initial or Extended Evaluation, dispute resolution, if applicable, and string contention, if applicable, the applicant is required to complete a set of steps leading to delegation of the gTLD, including execution of a registry agreement with ICANN, and completion of pre-delegation testing. Refer to Module 5 for a description of the relevant steps in this phase.

### **1.1.5 Subsequent Application Rounds**

---

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

## **1.2 Information for All Applicants**

---

### **1.2.1 Eligibility**

---

Any established corporation, organization, or institution in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered.

## 1.2.2 *Two Application Types: Open or Community-Based*

---

All applicants are required to designate each application for a new gTLD as **open** or **community-based**.

### 1.2.2.1 *Definitions*

For purposes of this RFP, an **open gTLD** is one that can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. An open gTLD may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions.

For purposes of this RFP, a **community-based gTLD** is a gTLD that is operated for the benefit of a defined community consisting of a restricted population. An applicant designating its application as community-based will be asked to substantiate its status as representative of the community it names in the application, and additional information may be requested in the event of a comparative evaluation (refer to Section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a defined community that consists of a restricted population.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD.
4. Have its application endorsed in writing by an established institution representing the community it has named.

### 1.2.2.2 *Implications of Application Designation*

Applicants should understand how their designation as open or community-based will affect application processing at particular stages, as described in the following paragraphs.

**Objection/Dispute Resolution** – All applicants should understand that an objection may be filed against any application on community opposition grounds, even if the applicant has not designated itself as community-based or declared the TLD to be aimed at a particular community. Refer to Module 3, Dispute Resolution Procedures.

**String Contention** – Any applicant that has been identified as part of a contention set (refer to Module 4.1) may be obliged to participate in either a comparative evaluation or another efficient mechanism for contention resolution if the application reaches the string contention stage and the applicant elects to proceed.

A **comparative evaluation** will take place if a community-based applicant in a contention set has elected comparative evaluation.

Another efficient mechanism for contention resolution will result in other cases. If a comparative evaluation occurs but does not produce a clear winner, the efficient mechanism will then result.

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

**Contract Execution and Post-Delegation** – A community-based gTLD applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation, once it begins operating the gTLD. ICANN must approve material changes to the community-based nature of the gTLD and any associated contract changes.

### 1.2.2.3 Changes to Application Designation

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

### 1.2.3 Required Documents

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

1. **Proof of legal establishment** – Examples of acceptable documentation include articles or a certificate of incorporation, articles of association or equivalent documents relative to the type of entity and the jurisdiction in which it is formed, such as statutes or membership agreements of the entity.
2. **Proof of good standing** – Examples of acceptable documentation include a certificate of good standing or other equivalent official document issued by a competent government authority, if offered by a governmental authority for the jurisdiction.

Under some laws or jurisdictions, it may be possible to prove both establishment and good standing with a single document. That is, the same document may suffice for items 1 and 2.

If no such certificates or documents are available in the applicant's jurisdiction, an affidavit drafted and signed by a notary public or a legal practitioner duly qualified to represent clients before the courts of the country in which the applicant's organization is established, declaring that the organization is established and in good standing, must be submitted.

3. If the applicant is a government body or organization, it must provide a **certified copy of the act** wherein or governmental decision whereby the government body or organization was established.

ICANN is aware that practices and documentation standards vary from region to region, and has attempted to account for a variety of these practices when specifying the requirements. Applicants with exceptional circumstances should contact ICANN to determine how to provide appropriate documentation.

4. **Financial statements.** Applicants must provide audited financial statements for the most recently completed fiscal year for the applicant, and unaudited financial statements for the most recently ended interim financial period for the applicant.
5. Before delegation: **documentary evidence of ability to fund ongoing basic registry operations** for then-existing registrants for a period of three to five years in the event of registry failure, default or until a successor operator can be designated.

All documents must be valid at the time of submission.

Supporting documentation should be submitted in the original language. English translations are not required.

Some supporting documentation will be required only in certain cases:

1. **Community endorsement** – If an applicant has designated its application as community-based, it will be asked to submit a written endorsement of its application by an established institution representing the community it has named.
2. **Government support or non-objection** – If an applicant has applied for a string that is a geographical term, the

applicant is required to submit a statement of support or non-objection for its application from the relevant government(s) or public authorities. Refer to Section 2.1.1.4 for more information on the requirements for geographical names.

3. **Documentation of outside funding commitments** – If an applicant lists outside sources of funding in its application, it must provide evidence of commitment by the party committing the funds.

#### **1.2.4 Notice Concerning Technical Acceptance Issues with New gTLDs**

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All applicants should be aware that acceptance of their applications by ICANN and entering into a registry agreement with ICANN does not guarantee that the new gTLD will immediately function throughout the Internet. Past experience indicates that ISPs and webhosters do not automatically allow passage of or access to new gTLD strings even when these strings are authorized by ICANN, since software modifications may be required that may not happen until there is a business case for doing so.

Similarly, web applications often validate namestrings on data entry and may filter out new or unknown strings. ICANN has no authority or ability to require acceptance of new gTLD namestrings although it does prominently publicize ICANN-authorized gTLD strings on its website. ICANN encourages applicants to familiarize themselves with these issues and account for them in startup and launch plans. Successful applicants may find themselves expending considerable efforts post-implementation in working with providers to achieve acceptance of their new gTLD namestring.

Applicants should review (Informational) RFC 3696 (see <http://www.ietf.org/rfc/rfc3696.txt?number=3696>) for background. IDN applicants should review the material concerning experiences with IDN test strings in the root zone (see <http://idn.icann.org/>).

#### **1.2.5 Terms and Conditions**

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

### 1.3 Information for Internationalized Domain Name Applicants

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Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs) that require the insertion of IDN-encoded A-labels into the DNS root zone. IDNs are labels that contain one or more letters or characters other than LDH (letters a,...z; digits 0,...9; and the hyphen "-").

If an applicant applies for such a string, it must provide accompanying information indicating compliance with the IDNA protocol and other requirements. The IDNA protocol is currently under revision and its documentation can be found at

<http://www.icann.org/en/topics/idn/rfcs.htm>. Applicants must provide applied-for gTLD strings in the form of both a **U-label** and an **A-label**.

An A-label is the ASCII-Compatible Encoding form of an IDNA-valid string. Every A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm, and hence is a maximum of 59 ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123 and elsewhere.

A U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character, expressed in a standard Unicode Encoding Form, normally UTF-8 in an Internet transmission context.

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

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

1. Short form of string (English). The applicant will provide a short description of what the string would mean in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for TLD string, both

according to the ISO's codes for the representation of names of languages, and in English.

3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO code for the presentation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Representation of label in phonetic alphabet. The applicant will provide its applied-for gTLD string notated according to the International Phonetic Alphabet (<http://www.arts.gla.ac.uk/IPA/ipachart.html>).
6. Its IDN table. This table provides the list of characters eligible for registration in domain names according to registry policy. It will contain any multiple characters that can be considered "the same" for the purposes of registrations at the second level. For examples, see <http://iana.org/domains/idn-tables/>.
7. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator. If an applicant were applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications.

## ***1.4 Submitting an Application***

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Applicants may complete the application form and submit supporting documents using ICANN's TLD Application System (TAS). To access the tool, applicants must first register as a TAS user, which involves paying a user registration fee of USD100.

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

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

### **1.4.1 Accessing the TLD Application System**

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The TAS site is located at [URL to be inserted in final version of RFP].

TAS features include:

#### **1.4.1.1 Sub-user Management**

This feature allows applicants to create sub-users with varying permission levels to assist in completing the application. For example, if an applicant wishes to designate a user to complete the technical section of the application, the applicant can create a sub-user account with access only to that section.

#### **1.4.1.2 Workflow Management**

This feature allows applicants to check the status of their applications through TAS.

#### **1.4.1.3 Security**

ICANN uses all reasonable efforts to protect applicant information submitted through TAS. TAS uses advanced Internet security technology to protect applicant information against unauthorized access. This technology includes:

**Secure Socket Layer (SSL)** – To ensure that confidential information remains confidential, it is sent to TAS in a secure session using SSL technology. SSL technology scrambles or encrypts information as it moves between the user's browser and TAS.

**Limited TAS Authorized Users and Permission Levels** – TAS is a hierarchical system with defined user roles and permissions. ICANN-authorized personnel have access only to the portions of the system they need. For example, an accounting user may only need access to perform updates to the portion of a record indicating whether an applicant's evaluation fee has been received.

Although ICANN intends to follow the security precautions outlined here, it offers no assurances that these procedures will keep an applicant's data confidential and secure from access by unauthorized third parties.

### **1.4.2 Technical Support**

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TAS users can refer to the FAQ/knowledge base or contact [email address to be inserted in final version of RFP] for help using the system. Users can expect to receive a tracking

ticket number and a response within 24 to 48 hours through the TAS submission tool.

### **1.4.3 Backup Application Process**

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

## **1.5 Fees and Payments**

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

### **1.5.1 Breakdown of Fees and Amounts**

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The following fees are required from all applicants:

- **TAS User Registration Fee** – USD 100. This fee enables a user to enter the online application system. This fee is nonrefundable.
- **gTLD Evaluation fee** – USD 185,000. ICANN will not begin its evaluation of an application unless it has received the gTLD evaluation fee by the due date. Refer to subsection 1.5.4. The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded, and doesn't take resources from other ICANN funding sources, including generic registries and registrars, cc TLD contributions and RIR contributions.

In certain cases, refunds of a portion of this fee may be available for applications that are withdrawn before the evaluation process is complete. The amount of refund will depend on the point in the process at which the withdrawal is made. (Refer to subsection 1.5.5.) Details will be made available when the application process is launched.

Applicants may be required to pay additional fees in certain cases. Those possible additional fees include:

- **Registry Services Review Fee** – If applicable, this fee is payable for additional costs incurred in referring an application to the RSTEP for an extended review. Applicants will be notified if such a fee is due. The fee for a three member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. In every case, the applicant will be advised of the review

cost before its initiation. Refer to Section 2.1.3 of Module 2 on Registry Services review.

- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable to the applicable dispute resolution service provider in accordance with the provider’s payment instructions. ICANN estimates that non-refundable filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Dispute Resolution Adjudication Fee** – This fee is payable to the applicable dispute resolution service provider in accordance with that provider’s procedures and schedule of costs. Both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding.

ICANN estimates that a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please refer to the appropriate provider for the relevant amounts or fee structures. Refer also to Section 3.2 of Module 3 for further details.

- **Comparative Evaluation Fee** – This fee is payable to the provider appointed to handle comparative evaluations, in the event that the applicant participates in a comparative evaluation.

Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4.

This list does not include fees (that is, registry fees) that will be payable to ICANN following execution of a registry agreement. See <http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf>.

## 1.5.2 *Payment Methods*

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Payments to ICANN may be submitted by wire transfer, ACH, money order, or check.

### 1.5.2.1 *Wire Transfer Payment*

Instructions for making a payment by **wire transfer** will be available in TAS.

### 1.5.2.2 *ACH Payment*

Instructions for making **ACH payments** will be available in TAS.

### 1.5.2.3 *Credit Card Payment*

To make a **credit card payment**, note:

ICANN accepts Visa, MasterCard/Maestro, American Express and Discover credit cards as forms of payment. The maximum amount accepted is USD 20,000 per invoice.

- Fill out and sign the Credit Card Payment Form at <http://www.icann.org/en/financials/credit.pdf>.
- Send the completed form to ICANN at fax:  
+1.310.823.8649

Or mail the form to:

Internet Corporation for Assigned Names and Numbers  
(ICANN)  
Attention: Finance Department  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601 USA

### 1.5.2.4 *Check or Money Order Payment*

To make a **payment by check or money order** (USD only), mail or deliver by private carrier to:

Internet Corporation for Assigned Names and Numbers  
(ICANN)  
Attention: Finance Department  
4676 Admiralty Way, Suite 330  
Marina del Rey, CA 90292-6601 USA

### *1.5.3 Requesting an Invoice*

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

### *1.5.4 Deadlines for Payments*

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The Evaluation Fee must be received by [time] UTC [date].

ICANN or its providers will notify the applicants of due dates for payment in respect of additional fees (if applicable).

### *1.5.5 Withdrawals and Refunds*

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Refunds may be available to applicants who choose to withdraw at certain stages of the process.

An applicant that wishes to withdraw an application must use the TAS interface to request a refund. ICANN will not consider any other form of request for refunds. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN will be deducted from the amount paid.

Further details on refund amounts will be available in the final version of the RFP.

## *1.6 Questions about this RFP*

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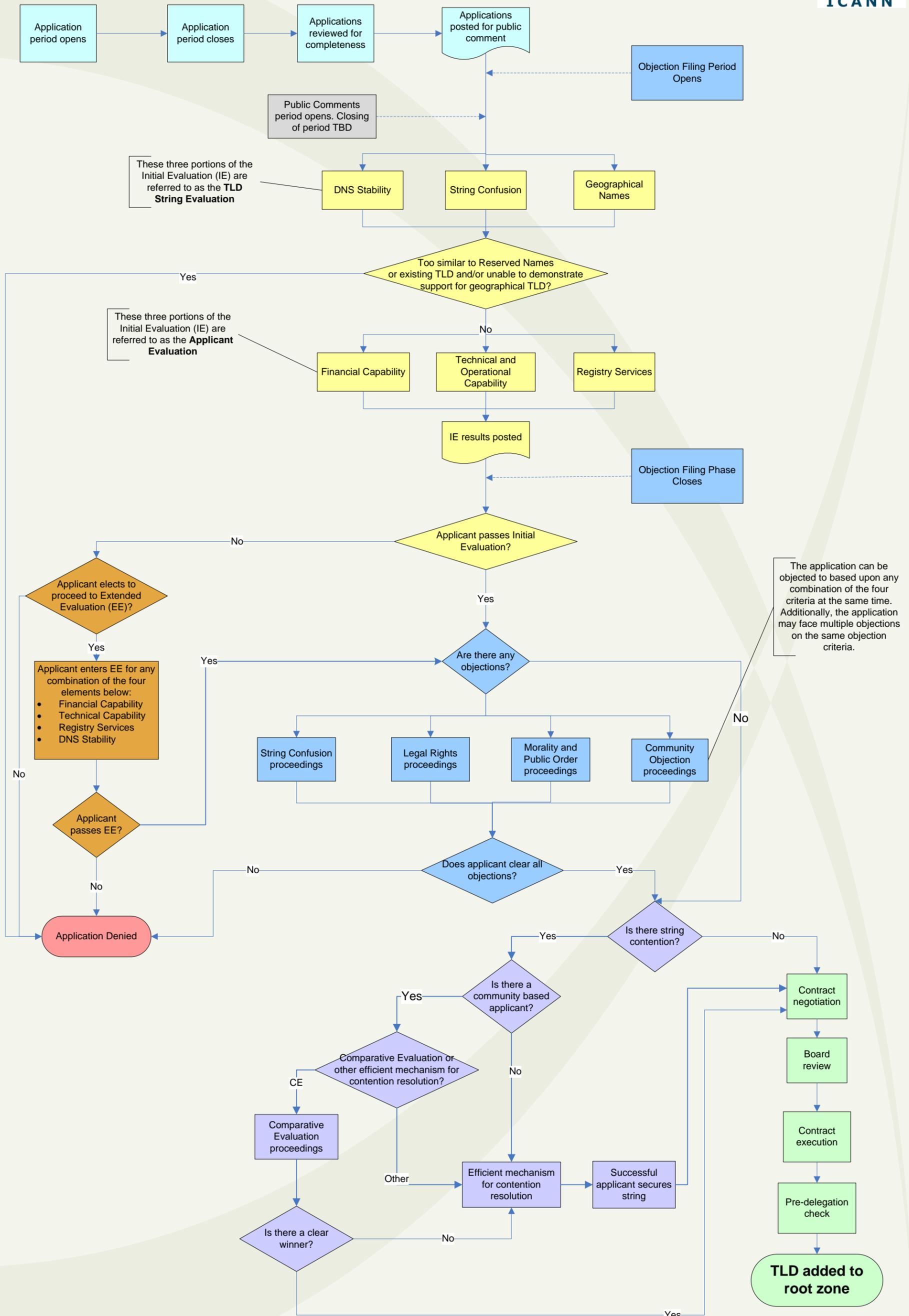
Applicants may submit questions about completing the application form to [email address to be inserted in final version of RFP]. To provide all applicants equitable access to information, ICANN will post all questions and answers in a centralized location on its website.

All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted in writing to the designated email address. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the dedicated online question and answer area.

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

# New gTLD Program - Evaluation Process

## DRAFT- For Discussion Purposes



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



# Draft Applicant Guidebook

## Module 2

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 2

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## *Evaluation Procedures*

This module describes the evaluation procedures and criteria used to determine whether applications are approved for delegation as a gTLD. All applicants will undergo an Initial Evaluation and those that do not pass all phases may enter into an Extended Evaluation.

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

The following elements make up **Initial Evaluation**:

- String Reviews
  - String confusion
  - Reserved Names
  - DNS stability
  - Geographical names
- Applicant Reviews
  - Demonstration of technical and operational capability
  - Demonstration of financial capability
  - Registry services

These elements, which are described in greater detail later in this module, are intended to ensure applied-for gTLD strings do not negatively impact DNS security or stability, and to ensure that applicants are capable of operating the gTLD in a stable and secure manner, and that new services can be introduced without adverse effect on the security or stability of the DNS.

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

**Extended Evaluation** may be applicable in cases in which an applicant does not pass the Initial Evaluation or additional inquiry is required.

## 2.1 Initial Evaluation

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

The first examination focuses on the applied for string to test:

- Whether the applied-for gTLD string is similar to others and would cause user confusion;
- Whether the applied-for gTLD string might disrupt DNS security or stability; and
- Whether requisite government approval is given in the case of certain geographical names.

The second examination focuses on the applicant to test:

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

### 2.1.1 String Reviews

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In the Initial Evaluation, ICANN reviews every applied-for gTLD string for string confusion, potential to introduce instability into the DNS, and whether relevant government approval is required. Those reviews are described in greater detail in the following paragraphs.

#### 2.1.1.1 String Confusion Review

The objective of this review is to prevent user confusion and loss of confidence in the DNS. This review involves a comparison of each applied-for gTLD string against existing TLDs and against other applied-for gTLD strings. The examination is to determine whether the applied-for gTLD string is so similar to one of the others that it would create a probability of detrimental user confusion if it were to be delegated to the root zone. ICANN will perform determinations of string similarity in accordance with the steps outlined here.

The similarity review will be conducted by a panel of String Similarity Examiners. This examination will be informed by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs. The score will provide one objective measure for consideration by the panel.

The examiners' task is to identify string similarities that would create a probability of detrimental user confusion. The examiners will use a common standard to test for whether string confusion exists, as follows:

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

The standard will be applied in two sets of circumstances, when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names.
- Applied-for gTLD strings against other applied for gTLD strings or strings requested in ccTLD processes).

**Existing String Similarity Examination** – This review involves cross-checking between each applied-for string and the list of existing TLD strings to determine whether the two strings are so similar to one another that they create a probability of detrimental user confusion.

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

An application that fails the string confusion review and is found too similar to an existing string will not pass the Initial Evaluation, and no further reviews will be available.

In the simple case in which an applied-for TLD string is identical to an existing TLD, the application system will recognize the existing TLD and not allow the application to be submitted.

Such testing for identical strings also takes into consideration the code point variants listed in any relevant language reference table.

For example, protocols treat equivalent labels as alternative forms of the same label, just as "foo" and "Foo" are treated as alternate forms of the same label (RFC 3490).

An applied-for gTLD string that passes the string confusion review is still subject to challenge by an existing TLD operator or by another gTLD applicant in the current

application round. That process requires that a specific objection be filed by an objector having the standing to make such an objection. Refer to Module 3, Dispute Resolution Procedures, for more information about the objection process.

***String Contention Sets: Similarity with Other Applied-for gTLD Strings*** – All applied-for gTLD strings will be reviewed against one another to identify any strings that are so similar that they create a probability of detrimental user confusion would result if more than one is delegated into the root zone. In performing the string confusion review, the panel of String Similarity Examiners will create contention sets that may be used later in the process. A contention set contains at least two applied-for strings identical to one another or so similar that string confusion would result if more than one were delegated into the root zone. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution. ICANN will notify applicants who are part of a contention set by the conclusion of the Initial Evaluation period. These contention sets will also be published on ICANN’s website.

***Similarity to TLD strings applied for as ccTLDs*** -- Applied-for gTLD strings will also be reviewed for similarity to TLD strings applied for in the IDN ccTLD Fast Track process (see <http://www.icann.org/en/topics/idn/fast-track/>). Should conflict with a prospective fast-track IDN ccTLD be identified, ICANN will take steps to resolve the conflict. (See process for Geographical Names in paragraph 2.1.1.4.)

***String Similarity Algorithm*** – The String Similarity Algorithm (Algorithm) is a tool the examiners use to provide one objective measure as part of the process of identifying strings likely to result in confusion. The Algorithm is also available to applicants for testing and informational purposes. The Algorithm and user guidelines are available at <http://80.124.160.66/icann-algorithm>.

The Algorithm calculates scores for visual similarity between any two strings, using factors such as letters in sequence, number of similar letters, number of dissimilar letters, common prefixes, common suffixes, and string length.

#### ***2.1.1.2 Review for Reserved Names***

The Reserved Names review involves comparison with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

**Top-Level Reserved Names List**

<i>AFRINIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>
<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
*Note that in addition to the above strings, ICANN will also reserve translations of the terms "test" and "example" in multiple languages.		

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

In addition, applied-for gTLD strings are reviewed in a process identical to that described in the preceding section to determine whether they exceed a similarity threshold with a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass the Reserved Names review.

**2.1.1.3 Review for Potential DNS Instability**

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

**2.1.1.3.1 String Stability Review**

New gTLD labels must not adversely affect on the security or stability of the DNS. Although no string complying with the requirements in paragraph 2.1.1.3.2 of this module is expected to adversely affect DNS security or stability, an extended review is possible if technical reviewers identify an issue with the applied-for gTLD string that requires further investigation.

**String Stability Review Procedure** – During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to ensure that proposed strings comply with relevant standards provided in the preceding section and determine whether any strings raise significant technical stability issues that may require an Extended Evaluation.

There is low probability that this review will be necessary for a string that fully complies with the string requirements in paragraph 2.1.1.3.2 of this module. However, the technical stability review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

See Section 2.2 for further information on the Extended Evaluation process.

### 2.1.1.3.2 String Requirements

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

If an applied-for gTLD string is found to violate any of these rules, the application will be denied. No further reviews are available.

**Technical Requirements for all Labels (Strings)** – The technical requirements for the selection of top-level domain labels follow.

- The ASCII label (that is, the label as transmitted on the wire) must be valid as specified in the technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181). This includes the following:
  - The label must have no more than 63 characters.
  - Upper and lower case characters are treated as identical.
- The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696). This includes the following:

- The label must consist entirely of letters, digits and hyphens.
- The label must not start or end with a hyphen.
- There must be no possibility for confusing an ASCII label for an IP address or other numerical identifier by application software. For example, representations such as "255", "0377" or "0xff" representing decimal, octal, and hexadecimal strings, can be confused for IP addresses. As such, labels:
  - Must not be wholly composed of digits between "0" and "9".
  - Must not commence with "0x" or "x", and have the remainder of the label wholly composed of hexadecimal digits, "0" to "9" and "a" through "f".
  - Must not commence with "0o" or "o", and have the remainder of the label wholly composed of digits between "0" and "7".
- The ASCII label may only include hyphens in the third and fourth position if it represents a valid Internationalized Domain Name in its A-label form (ASCII encoding).
- The presentation format of the domain (that is, either the label for ASCII domains, or the U-label for Internationalized Domain Names) must not begin or end with a digit.

***Requirements for Internationalized Domain Names*** – These requirements apply only to prospective top-level domains that use non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the IETF IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

- The label must be a valid internationalized domain name, as specified in the technical standard *Internationalizing Domain Names in Applications* (RFC 3490). This includes the following nonexhaustive list of limitations:
  - Must only contain Unicode code points that are defined as "Valid" in *The Unicode Codepoints and IDNA* (<http://www.ietf.org/internet->

[drafts/draft-ietf-idnabis-tables-02.txt](#)) and be accompanied by unambiguous contextual rules where necessary.

- Must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
- Must consist entirely of characters with the same directional property.
- The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>. This includes the following nonexhaustive list of limitations:
  - All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property.
  - Exceptions are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table is clearly defined.

The IDNA protocol used for internationalized labels is currently under revision through the Internet standardization process. As such, additional requirements may be specified that need to be adhered to as this revision is being completed. The current status of the protocol revision is documented at <http://tools.ietf.org/wg/idnabis>.

***Policy Requirements for Generic Top-Level Domains –***  
Applied-for strings must be composed of three or more visually distinct letters or characters in the script, as appropriate.

#### ***2.1.1.4 Geographical Names***

ICANN will review all applied-for strings to ensure that appropriate consideration is given to the interests of governments or public authorities in country or territory

names, as well as certain other types of sub-national place names. The requirements and procedure ICANN will follow is described in the following paragraphs.

#### 2.1.1.4.1 *Requirements for Strings Intended to Represent Geographical Entities*

The following types of applications must be accompanied by documents of support or non-objection from the relevant government(s) or public authority(ies).

- Applications for any string that is a meaningful representation of a *country or territory name* listed in the ISO 3166-1 standard (see [http://www.iso.org/iso/country\\_codes/iso\\_3166\\_data\\_bases.htm](http://www.iso.org/iso/country_codes/iso_3166_data_bases.htm)). This includes a representation of the country or territory name in any of the six official United Nations languages (French, Spanish, Chinese, Arabic, Russian and English) and the country or territory's local language.
- Applications for any string that represents a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
- Applications for a city name, where the applicant clearly intends to use the gTLD to leverage from the city name.
- An application for a string which represents a continent or UN region appearing on the

Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings list at <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

An applied-for gTLD string that falls into the above categories is considered to represent a geographical name. It is the applicant's responsibility to identify whether its applied-for gTLD string falls into the above categories and to determine the relevant government or governments, or the relevant public authority or authorities. In the case of an application for a string which represents a continent or UN region, evidence of support, or non-objection, will be required from a substantial number of the relevant governments and/or public authorities associated with the continent or the UN region.

The evidence of support or non-objection from the relevant government or public authority should include a signed

letter of support or non-objection from the minister with the portfolio responsible for domain name administration, ICT, foreign affairs or the Office of the Prime Minister or President of the relevant jurisdiction. If there are reasons for doubt about the authenticity of the communication, ICANN will consult with the diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact with their administration for communications.

The letter must clearly express the government's or public authority's support or non-objection for the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and what it will be used for.

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

#### *2.1.1.4.2 Review Procedure for Geographical Names*

A Geographical Names Panel (GNP) will be established to evaluate applications and confirm whether each string represents a geographic term, and to verify the authenticity of the supporting documentation where necessary. The Geographic Names Panel may consult with additional experts as they consider appropriate.

The steps ICANN and the Geographical Names Panel intend to follow to ensure compliance with these requirements are described here.

1. During the Initial Evaluation period, ICANN evaluates each application for a geographical name to confirm that the applicant has provided a letter of support or nonobjection from the relevant government.
2. ICANN forwards applications considered complete to the GNP for confirmation that:
  - The strings are a meaningful representation of a country or territory name or a subnational place name, and

- The communication from the government or public authority is legitimate and contains the suggested content.
3. The GNP also reviews applications that are not self-identified as a geographical name to ensure that the applied-for string is not a meaningful representation of a country or territory name or a sub-national place name.
  4. All applications determined to be geographical but without necessary supporting documents will be considered incomplete. The applicant will be notified and the application will not pass Initial Evaluation.
  5. The GNP may consult additional expertise if uncertainty arises about the name the applied-for gTLD string is claimed to represent.

The results of the evaluation will be publicly posted on ICANN's website at the conclusion of the Initial Evaluation, and will also be available to applicants.

If there is more than one application for a string representing a certain geographical term as described in this section, and the applications are considered complete (that is, have requisite government approvals), the applications will be suspended pending resolution by the applicants. If there is contention between identical (or similar) applicants where one is identified as a geographical name, the string contention will be settled using the string contention methodology described in Module 4.

### *2.1.2 Applicant Reviews*

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Concurrent with the applied-for gTLD string reviews described in subsection 2.1.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

#### *2.1.2.1 Information Sought*

The questions provided for applicants in the application form are available at <http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf>. Applicants answer questions which cover the following three areas in relation to themselves: general information, technical and operational capability, and financial capability.

Applicants should be aware that the application materials submitted in the online application system, as well as any evaluation materials and correspondence, will be publicly posted on ICANN's website. The sections in the application that are marked CONFIDENTIAL will not be posted. Any sections of the application that ICANN has not designated CONFIDENTIAL will be posted.

The applicant questions cover the following three areas:

**General Information** – These questions are intended to gather information about an applicant's legal identity, contact information, and applied-for gTLD string. Failure to provide any of this information will result in an application being considered incomplete. Under specific areas of questions under this category are: the identification of the applied-for string; selection of TLD type; and requests for certain documents.

**Demonstration of Technical and Operational Capability** – These questions are intended to gather information about an applicant's technical capabilities and plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual registry to complete the requirements for a successful application. It will be sufficient at application time for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of running a gTLD registry. Each applicant that passes the technical evaluation and all other steps will be required, following execution of a registry agreement, to complete a pre-delegation technical test before delegation of the applied-for gTLD. Refer to Module 5, Transition to Delegation, for additional information.

**Demonstration of Financial Capability** – These questions are intended to gather information about an applicant's financial capabilities to operate a gTLD registry business and its financial planning in preparation for long-term operation of a new gTLD.

#### **2.1.2.2 Evaluation Methodology**

Initial Evaluations are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the application form. ICANN and its evaluators are not obliged to take into account any information or evidence that is not made available in the application and submitted by the due date, unless explicitly requested by the evaluators.

Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and any such request will be made solely through TAS, rather than by direct means such as phone, letter, email, or other similar means. Only one exchange of information between the applicant and the evaluators may take place within the Initial Evaluation period.

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

### *2.1.3 Registry Services Review*

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Concurrent with the string reviews described in subsection 2.1.1, ICANN will review the applicant's proposed registry services. The applicant will be required to provide a list of proposed registry services in its application.

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

A full definition of registry service can be found at <http://www.icann.org/en/registries/rsep/rsep.html> and in the draft registry agreement at <http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf>. Registry services will be examined to determine if the proposed registry service might raise significant stability or security issues. Examples of services submitted to the registry services process by established registries can be found at <http://www.icann.org/en/registries/rsep>.

The registration of domain names, for example, is a registry service. Lists of registry services currently provided by

registries can be found in registry agreement appendices. In general cases, these services successfully pass this inquiry. See

<http://www.icann.org/en/registries/agreements.htm>.

Review of all applicants' proposed registry services will occur during the Initial Evaluation.

**Procedure** – ICANN's first review will be a preliminary determination of whether a proposed registry service requires further consideration based on whether the registry service may raise significant security or stability issues.

If ICANN's preliminary determination reveals that there may be significant security or stability issues surrounding the proposed service, the application will be flagged for an extended review by the RSTEP (see <http://www.icann.org/en/registries/rsep/rstep.html>). This review will occur during the Extended Evaluation phase (refer to section 2.2).

Definitions for security and stability applied in the registry services review are:

**Security** – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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

#### ***2.1.4 Applicant's Withdrawal of an Application***

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An applicant who does not pass the Initial Evaluation may be permitted to withdraw its application at this stage for a partial refund (refer to subsection 1.5.5 of Module 1, Introduction to gTLD Application Process).

## 2.2 *Extended Evaluation*

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

- Demonstration of technical and operational capability (refer to paragraph 2.1.2.1).
- Demonstration of financial capability (refer to paragraph 2.1.2.1).

An Extended Evaluation may also result if ICANN identifies a need for further review on the following elements:

- DNS stability (refer to paragraph 2.1.1.3).
- Registry services (refer to subsection 2.1.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

From the time an applicant receives notice of failure to pass the Initial Evaluation, it has 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation through the online application interface. If the applicant does not explicitly request the Extended Evaluation, and pay any additional fees as applicable, the application will not proceed.

### 2.2.1 *Technical and Operational or Financial Extended Evaluation*

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This subsection applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in paragraph 2.1.2.1.

The Extended Evaluation allows one additional round of inquiry and answer between the evaluators and the applicant to clarify information contained in the application. This supplemental information will become part of the application. Applicants may not change the information submitted in their original applications. Through the online system, the evaluators will provide the applicant a set of questions describing any deficiencies in the application and request clarification. Such communications will include a deadline for the applicant to respond.

The same panel that reviewed an application during Initial Evaluation will conduct the Extended Evaluation, using the

same criteria as outlined at <http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf>, to determine whether the application, now that certain information has been clarified, meets the criteria.

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

### *2.2.2 String Stability Extended Evaluation*

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This section applies to an Extended Evaluation of DNS security or stability issues with an applied-for gTLD string, as described in paragraph 2.1.1.3.

If the evaluators determine that a string poses stability issues that require further investigation, the applicant must either confirm that it intends to move forward with the application process or withdraw its application.

If an application is subject to such an Extended Evaluation, an independent 3-member panel will be formed to review the security or stability issues identified during the Initial Evaluation.

The panel will review the string and determine whether the string complies with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will communicate its findings to ICANN and to the applicant.

If the panel determines that the string does not comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application cannot proceed.

### *2.2.3 Registry Services Extended Evaluation*

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This section applies to an Extended Evaluation of Registry Services, as described in subsection 2.1.3.

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

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

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

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services may be included in the applicant's contract with ICANN.

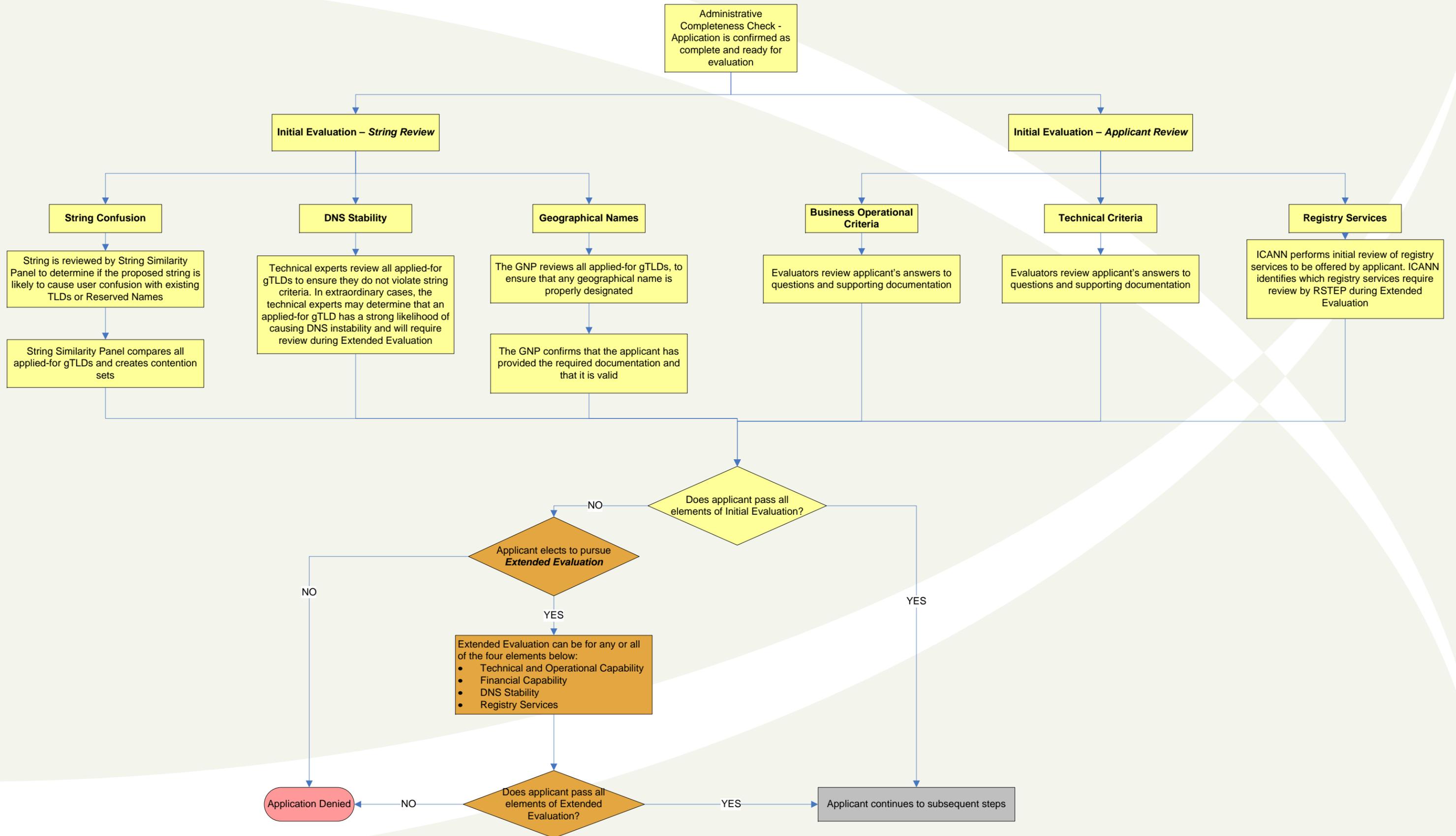
If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD.

### **2.3** *Probity and Conflicts of Interest*

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ICANN staff and by various independent service providers will review all applications during **Initial Evaluation** and **Extended Evaluation**. During this entire evaluation process, applicants must not approach, or have any other person or entity approach on their behalf, any ICANN staff member, any ICANN Board member, or any person associated with the evaluation process, including any evaluators, experts, examiners, or reviewers retained by ICANN.

# DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation





# Draft Applicant Guidebook

## Module 3

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 3

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## *Dispute Resolution Procedures*

This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging an objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each DRSP will apply in its decisions.

All applicants should be aware of the possibility that an objection may be filed against their applications, and of the options available in the event of such an objection.

### *3.1 Purpose and Overview of the Dispute Resolution Process*

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The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows certain parties with standing to have their objections considered before a panel of qualified experts. A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept this gTLD dispute resolution process. Similarly, an objector accepts the gTLD dispute resolution process by filing its objection.

#### *3.1.1 Grounds for Objection*

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An objection may be filed on any one of the following four grounds:

***String Confusion Objection*** – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string.

***Legal Rights Objection*** – The applied-for gTLD string infringes existing legal rights of the objector.

***Morality and Public Order Objection*** – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law.

**Community Objection** – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

### 3.1.2 *Standing to Object*

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Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by panelists designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection Ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round
Legal rights	Rightsholders
Morality and Public Order	To be determined
Community	Established institution

#### 3.1.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may also file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4). If an objection by a gTLD applicant to another gTLD applicant is unsuccessful, the applicants may both move forward in the process without being considered in contention with one another.

### 3.1.2.2 *Legal Rights Objection*

Only a rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming are infringed by the applied-for gTLD must be included in the filing.

### 3.1.2.3 *Morality and Public Order Objection*

Standing requirements for morality and public order objections remain under study. In the case of morality and public order objections, it may be appropriate to grant standing only to parties who have recognized authority in the arena of morality or public order, such as governments, or it may be appropriate to make this option available to any interested parties who assert harm due to an applied-for gTLD string.

### 3.1.2.4 *Community Objection*

Established institutions associated with defined communities are eligible to file a community objection. To qualify for standing for a community objection, the objector must prove both of the following:

***It is an established institution*** – Factors that may be considered in making this determination include:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

***It has an ongoing relationship with a defined community that consists of a restricted population*** – Factors that may be considered in making this determination include:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

### **3.1.3 Options in the Event of Objection**

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Applicants whose applications are the subject of an objection have the following options:

The applicant can file a response to the objection and enter the dispute resolution process (refer to subsection 3.3); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

## **3.2 Procedure for Filing an Objection**

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To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date. Objections must be filed directly with the appropriate DRSP for each objection ground.

The **International Centre for Dispute Resolution** has agreed in principle to administer disputes brought pursuant to string confusion objections.

The **Arbitration and Mediation Center of the World Intellectual Property Organization** has agreed in principle to administer disputes brought pursuant to legal rights objections.

The **International Chamber of Commerce** has agreed in principle to administer disputes brought pursuant to Morality and Public Order and Community Objections.

### **3.2.1 Objection Filing Procedures**

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The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. These procedures are provided to applicants for reference and are intended to cover dispute resolution procedures generally. Each provider has its own rules and procedures that also must be followed when filing an objection.

Should an applicant wish to file a formal objection to another gTLD application, it would follow these procedures.

- All objections must be filed by the posted deadline date. Objections will not be accepted by the DRSPs after this date.

- All objections must be filed in English.
- Each objection must be filed separately. That is, if any objector wishes to object to several applications at the same time, the objector must file an objection and pay a filing fee for each application that is the subject of an objection. If an objector wishes to object to one application on different grounds, the objector must file an objection and pay a filing fee for each objection ground.
- All objections must be filed with the appropriate DRSP. If an objection is filed with a DRSP other than the DRSP specified for the objection ground, that DRSP will promptly notify the objector of the error. The objector then has 5 calendar days after receiving that notification to file its objection with the appropriate DRSP.
- Objections must be filed electronically and all interactions with the DRSPs during the objection process must be conducted online.

Each objection filed by an objector must include:

- The name and contact information, including address, phone, and email address, of all parties submitting an objection.
- The basis for standing; that is, why the objector believes it has the right to object.
- A statement of the nature of the dispute, which should include:
  - A statement giving the specific ground under which the objection is being filed.
  - A detailed explanation of how the objector's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
  - A detailed explanation of the validity of the objection and why the application should be denied.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 2500 words, excluding attachments.

The DRSP will use electronic means to deliver copies of all materials filed to the applicant and to all objectors.

Each applicant and all objectors must provide copies of all submissions to the DRSP associated with the objection proceedings to one another, and to ICANN.

ICANN will publish a document on its website identifying all objections shortly after the deadline for filing objections has passed (refer to Item 1 above). Objections will not be published before that deadline.

### ***3.2.2 Objection Filing Fees***

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At the time an objection is filed, the objector is required to pay a nonrefundable filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

## ***3.3 Filing a Response to an Objection***

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### ***3.3.1 Filing Procedures***

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These procedures are intended to cover dispute resolution procedures generally. Each DRSP will have its own rules that also must be followed.

Upon notification that ICANN has published the list of objections filed (refer to subsection 3.2.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, if an applicant wishes to respond to several objections, the applicant must file a response and pay a filing fee to respond to each objection.
- All responses must be filed with the appropriate DRSP. If a response is filed with a DRSP other than the DRSP specified for the objection ground, that DRSP will promptly notify the applicant of the error. The applicant then has 5 calendar days after receiving the notification to file its objection with the appropriate DRSP.

- Responses must be filed electronically and all interactions with the DRSPs during the dispute resolution process must be conducted online.
- Each response filed by an applicant must include the name and contact information, including address, phone, and email address, of all parties submitting the response.
- Each responding applicant's response must contain a point-by-point confirmation or denial of the claims made by each objector. The applicant also should attach any copies of documents that it considers to be a basis for the response.
- Responses are limited to 2500, excluding attachments.
- The DRSP will use electronic means to deliver copies of all materials filed to the applicant and to all objectors.
- Each applicant and all objectors must provide copies of all submissions to the DRSP associated with the objection proceedings to one another and to ICANN.

### ***3.3.2 Response Filing Fees***

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At the time an applicant files its response, it is required to pay a nonrefundable filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded.

## ***3.4 Dispute Resolution Procedure***

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### ***3.4.1 Preliminary Objection Processing***

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Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's submission of a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for submitting an objection.

### ***3.4.2 Consolidation of Objections***

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Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections.

An example of circumstances in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

### ***3.4.3 Negotiation and Mediation***

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The parties to a dispute resolution proceeding are encouraged—but not required—to participate in a cooling off period to determine whether the dispute can be resolved by the parties. Each DRSP has panelists who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel to resolve the objection.

There are no automatic extensions of time associated with any cooling off period. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. The parties must limit their requests for extension to 30 calendar days.

### ***3.4.4 Selection and Number of Panelists***

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Appropriately qualified panelists will be appointed to each proceeding by the designated DRSP.

Panelists must be independent of the parties to an objection resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence,

including procedures for challenging and replacing a panelist for lack of independence.

There will be one panelist in proceedings involving a **string confusion objection**.

There will be one panelist with relevant experience in intellectual property rights disputes in proceedings involving an existing **legal rights objection**.

There will be three panelists recognized as eminent jurists of international reputation, in proceedings involving a **morality and public order objection**.

There will be one panelist in proceedings involving a **community objection**.

Neither the panelists, the DRSP, ICANN, nor their respective employees, Board members, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

#### **3.4.5 Adjudication**

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At its discretion, the panel appointed by the DRSP may request further statements or documents from the parties, although such requests will be limited and infrequent.

To keep costs down and limit delays, the panel will discourage and, if practicable, not permit any document production or other discovery-style requests from the parties.

Without its being requested by the parties, the panelists may appoint experts to be paid for by the parties, request live or written witness testimony, or request limited exchange of documents.

Any party may request a hearing; however, it is within the panel's discretion whether to allow such a hearing. The presumption is that the panel will render decisions based on written submissions and without a hearing.

If a request for a hearing is granted, videoconferences are to be used if possible. If not possible, then the DRSP panel will select a place for hearing if the parties cannot agree. The panel will determine whether the hearings are to be public or private. Hearings will last no more than one day, except in the most exceptional circumstances.

Typically, dispute resolution proceedings will be conducted in English, but may be conducted in another language in accordance with the rules of the provider.

### 3.4.6 *Decision*

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The DRSPs' final decisions will be in writing and will include:

- A summary of the dispute and findings; and
- The reasoning upon which the decision is based.

Each DRSP will develop a single format for all final decisions that its panelists render. The DRSP will notify the parties of the decision via email.

ICANN will strongly encourage DRSPs to use reasonable efforts to issue all final decisions within 45 days of the panel appointment date unless, after both parties have completed their initial submissions, the parties jointly request a short postponement of their adjudication date to accommodate negotiation or mediation or to accommodate other aspects of the proceedings, and the panel agrees.

When the panel is composed of three panelists, the decision will be made by a majority of the panelists.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

A dispute resolution panel decision will be considered an expert determination, and will be considered by ICANN in making a final decision regarding the success of any application.

### 3.4.7 *Dispute Resolution Fees*

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Before acceptance of objections, each DRSP will publish a schedule of costs for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while morality and public order and community objection proceedings will involve hourly rates charged by the panelists.

Within 7 business days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant.

Each party must make its advance payment within 15 calendar days of receiving the DRSP's request for payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its decision, the DRSP will refund any costs paid in advance to the prevailing party.

### **3.5 *Dispute Resolution Principles (Standards)***

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Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

#### **3.5.1 *String Confusion Objection***

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A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion.

String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the

average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

### 3.5.2 *Legal Rights Objection*

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In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel presiding over a legal rights objection will determine whether the potential use of the applied-for TLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s trademark or service mark (“mark”), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark, or otherwise creates an impermissible likelihood of confusion between the applied-for TLD and the objector’s mark, by considering the following non-exclusive factors:

1. Whether the applied-for TLD is identical or similar, including in appearance, phonetic sound or meaning, to the objector’s existing mark.
2. Whether the objector’s acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the TLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant’s intent in applying for the TLD, including whether the applicant, at the time of application for the TLD, had knowledge of the objector’s mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the TLD,

and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the TLD by the applicant is consistent with such acquisition or use.

7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the TLD, and if so, whether any purported or likely use of the TLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended-use of the TLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the TLD.

### ***3.5.3 Morality and Public Order Objection***

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This section is under construction. ICANN expects to implement a standard for morality and public order objections in accordance with international legal principles. Accordingly, ICANN has reviewed legal systems in all ICANN regions. ICANN has also consulted with judges, attorneys, and legal experts in many jurisdictions. The general principles guiding ICANN in the establishment of dispute resolution standards are: (1) everyone has the right to freedom of expression; and (2) such freedom of expression may be subject to certain narrowly interpreted exceptions that are necessary to protect other important rights. See Articles 19 and 20 of the International Covenant on Civil and Political Rights. ICANN continues to address the challenge of identifying standards appropriate for the global namespace.

### ***3.5.4 Community Objection***

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The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a defined community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and

- There is a likelihood of detriment to the community named by the objector if the gTLD application is approved.

Each of these tests is described in further detail below.

**Community** – The objector must prove that the community expressing opposition can be regarded as a well-defined community. A panel could balance a number of factors to determine this, including:

- Level of public recognition of the group as a community at a local and / or global level;
- Level of formal boundaries around the community and what elements are considered to form the community;
- How long the community has been in existence;
- How globally distributed is the community (breadth, level of importance)(this may not apply if the community is territorial); and
- How many people make up the community.

If opposition by a number of people is found, but the group claiming opposition is not determined to be a distinct community, the objection will fail.

**Substantial opposition** – The objector must prove substantial opposition within the community it has identified. A panel could balance a number of factors to determine whether there is substantial opposition, including:

- Number of expressions of opposition relative to the composition of the community;
- Distribution or diversity among sources of expressions of opposition, including:
  - Regional
  - Subsectors of community
  - Leadership of community
  - Membership of community
- Nature/intensity of opposition; and
- Costs incurred by objector in expressing opposition, including what other channels they have used to convey their opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

**Targeting** – The objector must prove an association between the applied-for gTLD string and the community expressing opposition. Factors that could be balanced by a panel to determine this include:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no clear connection between the community and the applied-for gTLD string, the objection will fail.

**Detriment** – The objector must prove that there is a likelihood of detriment to the rights or legitimate interests of its associated community. Factors that could be used by a panel in making this determination include:

- Damage to the reputation of the community that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string; and
- Dependence of the community on the DNS for its core activities.

**Defenses** – Satisfaction of the standing requirements for filing a Community Objection (refer to paragraph 3.1.2.4) by the applicant is a complete defense to an objection filed on community grounds.

# DRAFT - New gTLD Program – Objection and Dispute Resolution



An applicant may face anywhere from zero objections to multiple objections in any of the four areas

Objection filing phase opens

Party with standing files objection directly with DRSP for these grounds:

- **String Confusion**
- **Legal Rights**
- **Morality and Public Order; and/or**
- **Community**

Objector pays filing fee directly to DRSP

Objection filing phase closes

Applicant responds to objection by paying filing fee and responding to claims made by objector

Once the DRSPs receive all objections, at their discretion, the DRSPs may elect to consolidate certain objections if there are multiple objections to the same application based on the same ground

Panel reviews parties' submissions and renders decision

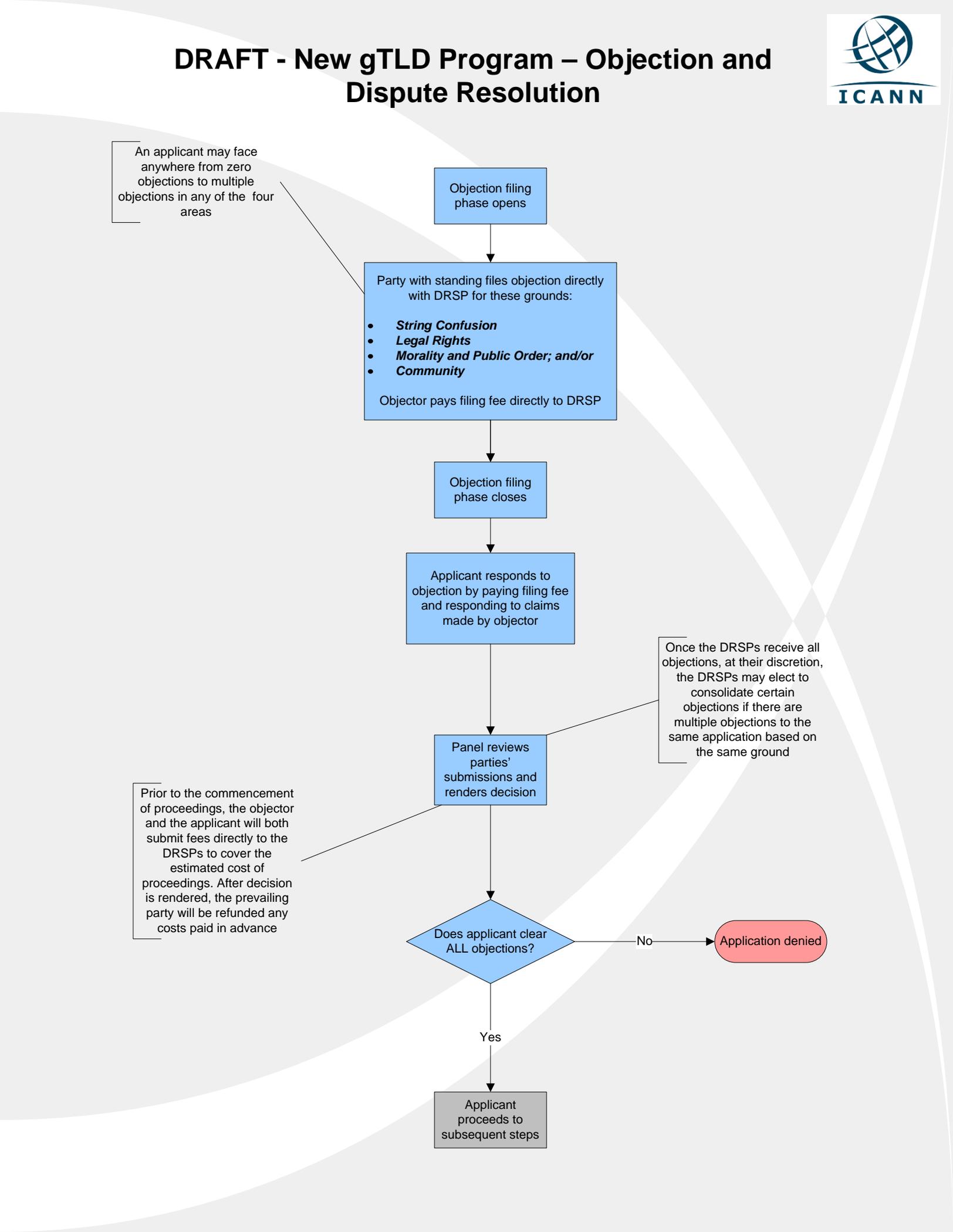
Prior to the commencement of proceedings, the objector and the applicant will both submit fees directly to the DRSPs to cover the estimated cost of proceedings. After decision is rendered, the prevailing party will be refunded any costs paid in advance

Does applicant clear ALL objections?

No → Application denied

Yes

Applicant proceeds to subsequent steps





# Draft Applicant Guidebook

## Module 4

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 4

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## *String Contention Procedures*

This module describes situations in which contention over applied-for gTLD strings occurs, and the two methods available to applicants for resolving such contention cases.

### *4.1 String Contention*

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String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in string confusion, called contending strings. If either situation 1 or 2 above occurs, such applications will proceed to contention resolution through either comparative evaluation or an efficient mechanism for contention resolution, both of which are described in this module. A group of applications for contending strings is referred to as a contention set.

#### *4.1.1 Identification of Contention Sets*

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Contention sets are groups of applications containing identical or similar applied-for gTLD strings. (In this RFP, “similar” means strings so similar that it is probable that detrimental user confusion would result if the two similar gTLDs are delegated into the root zone.) Contention sets are identified during Initial Evaluation from review of all applied-for TLD strings by the panel of String Similarity Examiners. ICANN will publish contention sets by the close of the Initial Evaluation period.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be

identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant language reference table.

The String Similarity Examiners will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Confusion Review described in subsection 2.1.1 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or so similar that there is a probability of user confusion if both were to be delegated as TLDs in the root zone. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. Direct and indirect contention are explained in greater detail in the example that follows.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

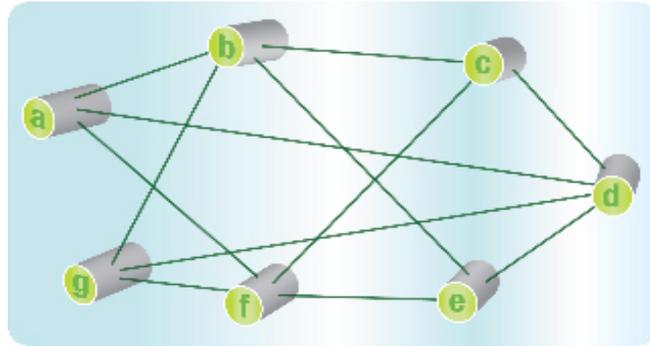


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process steps have concluded. This is because any application excluded through those steps might modify a contention set identified earlier. A contention set may be split it into two sets or it may be eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

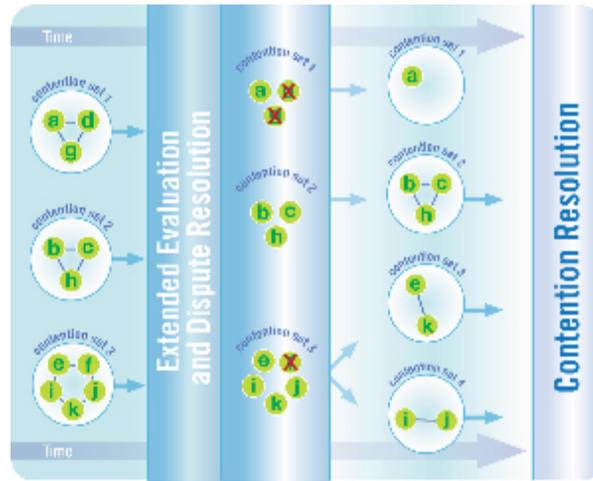


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through comparative evaluation or an efficient mechanism for contention resolution, depending on the circumstances. In this process, ICANN addresses each contention set to achieve an unambiguous resolution.

In their policy advice, the GNSO called for an efficient process to resolve cases of contention where there was no claim of community representation to be used as a factor for resolving the contention. While not settled, candidate means for this process are discussed below and in more detail in a companion paper to the Draft Applicant Guidebook called “Resolving string contention—a complete lifecycle including string contention resolution.”

#### 4.1.2 *Impact of Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another applicant (refer to Module 3), and the panel does find that string confusion exists; that is, rules in favor of the objector, the two applicants will be placed in direct contention with each other. Thus, the outcome of a proceeding based on a string confusion objection would result in a new contention set structure for the relevant applications.

### ***4.1.3 Self-Resolution of String Contention***

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Applicants that are identified as being in contention may elect to reach a settlement or agreement among themselves whereby one or more applicants withdraws its application. This may occur at any stage of the process, once ICANN publicly posts the applications received on its website.

Applicants may not resolve a case of string contention by changing their applications by, for instance, selecting a new TLD string or creating a joint venture as a means to resolve the contention case.

### ***4.1.4 Possible Contention Resolution Outcomes***

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Any application with no contention situation left to resolve is allowed to proceed to the next step. In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

There may be more than one application that passes contention resolution within a contention set. If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, if string A is in contention with B, B is in contention with C, but C is not in contention with A. If A wins the contention, B is eliminated but C can go on since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

## ***4.2 Comparative Evaluation***

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Comparative evaluation can begin once all applicants in the contention set have completed all previous stages of the process.

The comparative evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the comparative evaluation. Each applicant participating in the comparative evaluation begins with a score of zero.

### 4.2.1 Eligibility for Comparative Evaluation

As described in subsection 1.2.2 of Module 1, all applicants are required to identify whether their application type is:

- Open; or
- Community-based.

Only community-based applicants may elect a comparative evaluation. ICANN policy states that if there is contention for strings, a claim to support a community by one party will be a reason to award priority to that application. If one community-based applicant within a contention set makes this election, all other community-based applicants in the same contention set will be part of the comparative evaluation.

Applicants designating their applications as community-based will also be asked to respond to a set of questions in the application form that would provide relevant information if a comparative evaluation occurs.

Before the comparative evaluation begins, all community-based applicants in the contention set may be asked to provide additional information relevant to the comparative evaluation. Additionally, the community-based applicants will be required to pay a Comparative Evaluation Fee (refer to Section 1.5 of Module 1) to participate in the comparative evaluation.

### 4.2.2 Comparative Evaluation Procedure

Comparative evaluations for each contention set will be performed by a comparative evaluation provider appointed by ICANN to review all applications for contending gTLD strings. The panel's charter is to determine whether one of the community-based applications clearly and demonstrably would add more value to the Internet's Domain Name System. Open applicants within the contention set will not participate in the comparative evaluation.

If no single community-based applicant emerges as one that clearly and demonstrably adds more value to the namespace than all the competing contending applications, then all of the parties in the contention set (both open and community-based applicants) will proceed to an alternate mechanism for efficient contention resolution.

### 4.2.3 Comparative Evaluation Criteria

A panel appointed by the comparative evaluation provider will review and score the one or more community-based applicants who elected comparative evaluation against the criteria in the following table:

Criteria	Score		
	3	2	1
<b>Nexus between Proposed String and Community</b>	String is name or well-known abbreviation of community institution.	String is relevant to applicant's area of interest but also has other well-known associations.	No connection.
<b>Dedicated Registration Policies</b>	Registration eligibility is strictly limited to members of the pre-established community identified in the application. Registration policies also include name selection and use requirements consistent with the articulated scope and community-based nature of the TLD. Proposed policies include specific enforcement measures including investigation practices, penalties, takedown procedures and appeal mechanisms.	Registration eligibility is predominantly available to members of the pre-established community identified in the application, and also permits people or groups informally associated with the community to register. Policies include some elements of the above but one or more elements are missing.	No dedicated registration policies.
<b>Community Establishment</b>	Clearly identified, organized and pre-established community of considerable size and longevity.	The community addressed fulfills some but not all the requirements for a score of 3.	No community addressed.
<b>Community Endorsement</b>	Endorsement by a recognized institution or by member organizations.	Endorsement by some groups with apparent relevance, but also some opposition by groups with apparent relevance.	Assorted endorsements from individuals or groups of unknown relevance – or – no endorsement by any community.

If no applicant scores 11 or more, there is no clear winner. If only one applicant scores 11 or more, that applicant will be declared the winner.

If more than one applicant scores 11 or more, the evaluators will consider what portion of the community is represented by the application. *If one applicant represents*

*a much larger share of the relevant community than another, that will be a basis for awarding priority.*

Following the comparative evaluation, ICANN will review the results and reconfigure the contention set as needed. The same procedure will occur for remaining contention sets involving any community-based application that has elected comparative evaluation. If no community-based applicant that has elected comparative evaluation is left in the contention set, any applications remaining in contention will proceed to a subsequent contention resolution process. Applications not in contention will proceed toward delegation.

### ***4.3 Efficient Mechanism for Contention Resolution***

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A tie-breaker mechanism will be developed for resolving string contention among the applicants within a contention set, if the contention has not been resolved by other means. Unless the specific conditions for comparative evaluation outlined in Section 4.2 apply, this mechanism will be used to resolve the contention. This mechanism may also be used if no clear winner is identified during the comparative evaluation process.

The GNSO policy recommendations call for an efficient means of resolution. Continued investigation regarding the availability of alternative methods will guide ICANN's development of this mechanism.

The first efficient means of resolution that will be employed is a settlement arrived at by contending parties. Applicants for identical or similar TLDs can arrive at an accommodation where all in direct contention withdraw except for one. As described earlier, those withdrawing cannot apply for a new string. Nor can contending parties combine to form a new applicant. It is expected that many cases of contention will be resolved in this manner as it will be the most efficient and economical for the contending parties.

Failing to arrive at accommodation of the type described just above, auctions are one means of last resort that is being explored to resolve the contention. The purpose of an auction is to resolve contention in a clear, objective manner.

**Auction proceeds** – The purpose of an auction is to resolve contention in a clear, objective manner. It is not to raise revenue. While there may be significant proceeds from auctions in the event they occur, it is important to understand that this in no way the purpose of the auction. The annual budget process sets ICANN’s funding and spending limits. ICANN has no authorization to spend beyond the budget. ICANN already has precedent of returning revenue to the community when last year and in 2006 ICANN reduced registration fees from 25¢ to 20¢ over two years as a result of an unforeseen growth in revenue. Proceeds from auctions will be reserved until the uses of the proceeds are determined through a community consultation. The proceeds will not go into ICANN’s general expense budget but will be separately earmarked for projects or uses identified by the community. This important aspect of the auction process and its result will be an important part of the communications plan for the new gTLD program.

The new gTLD application fee is designed to be cost/revenue neutral. It factors in costs already forgone, future processing costs and legal expenses that are significant and would be a large drain on the Corporation’s established budget.

See further details on the exploration of an auction model in the contention lifecycle at <http://www.icann.org/en/topics/string-contention-22oct08.pdf>.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching this stage.

#### ***4.4 Contention Resolution and Contract Execution***

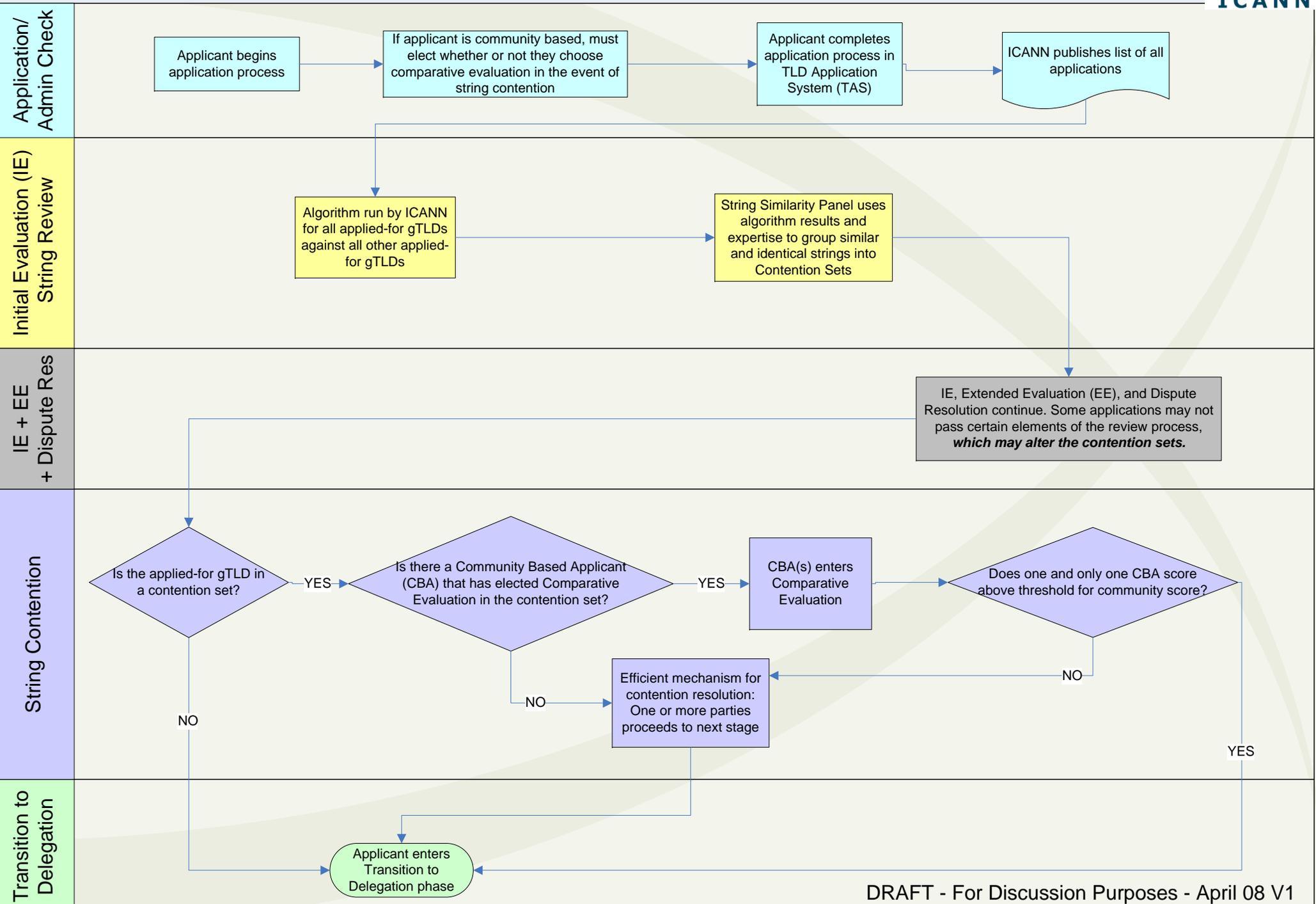
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An applicant that has been declared winner of a contention resolution process will proceed by entering into the contract execution phase. (Refer to section 5.1 of Module 5.)

If the winner of the contention resolution has not executed a contract within 90 days of the decision, ICANN has the right to extend an offer to the runner-up applicant to proceed with its application. For example, in a comparative evaluation, the applicant with the second-

highest score (if equal to or greater than eleven, might be selected to go on to the next step, delegation. (Refer to Module 5.) Similarly, in an efficient mechanism for contention resolution, another applicant who would be considered the runner-up applicant might proceed to the delegation step. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time.

# DRAFT - New gTLD Program - String Contention





# Draft Applicant Guidebook

## Module 5

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 5

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## *Transition to Delegation*

This module describes the final steps required of an applicant, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD string into the root zone.

### *5.1 Registry Agreement*

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All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN in order to proceed to delegation.

It is important to note that the agreement referred to below does not constitute a formal position by ICANN and has not been approved by the ICANN Board of Directors. The agreement is set out here for review and community discussion purposes and as a means to improve the effectiveness of the agreement in providing for increased competition and choice for consumers in a stable, secure DNS.

The contract terms can be reviewed at <http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf>. All successful applicants are expected to enter into the agreement substantially as written. The terms of the contract and, in particular, differences with existing registry agreements are explained in a companion paper to the agreement, *Summary of Changes to Base Agreement for New gTLDs*, <http://www.icann.org/en/topics/new-gtld-draft-summary-changes-24oct08-en.pdf>.

After an applicant has successfully completed the application process, ICANN may conduct a pre-contract review. To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit updated documentation and information before entering into the registry agreement.

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or

inaccurate, the applicant must promptly notify ICANN and submit updated information. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

## 5.2 Pre-Delegation Testing

Following completion of the Board review, each applicant will be required to complete pre-delegation steps as a prerequisite to entering the IANA process for delegation into the root zone. The pre-delegation check must be completed within the time period specified in the registry agreement.

### 5.2.1 Technical Testing

The purpose of the pre-delegation technical test is to verify the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described, along with the applicant questions. (Refer to Module 2.) The checks are also intended to ensure that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the questions and criteria that follow.

Question	Criteria
<b>1 IDN (variant) tables</b>	
If applicant will be supporting IDNs, was the IDN table attached to the application when originally submitted and does it fulfill IDN and IANA guidelines and requirements?	IDN tables must be developed and provided by the IDN string applicant at the time the application was submitted. The table must fulfill the requirements from the IDN Guidelines as well as the IANA repository requirements in order to be considered valid (see <a href="http://iana.org/procedures/idn-repository.html">http://iana.org/procedures/idn-repository.html</a> ).
<b>2 DNSSEC keys, materials</b>	
If DNSSEC is offered as part of registry services at time of application, can applicant comply with requirements?	Trust anchor for the registry will be published in the IANA Interim Trust Anchor Repository. Validity will be determined by verifying that DNS resolvers that support DNSSEC can successfully retrieve and DNSSEC validate information from that zone when configured with the published trust anchor for the zone.
<b>3 Architecture load requirements</b>	
Has the applicant implemented a network architecture necessary to support load characteristics, as outlined in its application?	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples of self-certification documents include but are not limited to a network/system diagram of the as-built network system (demonstrating correspondence to documentation in initial application), results of load testing performed by the applicant, and actual performance of the configuration in use for other registries. At ICANN's discretion, aspects of this self-certification documentation can be audited on-site at the services delivery point of the registry.

Question	Criteria
<b>4 IPv6 for registrants</b>	
Does registry support provisioning of IPv6 services for its registrants?	Registry must support provisioning of IPv6 services on behalf of its registrants. This means that registrar systems will allow entry of IPv6 addresses in all relevant address fields, that the SRS system is set up to support the communication of IPv6 addresses, and that registry name servers can be provisioned with IPv6 addresses. Applicant will demonstrate successful provisioning of a test account with IPv6 name server entries.
<b>5 IPv6 reachability</b>	<i>Note: This requirement is under consideration and the community is urged to provide feedback on this requirement.</i>
Does registry support access to DNS servers over an IPv6 network?	IANA currently has a minimum set of technical requirements for IPv4 name service. These include two nameservers separated by geography and by network topology, which each serve a consistent set of data, and are reachable from multiple locations across the globe. The registry will meet this same criterion for IPv6, requiring IPv6 transport to their network. Applicant will identify IPv6-reachable name servers that meet these requirements, and reachability will be verified by ICANN.
<b>6 Escrow deposit sample</b>	
Has the applicant demonstrated the ability to conform to registry escrow requirements? See <a href="http://www.icann.org/en/topics/new-gtld-draft-escrow-spec-24oct-08-en.pdf">http://www.icann.org/en/topics/new-gtld-draft-escrow-spec-24oct-08-en.pdf</a> .	The applicant will provide a conforming sample of a dummy data deposit showing correct type and formatting of content. The applicant will also provide evidence of an agreement with an escrow provider complying with Part B of the Data Escrow Requirements.
<b>7 System monitoring</b>	
Has the applicant implemented the system monitoring described by the applicant in the initial application?	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples of self-certification documents include but are not limited to: diagrams of monitoring systems (demonstrating correspondence to documentation provided in the application), output of periodic monitoring runs performed by the applicant demonstrating capability claimed in the application, and actual performance of this monitoring set up in use for other registries. At ICANN's discretion, aspects of this self-certification documentation can be audited on-site at the services delivery point of the registry.
<b>8 Registry continuity planning</b>	
Has applicant demonstrated capability to comply with ICANN's Registry Continuity Plan? See <a href="http://www.icann.org/registries/failover/icann-registry-failover-plan-15jul08.pdf">http://www.icann.org/registries/failover/icann-registry-failover-plan-15jul08.pdf</a>	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples include identification of appropriate contact points and evidence of the registry's own continuity plan, and identification of a registry services continuity provider.
<b>9 System performance requirements</b>	
Has applicant demonstrated capability to comply with the performance specifications? See <a href="http://www.icann.org/en/topics/new-gtld-draft-performance-spec-24oct08-en.pdf">http://www.icann.org/en/topics/new-gtld-draft-performance-spec-24oct08-en.pdf</a>	Applicant will self-certify adherence to this requirement and provide materials to ICANN that demonstrate adherence. Examples of self-certification documents include but are not limited to performance and availability results that demonstrate DNS availability at stated levels for at least one month, and Whois service availability for at least one month. At ICANN's discretion, aspects of this self-certification documentation can be audited on-site at the services delivery point of the registry.

### *5.2.2 Additional Requirements*

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At the pre-delegation stage, an applicant must also provide documentary evidence of its ability to fund ongoing basic registry operations for then-existing registrants for a period of three to five years in the event of registry failure, default or until a successor operator can be designated. This obligation can be met by securing a financial instrument such as a bond or letter of credit (i.e., evidence of ability to provide financial security guaranteed by a creditworthy financial institution); contracting with and funding a services provider to extend services; segregating funding; or other means.

Once an applicant has met the requirements in 5.2.1 and 5.2.2 above, it is eligible to proceed to delegation of its applied-for gTLD string by IANA.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

### *5.3 IANA Delegation Process*

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Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database. Information about the delegation process is available at <http://iana.org/domains/root/>.

### *5.4 Ongoing Operations*

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ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

The registry agreement contains a provision for ICANN to perform audits to ensure that the registry operators remain in compliance with agreement obligations.



# Draft Applicant Guidebook

## Module 6

Please note that this is a discussion draft only. Potential applicants should not rely on any of the proposed details of the new gTLD program as the program remains subject to further consultation and revision.

24 October 2008

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# Module 6

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## *Top-Level Domain Application - Terms and Conditions*

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) will reflect negatively on this application and may cause ICANN and the evaluators to reject the application.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to reject any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to proceed with review and consideration of an application to establish one or more gTLDs is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering for a gTLD under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's consideration of the application, and any approval or rejection of the application; and/or (b) ICANN's reliance on information provided by applicant in the application.
6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND

ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER START-UP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD.

7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other materials prepared in connection with the evaluation of the application; provided, however, that information will not be published to the extent that the application specifically identifies such information as confidential. A general statement as the confidentiality of the application will not be sufficient for these purposes. Except for information that ICANN determines to treat as confidential, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.
8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion.
9. Applicant gives ICANN permission to use applicant's name and/or logo in ICANN's public announcements (including informational web pages) relating to top-level domain space expansion.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in

connection with the application materials. Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.

11. Applicant authorizes ICANN to:
  - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
  - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession.
12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.

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# Glossary

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## *Terms Applicable to this RFP and to the New gTLD Application Process*

A-Label	The ASCII-Compatible Encoding (ACE) form of an IDNA-valid string.
Applicant	An entity that has applied to ICANN for a new gTLD by submitting its application form through the online application system.
Application	An application for a new gTLD lodged in response to this RFP. An application includes the completed Application Form any supporting documents, and any other information that may be submitted by the applicant at ICANN's request.
Application form	The set of questions to which applicants provide responses, as at <a href="http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf">http://www.icann.org/en/topics/new-gtld-draft-evaluation-criteria-24oct08-en.pdf</a> .
Application interface	The web-based interface operated by ICANN, available at [URL to be inserted in final version of RFP]
Application round	The complete succession of stages for processing the applications received during one application submission period for gTLDs. This RFP is for one application round. Any subsequent application rounds will be the subject of subsequent RFPs.
Application submission period	The period during which applicants may submit applications through the application interface.
Applied for gTLD string	A gTLD string that is subject of an application.
American Standard Code for Information Interchange (ASCII)	A character encoding based on the English alphabet. ASCII codes represent text in computers, communications equipment, and other devices that work with text. Most modern character encodings—which support many more characters than did the original—have a historical basis in ASCII.
AXFR	Asynchronous full transfer, a DNS protocol mechanism through which a DNS zone can be replicated to a remote DNS server.
Business ID	A number such as a federal tax ID number or employer information number.

ccTLD	Two-letter top-level domains corresponding with the ISO 3166-1 country code list. See <a href="http://iana.org/domains/root/db/">http://iana.org/domains/root/db/</a> .
Community-based TLD	A community-based gTLD is a gTLD that is operated for the benefit of a defined community consisting of a restricted population. An applicant designating its application as community-based must be prepared to substantiate its status as representative of the community it names in the application
Community objection	An objection based on the grounds that there is substantial opposition to a gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.
Comparative evaluation	A process to resolve string contention, which may be elected by a community-based applicant.
Consensus policy	A policy created through the GNSO policy development process listed in Annex A of the ICANN Bylaws. See <a href="http://www.icann.org/en/general/bylaws.htm#AnnexA">http://www.icann.org/en/general/bylaws.htm#AnnexA</a> . A list of current consensus policies is available at <a href="http://www.icann.org/en/general/consensus-policies.htm">http://www.icann.org/en/general/consensus-policies.htm</a> .
Contention sets	A group of applications containing identical or similar applied-for gTLD strings.
Country-code TLD	See ccTLD.
Delegation	The process through which the root zone is edited to include a new TLD, and the management of domain name registrations under such TLD is turned over to the registry operator.
Digit	Any digit between "0" and "9" (Unicode code points U+0030 to U+0039).
Dispute Resolution Service Provider (DRSP)	An entity engaged by ICANN to adjudicate dispute resolution proceedings in response to formally filed objections.
Domain name	A name consisting of two or more (for example, john.smith.name) levels, maintained in a registry database.
Domain Name System Security Extensions (DNSSEC)	DNSSEC secures domain name look-ups on the Internet by incorporating a chain of digital signatures into the DNS hierarchy.
Existing TLD	A string included on the list at <a href="http://iana.org/domains/root/db">http://iana.org/domains/root/db</a>

Extended Evaluation	The second stage of evaluation applicable for applications that do not pass the Initial Evaluation, but are eligible for further review.
Extended Evaluation period	The period that may follow the Initial Evaluation period, for eligible applications which do not pass the Initial Evaluation.
Evaluator	The individuals or organization(s) appointed by ICANN to perform review tasks within Initial Evaluation and Extended Evaluation under ICANN direction
Evaluation fee	The fee due from each applicant to obtain consideration of its application.
Geographical Names Panel (GNP)	A panel of experts charged by ICANN with reviewing applied-for TLD strings that relate to geographical names.
Generic Names Supporting Organization (GNSO)	ICANN's policy-development body for generic TLDs and the lead in developing the policy recommendations for the introduction of new gTLDs.
Generic top-level domain gTLD	See gTLD A TLD with three or more characters that does not correspond to any country code.
Hyphen	The hyphen "-" (Unicode code point U+0029).
Internet Assigned Numbers Authority (IANA)	IANA is the authority originally responsible for overseeing IP address allocation, coordinating the assignment of protocol parameters provided for in Internet technical standards, and managing the DNS, including delegating top-level domains and overseeing the root name server system. Under ICANN, IANA distributes addresses to the Regional Internet Registries, coordinate with the IETF and other technical bodies to assign protocol parameters, and oversees DNS operation.
ICANN	Internet Corporation for Assigned Names and Numbers
ICANN-accredited registrar	A company that registers domain names for Internet users. There are more than 900 ICANN-accredited registrars who provide domains to Internet users. The list of ICANN-accredited registrars is available at <a href="http://www.icann.org/en/registrars/accredited-list.html">http://www.icann.org/en/registrars/accredited-list.html</a>
Internationalized Domain Name (IDN)	A domain name including at least one character other than those in letters (a,...,z), digits (0,...,9) and the hyphen (-).
Internationalizing Domain Names in Applications (IDNA)	The technical protocol used for processing domain names containing non-ASCII characters in the DNS.

IDN ccTLD Fast Track	The process for introducing a limited number of IDN ccTLDs associated with the ISO-3166 two-letter codes. See <a href="http://www.icann.org/en/topics/idn/fast-track/">http://www.icann.org/en/topics/idn/fast-track/</a> .
IDN table	A table listing all those characters that a particular TLD registry supports. If one or more of these characters are considered a variant this is indicated next to that/those characters. It is also indicated which character a particular character is a variant to. The IDN tables usually hold characters representing a specific language, or they can be characters from a specific script. Therefore the IDN table is sometimes referred to as "language variant table", "language table", "script table" or something similar.
IGO	Inter-governmental organization.
Internet Engineering Task Force (IETF)	The IETF is a large, open international community of network designers, operators, vendors, and researchers concerned with the evolution of the Internet architecture and the smooth operation of the Internet.
Initial Evaluation period	The period during which ICANN will review an applied-for gTLD string, an applicant's technical and financial capabilities, and an applicant's proposed registry services.
International Phonetic Alphabet	A notational standard for phonetic representation in multiple languages. See <a href="http://www.arts.gla.ac.uk/IPA/IPA_chart_(C)2005.pdf">http://www.arts.gla.ac.uk/IPA/IPA_chart_(C)2005.pdf</a> .
IXFR	Incremental Zone Transfer, a DNS protocol mechanism through which a partial copy of a DNS zone can be replicated to a remote DNS server.
LDH (Letter Digit Hyphen)	The hostname convention defined in RFC 952, as modified by RFC 1123.
Legal Rights objection	An objection on the grounds that the applied-for gTLD string infringes existing legal rights of the objector.
Letter	Any character between "a" and "z" (in either case) (Unicode code points U+0061 to U+007A or U+0041 to U+005A).
LLC	Limited liability corporation.
Morality and public order objection	An objection made on the grounds that the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under international principles of law.
Objection	A formal objection filed with a Dispute Resolution Service Provider in accordance with that provider's procedures.
Objection filing period	The period during which formal objections may be filed

	concerning a gTLD application submitted to ICANN
Objector	One or more persons or entities that have filed a formal objection against a new gTLD application with the appropriate DRSP.
Open TLD	An open TLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. An open TLD may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions.
Pre-delegation test	A technical test and other steps required of applicants before delegation of the applied-for gTLD string into the root zone.
Primary contact	The person named by the applicant as the main contact for the application, and having authority to execute decisions concerning the application.
Principal place of business	The location of the head office of a business or organization.
Registrar	See ICANN-accredited registrar.
Registry	A registry is the authoritative, master database of all domain names registered in each top-level domain. The registry operator keeps the master database and also generates the zone file that allows computers to route Internet traffic to and from top-level domains anywhere in the world.
Registry Agreement	The agreement executed between ICANN and successful gTLD applicants, which appears in draft form at <a href="http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf">http://www.icann.org/en/topics/new-gtld-draft-agreement-24oct08-en.pdf</a> .
Registry operator	The entity entering into the Registry Agreement with ICANN, responsible for setting up and maintaining the operation of the registry.
Registry services	(1) Operations of the registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement; and (2) other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and (3) any other products or services that only a registry operator is capable of providing, by reason of its

	designation as the registry operator.
Registry Services Technical Evaluation Panel (RSTEP)	The Registry Services Technical Evaluation Panel is a group of experts in the design, management, and implementation of the complex systems and standards-protocols used in the Internet infrastructure and DNS. RSTEP members are selected by its chair. All RSTEP members and the chair have executed an agreement requiring that they consider the issues before the panel neutrally and according to the definitions of security and stability.
Reserved Name	A string included on the Top-Level Reserved Names List (Refer to paragraph 2.1.1.2 of Module 2.)
Request for Comments (RFC)	The RFC document series is the official publication channel for Internet standards documents and other publications of the IESG, IAB, and Internet community.
Rightsholder	The person or entity that maintains a set of rights to a certain piece of property.
Root Zone	The root zone database represents the delegation details of top-level domains, including gTLDs and country-code TLDs. As manager of the DNS root zone, IANA is responsible for coordinating these delegations in accordance with its policies and procedures.
Round	See application round.
Script	<p>A collection of symbols used for writing a language. There are three basic kinds of script. One is the alphabetic (e.g. Arabic, Cyrillic, Latin), with individual elements termed "letters". A second is ideographic (e.g. Chinese), the elements of which are "ideographs". The third is termed a syllabary (e.g. Hangul), with its individual elements represent syllables. The writing systems of most languages use only one script but there are exceptions such as for example, Japanese, which uses four different scripts, representing all three of the categories listed here.</p> <p>It is important to note that scripts which do not appear in the Unicode Code Chart are completely unavailable for inclusion in IDNs.</p>
Security	In relation to a proposed registry service, an effect on security by the proposed Registry Service means (1) unauthorized disclosure, alteration, insertion, or destruction of registry data, or (2) unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.
Shared Registry System (SRS)	A system that allows multiple registrars to make changes

	to a registry simultaneously.
Stability	In relation to a proposed registry service, an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF; or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.
String	The string of characters comprising an applied-for gTLD.
String confusion objection	An objection filed on the grounds that the applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD.
String Similarity Algorithm	An algorithmic tool used to identify applied-for gTLD strings that may result in string confusion.
String Similarity Examiners	A panel charged with identifying applied-for gTLD strings that may result in string confusion.
String contention	The scenario in which there is more than one qualified applicant for the same gTLD or for gTLDs that are so similar that detrimental user confusion would be the probable result if more than one were to be delegated to the root zone.
TLD Application System (TAS)	The online interface for submission of applications to ICANN.
Top-level domain (TLD)	TLDs are the names at the top of the DNS naming hierarchy. They appear in domain names as the string of letters following the last (right-most) dot, such as "net" in <a href="http://www.example.net">www.example.net</a> . The TLD administrator controls what second-level names are recognized in that TLD. The administrators of the root domain or root zone control what TLDs are recognized by the DNS.
U-Label	A "U-label" is an IDNA-valid string of Unicode characters, including at least one non-ASCII character, expressed in a standard Unicode Encoding Form, normally UTF-8 in an Internet transmission context.
Uniform Domain Name Dispute Resolution Policy	A policy for resolving disputes arising from alleged abusive registrations of domain names (for example, cybersquatting), allowing expedited administrative

(UDRP)	proceedings that a trademark rights holder initiates by filing a complaint with an approved dispute resolution service provider.
User registration fee	The fee paid by prospective applicants for new TLDs to obtain access to the TLD Application System (TAS).
Whois	Records containing registration information about registered domain names.

**EXHIBIT JJN-45**

## NEW gTLD DRAFT APPLICANT GUIDEBOOK VERSION 4 PUBLIC COMMENT SUMMARY AND ANALYSIS

### Sources

Public Comment Postings (31 May to 21 July 2010). The full text of the comments may be found at: <http://icann.org/en/topics/new-gtlds/comments-4-en.htm>.

### GENERAL COMMENTS

#### Key points

- There should be a level playing field for the introduction of new gTLDs, with no privileged treatment for potential applicants.
- By working with SO and AC working groups, ICANN has sought to ameliorate concerns that, in considering and responding to public comments, staff is making policy.
- By publishing these comment summaries and making significant amendments to the Guidebook, ICANN has sought to ameliorate concerns that it is not responsive to comment.
- ICANN has created staffing and resource plans to be in a position to adequately monitor contractual compliance.
- The New gTLD Program has introduced new rights protection mechanisms and malicious conduct mitigation measure to help provide for the safety of Internet users.
- Success of the New gTLD Program will be measured by the benefits to Internet users and not by the number of gTLD applicants.
- The ICANN community is striving to avoid delays in launching the new gTLD process that would undermine the credibility of ICANN's multi-stakeholder, bottom-up policy development process.

#### Summary of Comments

Public Interest TLDs. The sale of TLDs needs to be balanced with sound public policy. E.g., the potential use of a .health to signify health providers could make it increasingly difficult for consumers to differentiate between legitimate health providers and general commercial organizations. Also, TLDs such as .physio could be misused and potentially breach national laws (e.g. in Australia, use of physio.au by anyone other than a registered physiotherapist would breach registration laws). The fees for new TLDs are prohibitive for small not-for-profit groups that might appropriately manage public interest-oriented TLDs (e.g. a national physiotherapy association managing a .physio). ICANN should therefore reserve some TLDs where the public interest does or should outweigh commercial interests. *D. Mitsch (16 June 2010)*.

#### No privileged treatment and a level playing field.

In response to many requests for privileged treatment by various potential applicants, ICANN has wisely resisted these pleas. We support a single application window, a single set of rules, and no special priority to any type of application beyond those already contemplated in the DAG. *Minds + Machines 21 July 2010*.

Proposals for advantaged applicants should not be adopted. There will be an official communications and marketing period to give everyone the possibility (not just “insiders”) to get their community, geographical or standard TLD. Giving advantage to some applicants would compromise the ability of communities or governments to find the best TLD solution. *Bayern Connect (21 July 2010)*.

#### Glossary.

Definitions are often circular (e.g., the community-based TLD definition uses the term “community” and does not explain what comprises a “community”) and do not adequately describe the technical terms for those new to ICANN processes. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

CORE appreciates additions made to the DAG to address the specific needs of intergovernmental organizations or governmental entities. CORE requests a further clarification that “governmental entities” means any level of public authorities, according to their respective legal systems, be that national, federal, state, regional, local, municipal or other. In many languages there is a clear distinction between “governments” and “public authorities” where the former is sometimes reserved to the highest political body representing the sovereign state, and may go further down to federal or regional level, but rarely encompasses all levels of public authorities with a political and administrative mandate to manage a territory. *A. Abril i Abril (Module 5, 21 July 2010)*.

New gTLD-related enforcement resources--not-for-profits. ICANN should consider including in the Applicant Guidebook mechanisms that allow not-for-profit organizations to conduct enforcement activities in a more efficient and cost effective manner. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

Compliance. The new gTLD program raises concerns over abuse in the secondary market for new TLDs which ICANN is not in a position to adequately monitor from a contract compliance standpoint due to the unlimited nature of the proposed gTLDs, and also raises concerns over abuse of solicitations for defensive registrations. *A. Aikman-Scalese (21 July 2010)*.

Compliance Officer. The entity awarded a new gTLD should be required to designate by name a Compliance Officer responsible for contract compliance and should be required to notify ICANN immediately of any changes in that designation. They should also be required to provide prominent public notice on their home page of the name and contact information for the designated Compliance Officer. *A. Aikman-Scalese (21 July 2010)*.

Whois concerns. Concerns about inaccurate Whois information should be addressed prior to implementation of the new gTLD program. *A. Aikman-Scalese (21 July 2010)*.

Costs. The effect of each new version of the guidebook is to raise operational costs for all kinds of TLD registries, when most of them don’t need the highest possible standards. One size does not fit all. *A. Abril i Abril (21 July 2010)*.

#### Overall approach.

ICANN must discard the mantra that more is better. Per the advice of the Economic Framework paper, it should analyze the likely costs and benefits of new gTLDs and move forward to authorize only those that can demonstrate a net public benefit. *MPAA (21 July 2010)*. *BITS (22 July 2010)*.

The Business and Commercial Users' Constituency (BC) wants to see new gTLDs rolled out in a systematic manner. All new names should meet five key principles—differentiation, certainty, good faith, competition and diversity. *BC (26 July 2010)*.

The four overarching issues are not integrated into the DAGv4 and ICANN's development of the implementation plan for new gTLDs. ICANN should develop a holistic implementation plan that includes a comprehensive set of safeguards for addressing these issues. *AT&T (21 July 2010)*.

ICANN's multistakeholder, bottom up process loses all credibility if delays continue. It is time to concede that the gTLD process has been overloaded. It must be redesigned in a way to constrain (a) the range of issues to be dealt with in the application documents; and (b) the range of gTLD applications accepted in the coming round. Both constraints can be applied by specifying a simple set of guiding principles rather than scoring systems or lists of names and codes. Examples of possible principles:

(1) ICANN must maintain an environment conducive to the beneficial development of the Internet  
(2) ICANN may deny the delegation of gTLDs or kinds of gTLDs whose likely negative externalities (external costs) outweigh their benefits for the development of the Internet in the public interest. *W. Staub (21 July 2010)*.

Flaws in policymaking process. Where public comments suggest a policy that does not yet have consensus through the bottom-up process, that proposed policy should not be introduced at the discretion of the ICANN staff. In such cases the proposed policy should go to the appropriate policy making body (e.g., the GNSO). The three issues of vertical integration/separation, single registrant single user (SRSU), and HSTLD do not have consensus and the ICANN staff exceeded its role by including them in some versions of the DAG in the implementation process despite that these issues are not explicitly discussed in the final report for new gTLDs. The staff's role is to make an implementation plan for what is figured out in policy discussions, not to introduce a new policy. Public comments of value to the staff are comments that: (1) suggest that a policy issue which became consensus is not implemented; (2) suggest that the implementation plan contradicts the policy consensus or ICANN bylaws, etc.; (3) suggest that there is a flaw in the plan so that there is difficulty in actual implementation; and (4) suggest an improvement for implementation of a policy issue which became consensus. *JPNIC (2 Sept. 2010)*.

Criterion for measuring success of new gTLD program. Belief in meeting consumer demand and eagerness for new gTLD business are deeply connected. But beyond the issues of competition and consumer choice is the additional issue of stability. Threats to stability caused by eagerness for new gTLD business have not completely disappeared. A high number of applications received and processed is not the measure of success for ICANN. In reality only a few applicants will succeed; others will fail because they do not represent real consumer demand. After this stage we will be able to enter into a new era in which people can calmly predict consumer demand and the stability threat will be reduced. Reaching that point will be an achievement for ICANN. It is of concern that by recommending single registrant single user (SRSU) TLDs, ICANN staff may be intending to increase the number of applications. This should not be true. *JPNIC (2 Sept. 2010)*.

### **Support for New gTLD Program**

Complete the guidebook and do not delay the program. Further delay of the launch will erode the credibility of the new gTLD program. The Guidebook is in very good shape and reflects hard-won

compromises. *Minds + Machines (21 July 2010)*. *Bayern Connect (21 July 2010)*. *R. Tindal (21 July 2010)*. *D. Schindler (22 July 2010)*. *J. Frakes (22 July 2010)*.

It is almost time to move to the gTLD implementation stage. Demand Media strongly believes that introducing new gTLDs will provide more choices for consumers, genuine uniqueness and specificity in TLDs and greater competition among registries. Many issues have been addressed by ICANN in the various version of the DAG with community's input. The Applicant Guidebook may need to be amended to deal with future issues and that is to be expected. The DAGv4 represents sound judgment and consensus in most respects. *Demand Media (22 July 2010)*. *J. Frakes (22 July 2010)*.

## **Opposition to New gTLD Program**

### Opposition.

The International Olympic Committee (IOC) opposes introduction of new gTLDs. IOC's recommendations should not be taken as a waiver of IOC's right to proceed against ICANN for damages resulting to the IOC or the Olympic movement from implementation of the proposed new gTLD system. *IOC (21 July 2010)*.

Introduction of new gTLDs is premature and launch should not proceed without further review and revision. It is imperative that any plan put in place will guarantee the safety of Internet users and protect the rights of all parties. *CADNA (21 July 2010)*. *Rosetta Stone (21 July 2010)*. *AIPLA (21 July 2010)*. *IACC (21 July 2010)*.

ICANN has not adequately addressed the overarching issues. Unresolved malicious conduct concerns alone require that the gTLD program not go forward because it is far from ready. At minimum ICANN should assume at least another 18-24 months will be needed before it could launch new gTLDs given all the unresolved matters. As evidenced by the economic work produced by ICANN this summer, it is far from clear whether the public interest will be served; there has been no demonstration of demand for new gTLDs, or that a flood of new gTLDs will result in constructive, new competition. *SIIA (21 July 2010)*.

The case has not been made for and no sensible advantages would be gained by introduction of new gTLDs. The new program will create more confusion and worsen cybersquatting and trademark infringement problems. Instead of introducing an unlimited number of additional TLDs, ICANN should concentrate on improving the current DNS by finding effective solutions to cybersquatting and trademark infringement problems. *H. Lundbeck (8 July 2010)*. *VKR Holding (13 July 2010)*. *LEO Pharma (14 July 2010)*. *Vestas (16 July 2010)*.

ICANN should cease its headlong rush to authorize an unlimited number of new gTLDs and instead follow a more considered approach based on an assessment of the need for new gTLDs and how they can be judiciously authorized so as to protect the interest of commercial users and the general public. *MPAA (21 July 2010)*.

Microsoft continues to object to ICANN's planned simultaneous introduction of an unlimited number of new ASCII gTLDs. If ICANN nonetheless proceeds despite the widespread opposition to the program and the economic downturn, then it should take the time necessary to consider and address the issues and questions raised by the community about the intended implementation of the plan. It is essential that ICANN "get it right" and as written the DAGv4 effectively ensures that it will not. *Microsoft (21 July 2010)*.

ICANN is not promoting competition. ICANN is not promoting competition with the new gTLD program but is acting in favor of registrars and registries and against the interests of the public. If competition is working, this will be seen through registration prices lower than .com. ICANN refuses to take steps to eliminate VeriSign's abusive .com monopoly by implementing a regular tender process so that each TLD is managed by a registry that will give consumers the lowest price for a set level of service. *G. Kirikos (1 June 2010).*

ICANN does not value public input. We will passively resist by not participating in a process that only leads to predetermined outcomes. We request that ICANN notify the community when it is ready and willing to demonstrate that it properly values public comments. *G. Kirikos (17 July 2010).*

## Analysis of Comments

### Policy development process and public comment

Since it was founded in 1998, one of ICANN's key mandates has been to create competition in the domain name market, "The new corporation ultimately should ... oversee policy for determining the circumstances under which new TLDs are added to the root system." The secure introduction of new gTLDs, as specified in the White Paper, remains an essential element in fostering competition and choice for Internet users in the provision of domain registration services.

The introduction of new gTLDs continued to be identified as a core objective for ICANN in several key agreements, for example "Define and implement a predictable strategy for selecting new TLDs" in the 2003 Memorandum of Understanding. The study and planning stages, extending back several years, include two trial rounds of top-level domain applications held in 2000 and 2003. Experiences from those rounds have been used to shape the current process.

The New gTLD Program has its origins in carefully deliberated policy development work by the ICANN community. In October 2007, the GNSO, formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from a wide variety of stakeholders, including governments, individuals, civil society, business and intellectual property constituencies, and the technology community were engaged in discussions for more than 18 months on such questions as demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. The ICANN Board subsequently approved these recommendations in June 2008, and directed staff to develop an implementation plan.

The development of the Applicant Guidebook, and the resolution of the overarching issues identified during the process, has been a challenging task. Recommendations adopted from the trademark and malicious conduct working groups have been, where possible, incorporated into the Applicant Guidebook, while issues of root zone scaling and the overall demand for new gTLDs are being addressed in separate reports.

Since creation of the consensus policy to introduce new gTLDs, ICANN has commissioned several economic studies to describe the costs, benefits and conditions necessary to maximize net social benefit of the program. The studies have also explored anticipated benefits of gTLD expansion.

The program implementation contains several elements in mitigation of certain concerns, including:

- Developing dispute resolution procedures for:
  - Similar TLD applications causing user confusion
  - Misuse of community labels
  - Infringement of rights
- Introduction of additional rights protection mechanisms
- Measures to mitigate and reduce malicious conduct
- Root zone scaling and DNS stability measures

The multi-stakeholder model means that ICANN is responsible to a diverse range of stakeholders, and the ICANN community has done an outstanding job of considering, in many cases, diverse views on issues and finding workable solutions. While there are claims that the failure to launch new gTLDs could be interpreted as a failing of the multi-stakeholder model, the process is, on the contrary, an example of its success. The implementation of this program has been a truly collaborative, community effort, involving a number of individuals who have worked very hard to resolve many contentious and important issues in large part through dedicated working groups such as:

- The Implementation Recommendations Team - proposed solutions on trademark protection;
- The Special Trademark Issues group - made recommendations for a Uniform Rapid Suspense System and a Trademark Clearinghouse;
- The Zone File Access group - recommended a standard zone file access model to aid those addressing potential DNS abuse;
- The Temporary Drafting Group - worked with ICANN to draft selected proposed elements of the registry agreement;
- The IDN Working Group – completed work on definitions and solutions for variant TLD management.

Some may question the value of the public comment process, if all comments are not going to be acted upon. However, the analysis of public comments received on the new gTLD process has set a new benchmark for ICANN. It is acknowledged that the content of the Applicant Guidebook will not please everyone, but there has been a genuine commitment to consider and respond thoughtfully to the public comments that people have taken the time to make, and in many cases these comments have been directly acted upon. This is evidenced by the considerable number of changes that have been made to the various iterations of the Guidebook and the consideration of the overarching issues that arose during the process.

While listening carefully to the public feedback, one of the challenges has been to be careful not to reopen for debate issues that had been discussed and resolved during the policy development process while also ensuring that the consideration of public comment did not lead to new policy discussions. The Applicant Guidebook was developed around the principles, recommendations and implementation guidelines provided by the GNSO policy development process. These guiding principles in developing the Applicant Guidebook have been to: preserve DNS stability and security; provide a clear, predictable and smooth-running process; and address and mitigate risks and costs to ICANN and the global Internet community.

Registry-registrar cross-ownership was discussed in the context of promoting choice and competition. The GNSO considered the issue and was not able to come to consensus, which ultimately led to the Board making a decision supporting cross-ownership, with some protections built in.

The High Security Top Level Domain discussion was part of the overall concern about potential for increased malicious conduct and the principle that the introduction of new gTLDs should not cause security or stability issues. The community undertook a great deal of work on malicious conduct, which included a working group on a possible HSTLD designation. As a result of discussion on strategies for mitigating malicious conduct in the namespace, nine measures were recommended to increase the benefits to overall security and stability for registrants and trust by all users of new gTLD zones.

A well-defined process was undertaken which recommended the introduction of new gTLDs and was supported by the ICANN Board. We believe that many of the reasons for not supporting the introduction of new gTLDs that have been identified through public comment and public workshops and fora have been heard and addressed during the development of the Applicant Guidebook.

## **Compliance**

In addition to the development of the Applicant Guidebook and the operational readiness of the New gTLD Program itself, ICANN has allocated considerable time and effort to ensure the overall organization, including its Compliance group, will be able to manage the potentially increased volume from new Registries.

## **Glossary and definitions**

In addition to the glossary provided at the back of the Applicant Guidebook, Module 1 provides more detailed explanations of the meaning of terms such as “community” in the context of the new gTLD process.

We acknowledge that there are varying levels of governments, and differing terminology and levels among governments. Additions have been made to the next version of the Applicant Guidebook to respond to comments for clearer definitions. The geographic names section has attempted to identify the expected level of government support, non-objection, required for the different categories.

## **Success of the new gTLD program**

There are many ways to measure the success of the new gTLD program. From an operational standpoint, for example, we will look at the efficiency with which applications are processed, the performance of the TLD Application System (TAS), and the overall process flow and timelines.

There are other ways success could be measured. The Affirmation of Commitments calls for a review of Competition, Consumer Trust and Consumer Choice one year after new gTLDs go into operation. This analysis will likely answer critical questions that are asked today, for instance: has there been an increase in choice for consumers? Has the stability and interoperability of the DNS been impacted by the increased number of gTLDs in the root? Has the program allowed for more geographic diversity in the gTLD namespace?

## TIMELINE / MODELS

### Key Points

- The Board has directed staff to adopt as a working plan the Launch Scenario with launch date of Q2 2011.

### Summary of Comments

#### Finalize the new gTLD process.

ICANN should finalize the gTLD process and start accepting new applications. Actions to facilitate this are highly welcome, such as the proposed “ICANN Summit” in September. *dotBERLIN (3 July 2010)*. *dotBayern (20 July 2010)*. *dotHamburg (21 July 2010)*. *dotZON (21 July 2010)*.

It is important for the credibility of ICANN and the vast number of already existing applicants to continue with the process so that a final guidebook can be published as soon as possible. *Bayern Connect (21 July 2010)*. *Domain Dimensions (22 July 2010)*.

A reliable timeframe for the next application round should be set. *dotZON (21 July 2010)*. *eco (21 July 2010)*. *HOTEL (21 July 2010)*. *NIC Mexico (21 July 2010)*. *EuroDNS (22 July 2010)*. *dotKoeln (22 July 2010)*.

Now is the time for the new gTLD program to move forward. The guidebook should be in final form no later than the end of 2010 and the application window and communication/outreach completed by summer 2011. A schedule for the next 18-24 months should be provided which clearly delineates what will happen and when as it relates to the new gTLD program. *J. Frakes (22 July 2010)*.

ICANN should move forward with the program in a timely fashion. ICANN needs to recognize that it cannot focus the community’s time and energy on the “unknown”. It would be unreasonable to expect any group of people to draft policies today that would remain unaltered for eternity. It would be beneficial for all parties if these limitations were recognized. If and when issues arise let us all address them then. *Blacknight Solutions (21 July 2010)*.

Changes in the latest version of the DAG allow for the launching of the application round in the near future. *AFNIC (23 Aug. 2010)*.

With a few tweaks we believe the new gTLD program will be ready to launch later this year or early 2011. *Neustar (21 July 2010)*.

#### Official timeline and benefits of an incremental approach.

ICANN now needs to focus on publishing an official timeline as much as it needs to work on the final adjustment of the new gTLD program. Accumulated delays are detrimental to new gTLD applicants with projects having “net social benefit” and undermine ICANN’s credibility and legitimacy. The incremental approach previously suggested by AFNIC is still valid. If an incremental approach were not deemed appropriate for the application process (reserved windows for applications with defined characteristics), it could still be highly beneficial in the subsequent processing of applications, i.e., either for the actual processing of the application and/or later on upon negotiation of the Registry Agreements. Once ICANN

accepts applications, it would seem fairly reasonable that groups of like-featured applications could naturally appear (objectives, governance, policies and/or targeted audiences, etc.) Efficiency, simplicity and justice principles would then argue for specialization of the processing of such applications. Specialization could intelligently combine with the incremental approach. Batches of applications would form on the basis of rationality rather than mere chance. ICANN would gain time to deal with the most difficult problems posed by projects of uncertain “net social benefit” while it would realize and prove the value of its new gTLD program by unleashing initiatives that are of evident “net social benefit.” *AFNIC (23 Aug. 2010).*

#### Indifference toward public comments.

ICANN has admitted that it is ultimately indifferent to comments submitted by stakeholders in this process. Time Warner is deeply concerned that ICANN appears poised to move forward with the launch of new gTLDs despite the fact that none of the “overarching issues” identified by ICANN in early 2009 have been adequately addressed in the DAGv4. If ICANN plans to launch a successful gTLD program, it has more work to do before claiming “mission accomplished” and accepting applications. *Time Warner (21 July 2010).*

#### ICANN should revisit issues with open mind.

ICANN should revisit issues with an open mind and propose needed changes before the Board meets in September to consider all of the outstanding issues relating to implementation of the new gTLD program. *COA (21 July 2010).*

#### Take more time before introducing new gTLDs because issues remain unresolved.

Three substantive issues remain unresolved in the DAGv4: (1) the economic study; (2) proposed rights protection mechanisms; and (3) root scaling. *MarkMonitor (19 July 2010). Carlson (21 July 2010). BBC (21 July 2010). HSBC (21 July 2010). DuPont (21 July 2010). Comerica (3 Aug. 2010). Sunkist (21 July 2010). LifeScan (22 July 2010). Solvay (22 July 2010). ETS (22 July 2010). Liberty Mutual (22 July 2010).*

As advised in the Economic Framework report, ICANN should move slowly in rolling out new gTLDs and study the implementation, demand, and potentially negative consequences arising from a new gTLD rollout. There has not been significant progress on the four overarching issues. *Verizon (20 July 2010). HSBC (21 July 2010). A. Aikman-Scalese (21 July 2010). Adobe Systems (21 July 2010). Rosetta Stone (21 July 2010).*

#### Clarity on next steps.

USCIB members would appreciate some clarity on how ongoing community discussions, the release of the Economic Framework study and expected second phase of that study, as well as the expected root scaling study, will affect the DAGv4 and possible launch of new gTLDs. For example, the Economic Framework study stated that it may be wise to continue ICANN’s practice of introducing new gTLDs in discrete, limited rounds. *USCIB (21 July 2010).*

ICANN should prioritize IDNs and introduce new gTLDs in discrete, limited rounds, consistent with the Economic Framework paper’s recommendations. *AT&T (21 July 2010). Coca-Cola (21 July 2010).*

#### Launch the less contentious cultural and linguistic TLDs.

Many of them will help developing countries and are less likely to be problematic with rights holders. *Blacknight Solutions (21 July 2010).*

## Analysis of Comments

### Finalizing the new gTLD process

ICANN continues to approach the implementation of the program with due diligence and plans to conduct a launch as soon as practicable along with the resolution of these issues.

### Timeline and benefits of an incremental approach.

A Special Meeting of the ICANN Board of Directors was held via teleconference on 28 October 2010 in which the Board discussed proposed timelines for publishing a final version of the Applicant Guidebook and the extent of public comment to be received on the Applicant Guidebook. After agreement on a proposed workplan to guide the remainder of staff's work, the Board directed staff to adopt as a working plan the scenario including a launch date in Q2 2011.

Staff continues to make progress towards the program development while, at the same time, working with the global Internet community towards a level of consensus on the Program's outstanding issues.

## COMMUNICATIONS

### Key Points

- The communications campaign is designed to address concerns about whether communications letting all parties know of the opportunity to operate a new gTLD are appropriately detailed, began soon enough, and contain enough detail to help entities that are new to ICANN's processes.

### Summary of Comments

Start communications period. The communications period should start sooner rather than later; 'outsiders' should get enough time to become familiar with the new gTLD opportunities. dotZON (21 July 2010).

Evaluation procedures—technical requirements training, education outreach. ICANN should provide greater detail and instruction regarding how to prepare for the technical requirements associated with the new gTLD application and process, and should provide education and training outreach for organizations such as not-for-profits that are new to ICANN activities. This outreach should begin immediately but be increased once the final Applicant Guidebook is released so that parties will have access to the final policy information. It should cover the application process as well as areas of interest to third parties, such as the objection procedures and rights protection mechanisms. Outreach should be done in all five ICANN regions, and ICANN should provide live in-person seminars open to the public rather than only posting information on its website or hosting webinars. AAMC (21 July 2010). Red Cross (21 July 2010). NPOC-FC (21 July 2010).

### Analysis of Comments

The Applicant Guidebook, exceeding 300 pages in length, is already quite detailed about the application process. It covers topics that the commenters requested, such as objection procedures and rights

protection mechanisms. Regarding the request to provide greater technical instruction, the questions contained in the application are intended to inform and guide the applicant in aspects of registry start-up and operation. Inexperienced applicants should find them a natural part of planning. Supplemental documentation or more detailed guidance on particular areas of technical operations are referenced in the guidebook where available, and a number of resources are available elsewhere in the community.

Regarding the communications plan for new gTLDs, ICANN has already undertaken significant effort to achieve the objective of the four-month requirement recommended by the Generic Names Supporting Organization. ICANN's staff remains deeply committed to the primary goal of ensuring that all those who wish to participate in, and benefit from, the new gTLD Program have opportunity to do so.

A communications plan has already been posted, received public comment, and is being revised. The current plan includes live outreach presentations in all five ICANN regions, in addition to written and recorded educational materials. In order to give due consideration to all publicly expressed views, the plan will be finalized after ICANN's international meeting in Cartagena, December 5 – 10 2011.

## APPLICATION PROCESS

### Key Points

- An Applicant Support Working Group has been established to evaluate options to provide support for defined groups of applicants. This has resulted in various types of outreach and education that ICANN expects to offer to applicants. This group will continue to work to find sources of funds and criteria for awarding them.
- A reduction in the application fee for efficiencies gained from certain types of applicants (i.e. multi-string, single entity applicant) has already been considered in determining the \$185,000 fee. ICANN staff will review processes after Round One to determine where additional efficiencies may be gained for subsequent rounds and additional efficiencies gained will be passed on to applicants in future rounds.

### Summary of Comments

Fee standards—developing and undeveloped countries. Huge fees (\$185K evaluation fee, US\$70K-\$122K and US\$32K-\$56K for the M&PO and community objections respectively) would stifle the initiative of developing and undeveloped countries and dampen globally balanced development of the Internet. ICANN should be able to set a fee standard based on the costs and adopt a favorable fee policy for the developing and undeveloped countries. ISC (21 July 2010).

Discounted fees--IDNs and Exact String Translations.

ICANN should significantly decrease application fees for exact translation equivalents of the same TLD to reflect the effort the evaluating team would require to process the applicant. If all TLDs fall under the same applicant, community, business plan, string, backend registry, etc., then ICANN does not need to spend additional time repeating the same evaluation step needlessly since economies of scale/scope are reasonably justified. .MUSIC (20 July 2010). dotKoeln (22 July 2010).

Each community-based applicant should be allowed to increase their utility within their specific community by having the option to apply for their respective IDN-equivalent TLDs for a nominal additional fee (per IDN or translated equivalent). It would not be justified to ask a community based applicant to pay an additional \$185K for each translation to the approved string. BC (26 July 2010). R. Andruff (Module 1, 21 July 2010).

Different fee models for different types of TLDs. Given the high fees and costs associated with applying for and operating a new gTLD, ICANN should consider setting up different fee models for different types of TLD applications to alleviate the costs on applicants. A sensible fee model will greatly enhance the chance of success for the new gTLD process. CNNIC (21 July 2010).

Reduced fees for small cities, small cultural and linguistic community TLDs. Special consideration, including reduction of the \$185K application fee and \$25K annual fee, should be given for small cities and small cultural and linguistic communities which do not intend to compete with general commercial TLDs such as .com or new brand TLDs and for whom the current level of fees is not affordable. It is understood that a lower but appropriate application fee is still needed in order to prevent excessive applications. JIDNC (21 July 2010).

Special consideration regarding technical requirements and fees for developing country applicants representing cultural, linguistic and geographical communities is appropriate and consistent with the advice of the GAC in its Brussels communication. A. Al-Zoman (21 July 2010). Arab Team (21 July 2010).

Reduced fee for bundled variants. ICANN should provide for a lower fee in the case where the TLD names are not chosen but are pre-existing (e.g. geographical names, many of which have more than one common name including IDN variants). Charging \$185K for each variant seems punitive and unfair. Minds + Machines (21 July 2010). Bayern Connect (21 July 2010).

Not-for-profit organizations. ICANN should reveal and detail its actual costs for reviewing each new gTLD application and consider setting a lower cost pricing structure for not-for-profit organizations that will allow ICANN to recover its costs without imposing additional overhead on the not-for-profit applicants. This transparency and pricing consideration should also apply to extended evaluation fees, objection filing and proceeding fees (in objection proceedings fees should be capped, or at least the initial fees that must be paid as a “deposit” on the proceeding). ICANN should consider a two-tiered cost structure to separate commercial uses of the new gTLDs from the informational, educational and lifesaving functions served by not-for-profit organizations. AAMC (21 July 2010). Red Cross (21 July 2010). NPOC-FC (21 July 2010).

Support for African new gTLD applications. The African ICANN Community urges that support be given for new gTLD applications from Africa and be prioritized. Civil society, NGOs and non for profit organizations in Africa are most in need of such support, and support is of utmost importance for geographic, cultural and linguistic and community based applications.

- Support should include but not be limited to: financial (reduced fees); linguistic (translation in the six UN languages); legal; and technical.
- Cost reduction is the key element in fulfilling the goals of Board Resolution 20, and the following should be entertained to achieve cost reduction: waiving the program development cost (\$26K); waiving the risk/contingency cost (\$60K); lowering the application cost (\$100K); waiving the registry fixed fees (\$25K per year); and charge only the registry-level transaction fee (\$.25 per

domain name registration or renewal). The reduced cost should be paid incrementally to give African applicants more time to raise money and since investors will be more encouraged to fund an application that has passed initial evaluation.

*African ICANN Community (28 June 2010).*

Developing countries applicant support working group—support for initiative. We welcome the recent ICANN initiative regarding possible support for applications from developing countries. The results of the working group should be taken into consideration in the final Applicant Guidebook. *Arab Team (21 July 2010).*

Developing country non-profit applicant financial support efforts by ICANN, where the applied for TLDs are for the public good, are welcome, and should include reduced fees for application, evaluation and the annual contract. For proposed gTLDs financially sponsored by certain governments, ICANN should consider the government's financial support commitment in place of the irrevocable standby letter of credit or deposit into an irrevocable cash escrow account, since some governments are reliable enough to guarantee sustainable operation of the registry(s). DNSSEC cost burdens should also be reduced and the application process should be made more accessible to global stakeholders. ICANN should provide document translations and conference simultaneous interpretations in six UN languages which may also help reduce costs for non-English speaking applicants. As for technical support, DNSSEC support is a necessity. *CONAC (22 July 2010).*

The consensus in the At-Large Community is that whatever the finalized processes and procedures, ICANN must embrace the prospect of providing affirmative support for participation of hitherto marginalized communities, especially those entrusted to act on behalf of disadvantaged groups or those with agendas widely recognized as active in the general public interest in the new gTLD economy. The ALAC strongly endorses continuation of these efforts. *ALAC (September 2010)*

Reduced application fee--brand and charitable organizations. The application fee is too high and could be discriminatory against certain types of applicants such as .brands restricted to employees of a company or charitable organizations. Such applicants should be eligible for a lower fee. *Hogan Lovells (21 July 2010).*

Application fee level is generally appropriate. The \$185K fee is likely to be a realistic average estimate of ICANN's costs to manage the program. Substantial changes to the new TLD process as described in DAGv4 could result in an increase in the fee. I support practical ways to reduce costs for the discrete group of applicants in need, especially those from developing countries. *R. Tindal (21 July 2010).*

Terms of payment—exchange rate. The following is suggested as addition in DAGv4 after section 1.5.4: "Section 1.5.5—Terms of payment: Payment to ICANN may be effected in USD or in the legal currency of the applicant's country. If the applicant decides to use his local currency for processing payments, the exchange rate used shall be the one which applies on the day the applicant registers with TAS (refer to paragraph 1.5.1)." This section is justified because the risk of exchange rates should not be borne by applicants alone, but shared with ICANN. It may be fair for ICANN to acquire financial products to hedge this currency risk, rather than each and every applicant having to provide this insurance on its own. *E. Blocher (Module 1, 5 June 2010).*

Refund of evaluation fee (1.5.1). The proposed 20% refund of the evaluation fee to unsuccessful applicants after having completed dispute resolution seems unreasonable. While it may be reasonable

to make such a refund if the applicant decides to withdraw at the outset of objection proceedings, there will be less incentive to take such an approach if the applicant knows that they will recover this sum whatever the outcome of the dispute resolution. BBC (21 July 2010)

## Analysis of Comments

### Fee Issues

Comments regarding fees have generally been consistent with previous versions of the Draft Applicant Guidebook. One comment is generally in support of the application fee to cover costs, while a number of comments have suggested a reduction in the application fee either based on where the applying organization is located (e.g., a developing country), its organization type (not-for profit, charities, small cities, a brand holder) or based on a presumed level of effort required to review an application (IDN variants, or multiple strings from the same organization).

Comments suggest a reduction of the \$185,000 application fee based on the type of TLD being applied for (linguistic, small community), the organization applying (not-for-profit) or where there may be multiple TLD strings applied for (e.g., IDN variants, translations of a string) by a single applicant. The processing steps and associated costs to perform each application evaluation are based on an average number of steps to complete each application and do not change based on the TLD type or organization applying. In addition, applications for translated versions of the same string would undergo the complete evaluation process as each application is expected to stand alone. Consequently, the current application fee is not expected to change for the initial application round. However, as stated previously, it is anticipated that subsequent application rounds will enable adjustments to the fee structure based on historical costs from previous rounds, the effectiveness and efficiency of the application evaluation process, and other data as it becomes available.

Currently, a working group, comprised of representatives from various Internet constituencies, is evaluating options to provide support for a defined set of applicants. The working group's preliminary recommendations were presented to the Board in September and a resolution was agreed on regarding the support to be provided by ICANN (<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.2>).

Progress is being made by the Applicant Support Working Group, tasked with, among other things, locating sources of funds to provide financial support for certain deserving applicants and determining criteria for releasing those funds in a way that avoids abuse and is fair.

There was a suggestion that payment of the application fee should be allowed in US dollars or in the legal currency of applicant's country to share exchange rate fluctuation risks. The payment of the application fee follows standard ICANN practices with respect to fees collected globally. For this process, ICANN receives funds in US currency only. It is the applicant's responsibility to arrange for funding in their own currency to equate to the evaluation fee at the time of the each wire transfer. ICANN does allow for normal fluctuations as the funds are applied to their respective application.

A comment questioned the relative incentives for applicants to participate in a dispute resolution proceeding or withdraw prior to the dispute resolution process. This was considered previously. The dispute resolution process is in place to allow a weighing of the objection in regard to the application. In

the event of an objection, an applicant may choose to withdraw at an earlier stage for a larger refund. The process is not designed to discourage applicants from completing a dispute resolution process just to afford some recovery to applicants who do not go through the entire evaluation.

## APPLICATION CATEGORIES

### Key Points

- Newly formed entities must be formally established prior to application submission. These entities will be evaluated similarly to established entities. Information required by newly formed entities is discussed in the Criteria section of the Application questionnaire.
- The standard for a successful community objection requires that the opposition be substantial so that the dispute resolution process is a consideration of the issues rather than a means for a single entity to eliminate an application.
- New TLD categories beyond what has already been described (community, geographic, and standard) will not be introduced, as ICANN believes that over time, the market and community interests are better suited to sorting TLD types. In addition, the introduction of categories may mean an unintended increase in compliance-related costs in areas without benefit to DNS security.

### Summary of Comments

Proposal for two categories under community-based TLDs—commercial and noncommercial. ICANN’s one-size-fits all approach does not accommodate all stakeholders. There should be two categories of community-based gTLDs—a commercial use and noncommercial use. Differentiated policies and evaluation procedures should be established for noncommercial TLDs—their evaluation should be simpler, as they may not be involved in trademark protection issues. ICANN should provide more support to noncommercial applicants—financially, technically and linguistically—and give some exceptions to them regarding vertical integration and Whois policies. This will simplify new gTLD management and accelerate the pace of evaluation to some extent. Moreover, GNSO has the commercial and noncommercial stakeholder groups, which perfectly matches the proposal. *CONAC (22 July 2010).*

Community-based application definition (1.2.3). The fourth factor (“Have its application endorsed in writing by one or more established institutions...”) seems too narrow in specifying “one or more” and is imbalanced when compared with the Section 3.3.1 grounds for a community objection. If it takes substantial opposition from a significant portion of the community to object, how is it possible that only one institution can represent a community in the application process? BITS suggests also that during the Initial Review process, reviewers should be required to change the designation from a “standard” to a “community-based” application if it is clear that the applicant intends the gTLD string to be targeted explicitly or implicitly at a specific community. It is also not clear why ICANN in Section 1.2.3.2 makes the assumption that community-based applications are intended to be a “narrow category.” *BITS (22 July 2010).*

Financial TLDs. Any domain name associated with financial services should be restricted to financial services companies, with substantial restrictions, guidelines and proof of eligibility. There should be a

formal Financial Services Panel for assessing financial service-oriented gTLD applications. Specific higher levels of security and stability should be mandated. The DAGv4 does not adequately address these recommendations. *ABA (22 July 2010)*.

Applicant Evaluation: yet-to-be formed entity. Clarification by ICANN is requested as to whether it is possible under the current DAG to submit an application in name and on behalf of a yet-to-be-formed entity, where checks and evaluations are performed on the submitting entity(s) while the future registry has to be defined in all terms, but not yet prove legal existence. ICANN is asked to clarify the required documentation for the future designated registry on behalf of which the application is submitted. Examples of such a situation would be community-based, non-profit entities wishing to form a Foundation to manage a given TLD, or a city that might establish an agency to manage a city TLD. *A. Abril i Abril (Module 2, 21 July 2010)*.

Brand category of applications. A third category of applications for brand owners would be beneficial. It is still unclear if brand owners could qualify to file a community-based application and whether a corporation could be considered to represent a community consisting of a restricted population such as its customers or employees. *Hogan Lovells (21 July 2010)*.

Closed gTLDs—lack of provisions.

The DAGv4 lacks provisions for operation of closed gTLDs. Would this mean that trademark owners owning a gTLD would need to open the registration procedure to second-level domain names applied for to third unrelated parties? In this case, what is the incentive of actually registering and operating such a gTLD? *PMI (21 July 2010)*.

Unique procedures are needed for single registrant TLDs. Such single registrant TLDs need different requirements in the utilization of ICANN authorized registrars. The DAGv4 does not address the unique procedures that are required for these unique registries, which are being used to increase online visibility of the TLD holder and not offering open registrations of second level names. *AT&T (21 July 2010)*.

Single registrant, brand, corporate TLDs—beyond scope of new gTLD program. Based on the GNSO report to the Board (11 Sept. 2007), single registrant, brand and corporate TLDs are beyond the scope of the current new gTLD process. We strongly urge ICANN to state this fact explicitly in the forthcoming final version of the new gTLD RFP for the next round. ICANN should also clearly state that “community-based TLDs” will not open the door for proprietary TLDs. *JPNIC (21 July 2010)*.

Opposition to single registrant, single user (SRSU) TLD category. ICANN staff should not propose single registrant single user (SRSU) TLDs because this proposal does not have consensus within the ICANN community. If the ICANN staff proposes it in its discretion, that would be a violation of process. In addition, such a proposal could increase the risk of lawsuits against ICANN by the SRSU applicants since many of the required elements of the new gTLD process do not properly fit for SRSU TLDs (e.g., mandatory use of ICANN registrars, data escrow and vertical integration). Therefore the third paragraph in the Background section addressing brand holders and organizations seeking to manage their own name should be deleted. The issue of SRSU TLDs is an important policy issue which should be discussed in the GNSO. It is not a consensus policy included in the 2007 GNSO final report for new gTLDs and it should be treated by a dedicated PDP. In case the dedicated PDP does not end in a timely manner, the next round of new gTLDs should exclude SRSU TLDs. This argument has the same logical structure as the

underlying logic of Board Resolutions 2010.03.12.17 and 2010.03.12.18 for Vertical Integration/Separation. *JPNIC (2 Sept. 2010)*.

## Analysis of Comments

A comment requests clarity on “yet-to-be formed entities” applying for a gTLD. Applications from or on behalf of yet to be formed legal entities, or applications presupposing the future formation of a legal entity (for example, a pending Joint Venture) will not be considered. All requirements of an existing entity continue to apply: proof of planned technical/operational and financial capabilities (see Criteria for Question 45 for financial information required by newly formed entities) will be required, background screening of the organizations forming the new entity as well as the new entity’s key officers and shareholders will be conducted, all required documentation for geographic names and/or community based applications must be presented, and all other requirements, as outlined in the draft Applicant Guidebook must be met to submit a complete application.

A comment notes a potential imbalance between the requirement for at least one endorsement of a community-based application, and the requirement that there be substantial opposition in the event of a community objection. It is intended that the application should have substantial support as well; however, this is difficult to establish based on a certain number threshold. It may well be that an applicant supported by one institution or group means substantial support for that case (e.g., a highly structured community with only one relevant institution or endorsement from the pre-eminent institution in that area). Conversely, the standard for a successful community objection requires that the opposition be substantial so that the dispute resolution process is a consideration of the issues rather than a means for a single entity to eliminate an application. Opposition from a single entity might also be determined substantial in a given case.

Comments provided suggestions for possible approaches to application categorization. Depending on the category, various accommodations are suggested: for example, no requirements for an ICANN contract, or to use accredited registrars, or to follow consensus policy, or policy provisions outlined in the GAC’s ccTLD principles. Some might be restricted to not-for-profit status, be eligible for reduced fees, require registration restrictions, and have names reserved in anticipation of registration by certain parties. There will be considerable debate and discussion in the community as to whether certain accommodations should be made. Should certain gTLDs not be required to have an agreement with ICANN or not be required to follow consensus policy? Should certain TLDs be required to maintain not-for-profit status? These discussions and debates will take considerable time and resources and may ultimately not result in consensus. The structure of TLD categories, if granted different accommodations with differing contractual obligations, would result in significantly higher compliance costs and therefore, annual fees.

Significant consideration has been given to the issue of introducing category-based TLDs in the new gTLD process. ICANN remains a strong proponent of innovative uses of new TLDs. This is especially so in cases where TLDs can be delegated to address the needs of specific communities such as intergovernmental organizations, socio-cultural groups and registered brands. Rather than having ICANN limit this type of innovation and identification with certain TLD models, more creativity might be spawned by allowing different groups to self-identify the type of TLD they purport to be and promote that model among their community.

If a self-declaration program is instituted and contractual accommodations are eliminated or minimized, fees can remain constant. Socio-economic groups, brand holders and other groups all can be accommodated under the existing structure and self-identify as a particular type of TLD. Over time, the market and community interests will sort TLD types – a model preferable to having ICANN make that determination a priori.

It may well be that as definitive categories of applicants emerge in practice, and as ICANN and the respective communities gain further experience of possible benefits of additional gTLD categorization over time, organizational structures might be developed with ICANN to reflect these categories. That will be a consequence of bottom-up policy developments by affected participants, according to the ICANN model. Nothing in the current implementation procedures forecloses those future developments.

Comments suggest that single registrant TLDs not be allowed as these may not have support from within the ICANN community nor is there policy to support such a category. Categorization of TLDs beyond what has been proposed (community, geographic, and standard) is not being introduced. In addition, an applicant is not required to have a minimum number of registrants to qualify for a TLD.

## PROCEDURES

### Key Points

- ICANN staff will conduct a Completeness Check of applications after the close of the 90-day Application Submission Period. Depending on the severity of missing information, incomplete applications may either be rejected or may be provided with an opportunity to provide missing information. Only after all applications have been designated as complete or have been rejected during the Completeness Check period will ICANN post the applied for strings and applicant data.
- The objection filing period begins with the posting of applied for strings and applicant data and ends 2 weeks after the close of Initial Evaluation. Applicant data necessary to file an objection will be made available via ICANN's website.
- It is important to note the distinction that reviews in Initial Evaluation offer no chance for appeal – the opportunity exists for clarifications only. Limited clarifications may be sought for String Similarity, DNS Stability and Background Screening as needed.

### Summary of Comments

#### Timing for amendment of incomplete applications.

The provisions in paragraph 1.1.2.8 (string contention) can be expected to be used in competing applications (contention sets) to take speculative advantage of intentionally caused delays by incomplete applications. Therefore applications should be given a limited time of a maximum 4 weeks to mend incomplete application parts. *dotBERLIN (13 July 2010)*. *dotBayern (20 July 2010)*. *dotHamburg (21 July 2010)*. *HOTEL (21 July 2010)*. *dotKoeln (22 July 2010)*.

Paragraph 1.1.2.8 should be amended so that applicants should be required to provide all information they can provide within a reasonable deadline set by ICANN. The string contention procedures will not

begin until all applicants in the contention set have completed all aspects of the evaluation. The deadline should help prevent applicants of speculative registrations from delaying the dispute resolution process. *eco (21 July 2010)*.

Supplements to applications. ICANN should allow supplements to applications after submission. This would help not for profit organizations that may have a learning curve to understand the process. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

Notice of changes (1.2.7). Part of the application should contractually or otherwise obligate applicants to notify ICANN of changes. *BITS (22 July 2010)*.

Clarify objection filing timeframe (1.1.2.4). ICANN needs to clarify the objection filing timeframe. One part of this area suggests that the objection period is based on the Administrative Completeness Check, but another section suggests it is based on the Initial Evaluation Period with a two week window of time between posting of the Initial Evaluation results and the close of the objection filing window. *BITS (21 July 2010)*.

Reconsideration. In every case, an applicant should have an opportunity within the ICANN process to request reconsideration of an erroneous or adverse decision. The current process has three places where an applicant or application can fail without opportunity for appeal or extended review: background check, string similarity, and DNS stability tests. *W. Seltzer (21 July 2010)*. *R. Dammak (July 2010)*.

Proof of good standing. ICANN should require proof of good standing in the application process. The DAGv4's elimination of this step at the early stage of the process raises concern about its impact on the entire process—it could potentially lead to a greater number of illicit applicants ending up in the applicant pool. Even if ill-intentioned applicants end up getting eliminated at a later point, it may still result in a waste of time of resources for ICANN and others which could have been prevented earlier in the process. *CADNA (21 July 2010)*.

ICANN permission to use Applicant logos (Module 6, section 9). There is no basis to give ICANN unfettered permission to use an Applicant's logos as section 9 provides. It is basic trademark law that the value and distinctiveness of a trademark such as a logo can be destroyed through unregulated use by parties other than the trademark owner. If ICANN requires the right to use an Applicant's logo, it should enter into a proper trademark license with the trademark owner. *IBM (21 July 2010)*.

Confidentiality (section 11.b). The confidentiality standard in this provision is insufficient. Rather than state that ICANN use "reasonable efforts" IBM proposes that the section should state that ICANN will have "sufficient agreements in place" to ensure confidentiality is maintained. *IBM (21 July 2010)*.

TLD Application System Access. Sections 1.1.2.1, 1.4.1 and 1.4.1.1 speak to applicants, but it is not clear what process ICANN will use for other users who wish to review open applications for possible objection. It is also unclear how 1.1.2.2. and ICANN not posting certain information on the TAS (e.g. related to finances, architecture and security) will affect potential objectors' ability to assess an application and its applicants. *BITS (22 July 2010)*.

Timing of subsequent application rounds (1.1.6). Given the timeframes of other sections, is it realistic for ICANN to assume the launch of a next round of applications “within one year of the close of the application submission period for this round”? *BITS (22 July 2010).*

Required financial documents (1.2.2). BITS recommends that ICANN ask for 3 years of audited financial statements instead of just one. Multiple years of statements would serve to validate the applicant’s ongoing fiscal strength. *BITS (22 July 2010).*

Application form (1.4.1.2)—encryption of data. ICANN should encrypt the application data in transit across the Internet (i.e. use HTTPS) and while it is at rest in storage at ICANN—at least for selected information such as financials. *BITS (22 July 2010).*

Evaluation fee (1.5.1)—proof of concept round. Can ICANN provide a table of the 200 Proof-of-Concept round applications, and are these eligible for re-application? *BITS (22 July 2010).*

## Analysis of Comments

Comments have requested clarity on the timing of providing complete applications to ensure string contention procedures begin appropriately. Although timelines are not yet final, it is expected that all Applicants will submit completed applications, including the receipt by ICANN of the full application fee, throughout and up to the final day of the Application Submission period. A 4-week completeness check period will ensue, allowing ICANN staff to validate that all applications question are complete and all necessary supplemental documents are attached. This review will not look at the adequacy of answers; rather it will focus on ensuring that each question has an answer. If an application is deemed incomplete, the applicant will have one opportunity to provide any missing data during this period. If the application remains incomplete at the end of this 4-week period, then it will be ineligible for further review and application fees (less any expenses incurred) will be refunded. Only after the completeness check is complete for all applications will ICANN post the applied for strings and other relevant information. The posting will also mark the beginning of Initial Evaluation. String Similarity analysis will begin immediately thereafter and string contention sets will be posted once this analysis is complete. Contention sets will be posted prior to the end of Initial Evaluation.

Another comment seeks clarity on the objection filing period as well the availability of applicant information necessary to file. The objection filing period will begin at the end of the completeness check period and will close two weeks after the Initial Evaluation results are posted. Based on current estimates, the objection filing period is expected to last approximately 5 1/2 months. In relation to the availability of applicant information, the objection process allows for interested parties to file objections against the organization applying for the string and/or the string on any of four grounds: [Limited Public Interest], Community, String Confusion, and Existing Legal Rights. This process does not allow for objections to be made on the applicant’s ability to meet financial, technical or operational criteria. Accordingly, relevant and necessary applicant data to file an objection will be made available via ICANN’s website.

A comment asked about the viability of committing to a subsequent application round “within one year of the close of the application submission period for this round.” The GNSO’s New gTLD Policy Development Final Report suggests that “Applications must initially be assessed in rounds until the scale of demand is clear” and that “...the first round will include scheduling information for the subsequent

rounds to occur within one year.” ICANN expects to meet this recommendation; however, the timing of the second round may be affected by necessary changes and improvements to the new gTLD program. Any potential delays in beginning the subsequent round will be communicated as soon as practical.

Comments have requested clarity, or made suggestions regarding several areas of the guidebook. One suggests that applicants should be contractually bound to inform ICANN if any material changes arise in regards to their submitted application. The current wording in the guidebook requires notice of changes to information, and makes it clear that if an applicant is found to have failed to notify ICANN of a material change, their application may be rendered invalid.

Another comment mentioned the three areas of Initial Evaluation (IE) that do not allow for appeal or extended evaluation; background check, string similarity, and DNS stability. It is important to note the distinction that no area of IE offers a chance for appeal – the opportunity exists for clarifications only. Limited clarifications may be sought for the three areas mentioned above in IE, as needed. For DNS Stability and String Similarity, as the submitted string cannot be modified, the need for clarifications is expected to be minimal.

A comment concerns the usage of the applicant’s name and logo in section 9 of the Terms and Conditions (Module 6). While the language does constrain the areas of usage, it will be further narrowed in the next version of the guidebook to reflect only the use of the applicant name. The other comment on Application Terms and Conditions relates to maintaining the confidentiality of applicant information in seeking consultation to evaluate an application. The Terms and Conditions state that ICANN will use reasonable efforts to ensure that panelists maintain confidentiality of information in the application. This would include having agreements in place with panelists and other experts that may be consulted, as suggested in the comment.

One comment suggests that three years of audited financial data should be requested as opposed to the one required in the current version of the guidebook. Requiring only one year of audited financials is intended to provide sufficient data on the applicant’s financial capability and broaden the range of applicants by avoiding overly burdensome requirements.

One comment reiterated that confidential data collected in TAS must be protected. We agree and ICANN is taking reasonable and necessary steps, including hiring an independent security consultant, to ensure that Applicant data is secured throughout the process.

One comment asked for a list of the year 2000 proof of concept participants. That information can be found here: <http://www.icann.org/en/tlds/app-index.htm>

## **EVALUATION**

### **Key Points**

- Applicants are expected to provide all necessary and relevant information at the time their application is submitted including disclosing any known concerns as described in Section 1.2.1 Eligibility (Questions 11d – f of the Application questionnaire).

- ICANN is moving forward with developing additional Eligibility (Section 1.2.1) guidelines that will be communicated to both potential applicants as well as Applicant evaluators prior to receiving applications.
- Protocols are being developed to ensure that all Applicants are aware of communications on a timely basis and are provided with same time period to respond to any clarifications requests.
- A clear process describing the Board’s role in evaluation and delegation has been developed and communicated.
- Initial Evaluations cannot be completed until all relevant public comments have been considered and addressed. A summary of how public comments were addressed per application will be provided after the end of Initial Evaluation.

## Summary of Comments

Question 18 and additional questions. The BC urges ICANN to add two more questions to sharpen the criteria for new gTLDs that add value and differentiation: (1) which users/registrants/organization/group/community do you intend to serve? (2) How does your TLD differentiate itself from others in the DNS? ICANN should initiate the new gTLD rollout with safeguards for an orderly approach to market differentiation and if or when necessary make adjustments in future applicant guidebooks. *BC (26 July 2010). R. Andruff (Module 1, 21 July 2010).*

Guidelines are needed regarding how Section 1.2.1 of the DAG will be applied. This section enables ICANN to deny a new gTLD application if any applicant, partner, officer, director or manager or any person owning more than 15% of the applicant “is the subject of a pattern of decisions indicating liability for, or repeated practice of bad faith in regard to domain name registrations.” Applicant evaluators need to be provided with additional guidance on this eligibility factor. For example, a statute of limitations of 5 years should apply in regard to past infringing activities, given that trademark infringement can be unintentional and the UDRP process is unpredictable. Also, a few adverse UDRP findings over many years in the context of a large domain portfolio should not be presumed to indicate that an entity or individual is a “bad actor” who should be barred from any significant involvement in a new gTLD. *ICA (21 July 2010).*

Definitions—security (2.2.3.1). The “security” section of this area is very minimalist. BITS recommends either direct inclusion of other security related requirements or at least reference to other areas of the applicant guidebook containing those requirements (e.g. 5.4.1). *BITS (22 July 2010).*

Evaluation team—communications (attachment to Module 2, scoring, p. A-3). How will applicants be notified that there is a communication to them from the evaluation team available at the “online interface” (e.g. will there be email notification to check the interface)? *BITS (22 July 2010).*

“Average, reasonable Internet user”. This term in Section 2.1.1.1.2 should be more clearly defined. *Red Cross (21 July 2010).*

Public interest prioritization. Rather than randomizing applications for batch processing, ICANN should consider prioritizing applications based on public interest need. *Red Cross (21 July 2010).*

World Health Organization (WHO) concerns not addressed. Concerns of the WHO regarding public health and safety issues involved with International Nonproprietary Names for pharmaceutical products (from WHO letter to ICANN dated 9 December 2009) have not been addressed. *A. Aikman-Scalese (21 July 2010).*

Financial evaluation—not-for-profits. Evaluation should take into account the different financial picture and sources of funding for not-for-profit organizations when reviewing whether an organization has adequate funding for three years of registry operations. *Red Cross (21 July 2010).*

Reserved names—regional ccTLD organizations (2.2.1.2). The four regional organizations of ccTLDs (AfTLD, APTLD, CENTR and LACTLD) should be added into paragraph 2.2.1.2 like reserved names. Like ARIN, LACNIC, AFRNIC, RIPE and APNIC, for IP numbers the regional organizations of ccTLDs are involved directly in the process of ccTLDs and ICANN. The four regional organizations have liaisons in the ccNSO Council and participate in different working groups and are recognized by the community. *E.I Ahon (Module 2, 17 June 2010).*

Section 2.2.2.3—Evaluation—clarifying questions. With respect to language changes made in this section, note that the evaluators are under no obligation to ask clarifying questions. RySG repeats its recommendation from its DAGv3 comments that evaluators should be obligated to ask clarifying questions where needed. *RySG (10 Aug. 2010). VeriSign (22 July 2010).*

Section 2.2.3.1—Definitions—Security and Stability.

No changes were made to the definitions of security and stability. They need to be revised. They conflict with and exceed the draft gTLD agreement, and are based on a misunderstanding of IETF practices and definitions. The contract language must be revised to adhere to proper terminology (e.g., contracted parties should not be required to adhere to IETF best practices; by definition best practices are not mandatory.) *RySG (10 Aug. 2010). VeriSign (22 July 2010).*

Some language in the “security” definition is too broad and opens it up to expansive interpretation. It potentially takes in a wide variety of small and large security incidents on the Internet. The mere fact that services are operating on a domain name does not imply or require registry involvement. The current language in the guidebook seems to come from the RSEP definition of an “effect on security” but it is missing the context of that definition. After the DAGv3 RySG suggested that the “security” language be changed to read: “Unauthorized disclosure, alteration, insertion or destruction of registry data, or the unauthorized access to or disclosure of registry information or resources on the Internet by registry systems operating in accordance with all applicable standards.” *RySG (10 Aug. 2010). VeriSign (22 July 2010).*

The “stability” definition’s phrase “authoritative and published by a well-established, recognized, and authoritative standards body” is unacceptable. ICANN should not leave the language open-ended and make contracted parties subject to any and all standards bodies. ICANN needs to explicitly enumerate the standards and name the authoritative body, which we believe is the IETF. Application of additional standards should be considered via the consensus process. *RySG (10 Aug. 2010).*

Question 11(f)—allegations of intellectual property infringement. The question as written is ambiguous. The more relevant question is whether the applicant has been charged with activities that infringe intellectual property rights in which a domain name has been used. The question should be rephrased to

refer to “allegations of intellectual property infringement relating to registration or use of a domain name.” The Notes column should make clear that ICANN can reject an application in which the applicant cannot provide a satisfactory explanation. *COA (21 July 2010)*.

Whois data quality policy disclosure. ICANN should require applicants to disclose their policies for Whois data quality—i.e. spell out how they will require registrars who sponsor registrations in the new gTLD to ensure the accuracy and currency of Whois data that they collect. The best approach is to include Whois data quality requirements in registry agreements with new gTLD operators, but disclosure in the application is a worthwhile fallback. ICANN should be able to use contract compliance tools to pursue registries that misrepresent their plans on critical issues such as improving Whois data quality. *COA (21 July 2010)*.

WHOIS requirements should be uniform. Whois enforcement must be stronger. The rules should be as specific as possible and ensure that accurate data is maintained. Applicants should be held to a uniform set of requirements in order to avoid any discrepancies. *CADNA (21 July 2010)*.

High Security Zone TLD Program—application-based incentives.

A specific evaluation question should be included to provide application-based incentives for applicants to protect the public by adopting the more rigorous protections spelled out in the High Security Zone TLD Program. Applicants should be awarded one or more optional points for a positive response, or alternatively points could be deducted from the evaluation score of an applicant who declines to take these additional steps to protect the public. *COA (21 July 2010)*.

We are concerned that an applicant’s decision to not pursue High Security Zone verification does not reflect negatively on the applicant or affect its scores in the evaluation process. There should be a right to object against any financial services gTLD applicant that seeks to avoid high security verification and such avoidance should be grounds for denial of the application. *ABA (22 July 2010)*. *BITS (22 July 2010)*.

ICANN Board role in evaluation and delegation.

The Board’s role in any part of the evaluation and delegation process is not sufficiently articulated or constrained. The Board’s role needs to be extremely clearly defined so that all parties know when and under what conditions the Board may step in. The Board, like the evaluators, needs to be bound by probity requirements to ensure there is no background lobbying (e.g. from national governments or others). The Board’s role in delegation must be clearly articulated (e.g., a Board bottleneck due to workload would be very unfair to an applicant who had successfully completed the application process). A full refund of costs of the evaluation would need to apply in cases of an applicant that passes evaluation but for which the Board denies delegation. *L. Williams (23 June 2010)*.

ICANN should assure that the Board’s role is to ensure that once submitted to ICANN that applications meet the criteria in the Final Applicant Guidebook as approved by the Board. ICANN should provide clarifying language in the Final Applicant Guidebook that if an application is deemed to have met the criteria, it is not the Board’s role to make further deliberations about the application’s validity or eligibility. *AusRegistry (20 July 2010)*.

Technical evaluation of new backend registry operators. Given the established registry backend operators—i.e., VeriSign, Afilias, Neustar, AusRegistry and CORE, ICANN should evaluate them once and “pass” all applicants who have them as their backend registry providers. This would save ICANN money

and simplify the application process. The only backend registry technical evaluation that would make sense is if the backend registry is new and has no prior history in the business. *MUSIC (20 July 2010)*.

Delegation decision—certainty of process. The Final Applicant Guidebook should provide clarifying information about certainty of process so that each successful gTLD applicant has a clear indication of when their delegation will occur. It is not clear how ICANN decides the order of delegation and how and when successful applicants are informed. *AusRegistry (20 July 2010)*.

Registry Failure—continuity of operations and financial instrument requirement.

The requirement for a financial instrument that will guarantee at least 3 years of operation of essential registry services in the event of business failure is an unnecessary drain on the resources of prospective registries already damaged by the long delay of the new gTLD program. The requirement is especially punitive for small registries and will tie up important resources. It will discourage deserving applications and contribute to the failure of others. The goal of protecting registrants can be met by different means. Instead, continuity can be assured through cooperative agreements between registries and/or registry service providers who agree to provide these services in the failed registry. This sort of arrangement, already contemplated by ICANN in its Registry Transition Process document, should be extended to the application evaluation portion of the DAG. ICANN should provide for alternative, non-financial means of guaranteeing registry service continuity, either wholly or in part. *Minds + Machines 21 July 2010*). *NIC Mexico (21 July 2010)*.

Neustar supports the financial instrument requirement. ICANN has done a comprehensive job to deal with situations where a registry operator is also the back-end registry services provider. A financial instrument is appropriate in such a case since there is no third party to continue the registry operations and therefore ICANN could incur significant costs for transition. The current language does not adequately address the situation where the registry operator does not operate the registry services itself but outsources it to a back end registry services provider. In such cases failure of the registry may not result in loss of critical services if the back-end provider continues operations in the event of an applicant failure. This approach would not require a financial instrument. Neustar notes that ICANN has already addressed the issue of the back-end registry service provider failure by requiring contingency planning and submission of a transition plan. *Neustar (21 July 2010)*.

Clarifications of language—public comments.

In 1.1.2.5, who will handle public comments and in which way (e.g. ICANN staff, independent evaluators) and how will they be reflected in the evaluation process? *DOTZON (21 July 2010)*.

There should be guidelines for evaluators to use when assessing public comments. How will they be determined? How will comment periods be managed? Comments may be used in dispute resolution (1.1.2.7); DRPs should be given guidelines regarding how to assess comments. *RySG (10 Aug. 2010)*. *VeriSign (22 July 2010)*.

RSEP fees. The cost estimate for fees for use of the RSEP process seems extremely high (\$50K for a three person RSEP panel). What are the individual cost factors that make up this estimate? There are now actual RSEP cases that have been processed, so that the cost model should now be re-evaluated and made more cost effective. *RySG (10 Aug. 2010)*. *VeriSign (22 July 2010)*.

## Analysis of Comments

Some comments suggested that “market differentiation” should be reflected as a criterion in the evaluation process. This point can be interpreted in a number of ways. Implementing market-differentiating criteria could be construed as limiting competition for existing registries and potentially stifling innovation. As with any industry, two or more organizations focused on the same consumer provide that consumer with choice. It is this choice that drives competition which can lead to innovation, product/service differentiation, and price reduction. Additionally, evaluating (i.e., scoring) the beneficial effect of innovation is difficult or impossible and presents contract enforceability issues.

The proposed question “Which users/registrants/organization/group/community do you intend to serve?” is already explicitly part of the application for those designating their applications as community-based. It is also implicitly part of the existing question required of all applicants to state their mission and purpose (question 18). This is an open-ended question to give the applicant the opportunity to describe the overall scope of its proposal, and to enable informed comment on the application. There is no expectation that this question should be used to eliminate any overlapping user groups, nor is there an assumption that the same group cannot be served by more than one TLD.

The second proposed question, “How does your TLD differentiate itself from others in the DNS?” might provide an interesting perspective, but it is unclear how responses to this question could be scored, used as a threshold item, or enforced without a significant expansion of the scope of ICANN’s responsibilities.

ICANN’s Core Values include “...depending on market mechanisms to promote and sustain a competitive environment.” How applicants will differentiate themselves within a given market or industry should be a decision left to the applicants and the relevant markets. ICANN should not judge the effectiveness of an applicant’s business model. Rather, ICANN is focused on DNS stability, preventing user confusion, determining whether an applicant has demonstrated basic competencies to run a registry, and protecting registrants and users.

A comment suggests that additional guidelines are needed for the Eligibility requirements as covered in section 1.2.1 of the Draft Applicant Guidebook. ICANN agrees and is moving forward with developing additional guidelines that will be communicated to both potential applicants as well as Applicant evaluators prior to receiving applications. Applicants will still be required to disclose any known issues and can provide clarification of these issues upon submitting the application. Should other issues be found, not previously disclosed by the Applicant, ICANN will seek additional clarification from the Applicant. This clarification request will be conducted during Initial Evaluation.

A comment suggests rephrasing question 11(f), regarding relevant infringing activity in the applicant’s background, for greater clarity, to refer to “allegations of intellectual property infringement relating to registration or use of a domain name.” This is a useful suggestion and this change will be made in the revision.

Comments have been raised seeking clarity on communication with Evaluation Panelists. One comment asks how Applicants will be notified of communications from Evaluation Panelists while another seeks to ensure that Evaluation Panelists be obligated to seek clarifying questions where needed. Protocols are being developed and will be published to ensure that all Applicants are aware of communications on a timely basis and are provided with same time period to respond to any clarification requests.

In addition, Applicants are expected to provide all necessary and relevant information at the time their application is submitted. This includes complete and accurate information to support relevant criteria in the Applicant Guidebook. Evaluation Panelists are experts in their respective fields and are expected to conduct a thorough analysis based on the information provided by each applicant. If a thorough analysis cannot be completed, then clarification questions may be asked. However, as the Applicant can provide no new information - only clarifying information for the answer or information previously provided - a clarification request may not be needed. Accordingly, clarifications will be at the discretion of the Evaluation Panelist.

Note that the evaluation process is designed to afford several opportunities for clarification and amplification when needed. Applicants are expected to provide complete and accurate applications and supplemental data upon the first submission. A Customer Service function will be available to handle questions from applicants during the Application Submission Period. The Customer Service function will endeavor to provide and publish answers to all relevant questions from all applicants, to the extent practicable, in the applicant's language of choice. The guidebook encourages applicants to take advantage of this Question/Answer mechanism to address any particular areas of uncertainty before the application is submitted, to reduce the need for additional clarification and review steps. Once the Initial Evaluation has commenced, the evaluation panels and applicants will conduct a coordinated exchange of information, if needed, which should address any remaining oversights or misunderstandings. Finally, applications not passing Initial Evaluation will have the option of requesting Extended Evaluation procedures in which they may provide further data supporting their applications (there is no extra cost to the applicant for electing this option). The availability of these opportunities before, during, and after application submission should allow the applicant to provide all necessary information to the evaluators.

A comment suggests there should be some prioritization of batch processing applications versus random selection. Note that batching will only occur if the volume of applications is so high that the process as already built cannot accommodate it. In such a case, the same concerns highlighted in the discussion of application categorization also apply to establishing categories of applications and prioritization thereof for batch processing. Providing benefit to one set of applicants over another does not promote a fair and impartial process.

A comment suggests that the evaluation should account for differing funding sources when reviewing an application from a not-for-profit entity as opposed to a for-profit entity. It should be noted that the estimated level of funds required for three years of operation is determined by the applicant, not the evaluators. The financial review panel considers the information provided and assesses whether the proposed funding level will be adequate to maintain a secure and stable TLD. This is the case regardless of what type of entity the applicant is.

In relation to Whois requirements, comments suggest that additional steps should be undertaken in regard to Whois accuracy measures as part of the evaluation process. This was discussed and considered previously. Changes in Whois policy require a consensus based, bottom-up decision. ICANN is working on several fronts to improve Whois accuracy: policymaking support, technical, compliance, and performance reviews. In the meantime, there are improvements in the Guidebook including the requirement to maintain a thick Whois database and an option to implement searchable Whois.

In relation to increased security, one comment suggests providing an incentive to encourage applicants to implement more rigorous protections as highlighted in the proposed High Security Zone TLD Program

and another suggests that such rigorous protections be required of certain applicants. Continual improvement in security will always be part of the new gTLD program. Adoption of an HSTLD type certification will be urged for registries whose model connotes “security, such as a TLD providing financial services.” There are a number of reasons for making this a requirement of a specific type of application.

Comments seek clarity of Board’s role in the evaluation and delegation processes. We agree that further clarification is needed, and consultations with the Board have resulted in the detail provided in the new Guidebook.

A comment suggests that established back-end registry providers be evaluated once as opposed to on a per-application basis. It is agreed that certain efficiencies can be gained in the approach to reviewing applications with the same back-end registry provider, and this will be tested in the evaluation process. However, there is no assumption that all such applications will be identical or should be subject to a less thorough standard of review.

A comment seeks clarification about the order of delegation and how and when successful applicants are informed. This process has been clarified in the Guidebook. The order of delegation depends strictly on how quickly the applicant can complete each step in the process after Initial Evaluation. Note, all applications will complete Initial Evaluation at the same time. If an application passes Initial Evaluation and is not part of a string contention set or does not have any objections pending, then it moves straight to contract execution. Once the contract is signed, the applicant will move straight to pre-delegation check. As this check is passed then it will move directly to IANA for delegation. ICANN expects to have resources available to execute each step as the application progresses. Note, however, that this part of the process is dependent on many factors – including applicant level of readiness – and not solely controlled by ICANN.

In terms of communication, clear posting dates will be communicated to the public and the pool of applicants throughout the evaluation process. As the Applicant progresses through each step, updates will be communicated to the public and to the Applicant directly.

One comment suggests the addition of the names of regional ccTLD organizations to the list of names that are reserved at the top level. This was considered; however, the top-level reserved names list is intended to be as narrow as possible, and cover only those names which have an impact on the DNS infrastructure or are part of the organizational structure of ICANN. The bodies mentioned are certainly contributors to ICANN, but fall more into the category of constituencies, which are more loosely formed and self-governed, and it would expand the list considerably to include all of these as reserved names.

Several comments seek clarification of the public comment process. As discussed in the Applicant Guidebook, the public comment period will open with the public posting of applicant data at the end of the completeness check and prior to commencing Initial Evaluation. To ensure that Evaluation Panels and Dispute Resolution Providers are able to effectively and timely consider public comments, the public comment window will remain open for 45 days. A general comment forum will remain available, but if comments are to inform Initial Evaluation, they must be submitted within the 45-day period. All panelist and dispute resolution providers will have access to the comments. The availability and use of public comments will be discussed with the Evaluation Panels and Dispute Resolution Service Providers as part of their training. In the case of a dispute resolution proceeding, the panel must provide the reasoning

upon which the expert determination is based, which might include consideration of relevant public comments.

Comments regarding the financial instrument requirement suggest that ICANN should provide alternatives, or that the requirement would be irrelevant in the case where part or all of the registry operations are outsourced to a third-party service provider. The two options currently included in the guidebook ([a] letter of credit or [b] cash escrow deposit) are in place because they provide the most efficient and reliable means for transfer of funds in the event of a registry failure scenario. Other options (such as those contained in earlier drafts of the guidebook) have been considered in detail for implementation, but could not offer the same speed or reliability without being cost-prohibitive for applicants. Note that the funds are only released if a threshold is met for failure of one of the critical functions. It should be considered that even if the existing service provider continues to execute the critical functions in the short term, it is not clear that such a provider would be willing to continue such operations indefinitely, especially in the absence of financial provision for it by the registry operator. The financial instrument is considered a cornerstone of registrant protection and thus is a requirement across all new gTLDs for a particular time period.

With regard to the registry services portion of the evaluation process, a set of comments suggested changes to the definitions of ‘security’ and ‘stability’ that are employed. The current definitions are found in existing registry agreements and can also be found in the Registry Services Evaluation Policy (“RSEP”) -- see <http://www.icann.org/en/registries/rsep/rsep.html>, which was adopted as an ICANN consensus policy. The definitions are intentionally broad -- anything a registry might do that could harm other systems on the Internet would be considered a security/stability issue and could cause ICANN to withhold approval of a particular service. These definitions are critically important terms and part of a process that has a significant impact on the DNS. A change to the currently accepted and workable process should be subject to a broader stakeholder discussion.

With regard to estimated RSEP fees, comments suggested that the model could be more cost-effective. The current expected fee of \$50,000 was estimated based on a significant decrease from historical costs. Efficiencies were introduced so that the fee is less than 50% of the current cost per RSTEP evaluation. In the three years that the Registry Services Evaluation Policy has been in place, a small fraction of registry services proposed by existing gTLD registries have resulted in an RSTEP review. Each inquiry involving the RSTEP involves a 5-person panel and costs \$100,000-\$125,000. In the new gTLD process it is anticipated that most cases will be addressed using a 3-person panel.

## **TRADEMARK PROTECTION**

### **Key Points**

- Comments from every section of the ICANN community and broader Internet community have been thoroughly considered in the development of the current trademark protection mechanisms called for in the Applicant Guidebook.
- These trademark protections reflect carefully crafted compromises that received broad support within the GNSO and At-Large communities.
- Although some debate adequacy, the new trademark protections are unprecedented and aim to create a balance between all interested parties with a main focus of protecting rights holders and consumers, including both registrants and Internet users.

## Summary of Comments

Registry option to exceed baseline rights protection. Most of the comments to date from the IP community are of a “baseline” nature, while registries themselves can choose to go over and above these requirements. Big Room invites feedback from IP and trademark experts as to what a “best in class” sunrise and ongoing rights protection mechanism(s) would entail. *Big Room (21 July 2010)*. What is expected of a registry operator section (5.4.1). This is an important section which includes key requirements such as DNSSEC deployment requirement, Whois service, maintenance of an abuse point of contact, and continuity. BITS suggests that ICANN require both the Trademark Rights Service and the Sunrise period at startup. *BITS (22 July 2010)*.

### Support for level of IP protection

The DAG is sufficient and is a significant concession to trademark owners even though the IRT’s recommendations were not accepted in their entirety. Every interest group within the ICANN community has found that they need to live with something that is, from their point of view, less than perfect. The IP community should be no exception especially in light of the considerable concessions already made to them. *Minds + Machines 21 July 2010*.

We work in the interest of the global hotel industry and we support the proposed instruments for rights protection, which are the result of intense discussions within the ICANN community. *HOTEL (21 July 2010)*.

Subject to minor drafting matters the trademark overarching issue should be considered complete. The protections developed through stakeholder discussion and compromise will provide trademark holders with significantly more protection than exists in current gTLDs. *R. Tindal (21 July 2010)*. *Domain Dimensions (22 July 2010)*. *Demand Media (22 July 2010)*. *D. Schindler (22 July 2010)*.

### Trademark protection not adequate.

IOC appreciates ICANN’s recognition of IOC’s comments regarding special statutory trademark protection as a proposed standard for inclusion in the trademark clearinghouse. However, IOC finds troubling the statements from ICANN leadership confirming that trademark protection in new gTLDs is believed to be a settled issue. *IOC (21 July 2010)*.

Current RPMs do not adequately address trademark concerns. *WIPO Center (16 June 2010)*. *Arla Foods (6 July 2010)*. *LEGO (6 July 2010)*. *JONAS (11 July 2010)*. *VKR Holding (13 July 2010)*. *Nilfisk (13 July 2010)*. *LEO Pharma (14 July 2010)*. *Vestas (16 July 2010)*. *Coloplast (19 July 2010)*. *MarkMonitor (19 July 2010)*. *BBC (21 July 2010)*. *C. Speed (21 July 2010)*. *Hogan Lovells (21 July 2010)*. *IPC (21 July 2010)*. *DuPont (21 July 2010)*. *Comerica (3 Aug. 2010)*. *Carlson (21 July 2010)*. *Sunkist (21 July 2010)*. *Solvay (22 July 2010)*. *ETS (22 July 2010)*. *LifeScan (22 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Coca-Cola (21 July 2010)*. *News Corporation (21 July 2010)*. *Adobe Systems (21 July 2010)*. *SIIA (21 July 2010)*. *Microsoft (21 July 2010)*. *ABA (22 July 2010)*. *Liberty Mutual (22 July 2010)*. *AIM (Module 5, 14 July 2010)*. *Nestle (21 July 2010)*.

Nilfisk is against introduction of new TLDs as long as the current system does not secure effective solutions to cybersquatting and trademark infringement. *Nilfisk (13 July 2010)*.

ICANN has not adequately addressed the overarching issue of trademark protection in the new gTLDs. *INTA Internet Committee (21 July 2010). Adobe Systems (21 July 2010)*

Introduction of new gTLDs will create vast opportunities for bad faith registrations and harm intellectual property owners and consumers. Consumers will lose trust in trademarks as guides in the global market. *JONAS (11 July 2010). INTA Internet Committee (21 July 2010).*

It is inevitable that conflicts will arise between competing brand owners in different jurisdictions. It is naïve to suggest (as ICANN does) that applicants identified as in contention can be encouraged to reach a settlement or agreement to resolve that contention, at least where trademark rights are concerned. It is highly unlikely that a brand owner would be prepared to share or relinquish control over its brand to a competing brand owner either in the same industry in a different country or a different industry in the same or a different country. We do not consider it possible to reconcile the conflict between territorial trademark rights and the global nature of the Internet. It is for this reason among others that BBC has opposed and maintains its opposition to ICANN's proposals. ICANN needs to adopt a solution which genuinely lessens the need for defensive registrations and the administrative and financial burden on trademark owners. *BBC (21 July 2010).*

It is extremely disappointing that ICANN has failed to take the opportunity to require registry operators to adopt and implement rapid takedown or suspension systems to combat malicious conduct. Microsoft reiterates the proposal it made for this in its version 3 comments, including being amenable to having one or more Microsoft employees with relevant expertise to work on an ICANN-convened expert group to develop a required rapid takedown or suspension system. *Microsoft (21 July 2010).* Notwithstanding a succession of processes, there has been little truly substantive dialog on trademark considerations. Exchanges are subject to palpable registration-driven pressures, and have not lived up to a proper standard of open and informed dialog, which is key to a long-term, stable DNS framework. This is illustrated by the heavily compromised state of the envisaged protection mechanisms: the PDDRP ignoring willful blindness; the URS becoming overburdened; and the TMC not providing a level playing field. These circumstances support the Economic Framework paper's recommendations that ICANN proceed in a controlled manner, i.e., in discrete limited rounds. WIPO staff will continue to monitor developments and remains available to contribute to rights protection systems that work for durable DNS expansion. *WIPO Center (21 June 2010).*

The trademark protections in the current guidebook are weak and inadequate. If ICANN does not review the current guidebook and adapt it to respond positively to our concerns, our members will appeal to national governments and other bodies. *MARQUES/ECTA (21 July 2010).*

Significant issues of concern remain regarding intellectual property protection. The online community will benefit from a smartly designed TMC and URS and IHG looks forward to seeing them through. *IHG (20 July 2010).*

The cost of acquiring a gTLD is too high for most companies, as well as the cost of enforcement of their trademark rights. At the very least, ICANN should allow for a period of time for existing companies with established, registered trademarks to register those trademarks with ICANN (or ICANN should be required to do a trademark search) to avoid this problem. *Piper Aircraft (14 July 2010).*

AAFA requests that ICANN reevaluate and revise the current rights protection mechanisms proposed for both the application process and post-delegation to ensure that brand owners' (i.e., the apparel and footwear industry that is so dependent on the strength of their reputation and brand names) legitimate concerns and rights are properly protected and assured in the new gTLD space. Without requisite mechanisms in place to protect brand owners in the application process and post-delegation, AAFA is concerned that the new gTLD program could provide a vehicle for rampant abuses and exploitation of its apparel and footwear members' valuable marks and brands to increase exponentially. The apparel and footwear industry is concerned that the proposed high costs of registering a new gTLD will not deter the often well-funded and highly organized counterfeiting operations that are prevalent online. As cost alone is unlikely an impediment to these bad actors, stronger brand protection mechanisms are critical. The RPMs need to be stronger, less costly and more efficient than the RPMs currently proposed in the DAGv4 for protecting trademarks. The overwhelming burden still falls substantially on brand owners to stop infringement, and the proposed processes to do so remain overly cumbersome, expensive and time intensive for brand owners. *AAFA (21 July 2010)*.

ICANN should address trademark owners' concerns about the current inadequate protection measures in DAGv4 by providing for rules that:

- Avoid discriminatory treatment of trademark registrations;
- Provide for equitable and efficient resolution of situations of split trademark ownership (e.g. geographic split or product category split);
- Include clear procedures for the trademark repository and recognition of trademark registrations;
- Include IP rights other than trademarks alone;
- Provide for an equitable and efficient dispute resolution system (a shifting burden of proof after demonstration of a prior IP right, including the "loser pays" principle);
- Streamlining the appellate procedure;
- Providing unambiguous provisions for transfer or cancellation of domain names; and
- Including clarification on closed gTLDs.

*PMI (21 July 2010)*.

#### Dilution of IRT work.

ICANN has allowed the mechanisms proposed by the IRT to be worn away, as ICANN evidently hopes that stakeholders will be worn down until they can be ignored entirely. The relevant provisions in AGBv4 have changed little from the STI Review Team recommendations. There is not consensus on the RPMs in DAGv4 which, if taken together, fall well short of an effective response to the problem of trademark-related external costs in the new gTLD process. ICANN's refusal to strengthen these mechanisms, even so far as to bring them back to the level originally recommended by the IRT, is tantamount to concluding that trademark holders and the public at large should bear these costs, which is contrary to the public interest that ICANN has pledged to serve. *Time Warner (21 July 2010)*. *Com Laude (21 July 2010)*. *Hogan Lovells (21 July 2010)*. *HSBC (21 July 2010)*. *MPAA (21 July 2010)*. *INTA Internet Committee (21 July 2010)*.

ICANN should proceed generally with all of the mechanisms set forth in the IRT report. *USCIB (21 July 2010)*. *Microsoft (21 July 2010)*.

The overarching trademark issues have not been resolved. It would not be a backwards step to re-form the IRT; changes are needed and the IRT is well placed to advise in this area. *C. Speed (21 July 2010)*.

ICANN should either turn to qualified IP experts to craft a package of effective protection measures or return to the original recommendations of the IRT report. WIPO could have a key role in this process and could use the IRT's original proposals as the starting point. ICANN should start out with strong measures that could be liberalized later if necessary. To satisfy the broader community, a review of such measures could be instigated after they are operational (e.g. after two years). *MARQUES/ECTA (21 July 2010)*.

The AGBv4 is a step backwards—ICANN has inexplicably chosen to dilute the long-term solutions presented by the IRT. Without adequate remedies, the issue of trademark protection remains unresolved. The current proposals are too burdensome, expensive and unwieldy compared with existing remedies such as the UDRP or civil remedies available under the ACPA. We do not expect the business or trademark community to endorse or make wide use of the current trademark protection proposals in the future. At a minimum, all trademark protection remedies must be: (1) effective as a remedy; (2) reasonably expedited; (3) stringent enough to avoid gaming; (4) based on actual costs (which avoids further monetization and extraction of unnecessary fees from trademark holders); (5) provide for increased certainty; and (6) result in making the trademark holder whole. *Verizon (20 July 2010)*. *IPC (21 July 2010)*. *DuPont (21 July 2010)*. *Rosetta Stone (21 July 2010)*.

#### Process.

It is clear from comments of senior ICANN staff at the Brussels meeting that no further major changes to the AGBv4 on rights protection mechanisms will be seriously entertained. The cross-community efforts to date are not a triumph of the bottom-up policy development process. Rather, the almost complete lack of support for the final outcome (the insufficient mechanisms now included in AGBv4) among members of the community with the most at risk demonstrates that the process has been a failure. The real losers will be the consuming public on whose interests in avoiding marketplace confusion and fraud the entire trademark system is based. *COA (21 July 2010)*. *BBC (21 July 2010)*. *Adobe Systems (21 July 2010)*.

It is ironic that ICANN prepares to announce “mission accomplished” on RPMs just when its Economic Framework paper calls for an objective study of the full costs to trademark owners of new TLDs (e.g., enforcement, monitoring, defensive registrations). This should have been step one in devising a sound and efficient system of RPMs, not an epilogue to a tale on which ICANN is about to close the book. *COA (21 July 2010)*. *BBC (21 July 2010)*.

Relationship to UDRP. The current new gTLD program's RPMs should meaningfully complement, not destabilize, the proven, globally recognized UDRP. *WIPO Center (16 June 2010)*.

Expansion. There is a substantial gap in coverage among the currently proposed trademark protection proposals. Currently there is no DRP or other mechanism that allows a brand owner directly to confront registrar misconduct. *INTA Internet Committee (21 July 2010)*.

#### Globally protected marks list (GPML).

The lack of a GPML in AGBv4 is very disappointing as it could have provided some relief for trademark owners of such marks. *Arla Foods (6 July 2010)*. *LEGO (6 July 2010)*. *Nilfisk (13 July 2010)*. *Vestas (16 July 2010)*. *MARQUES/ECTA (21 July 2010)*. *HSBC (21 July 2010)*. *IPC (21 July 2010)*. *DuPont (21 July 2010)*. *IPOA (21 July 2010)*. *Coca-Cola (21 July 2010)*. *News Corporation (21 July 2010)*. *Adobe Systems (21 July 2010)*. *SIIA (21 July 2010)*. *Nestle (21 July 2010)*.

Without the GPML there is no proactive trademark protection provided with the launch of new gTLDs. *AT&T (21 July 2010). AIPLA (21 July 2010). BC (26 July 2010). AIM (Module 5, 14 July 2010).*

## Analysis of Comments

Many have commented on the general nature of trademark protections that have been put in place for the New gTLD Program. Some think they are sufficient, some think they are not sufficient and some have said that there has not been enough substantive discussion on the issues. Still others state that any protections put in place should extend to registrars.

It is important to reflect on the chronology of events that led to the development of the trademark protections now included in the New gTLD Program for new gTLDs. After the early versions of the Applicant Guidebook were posted, the trademark community spoke out loudly and clearly – more trademark protections were needed. Those comments were heard by ICANN. In response, the Board resolved to establish an Implementation Recommendation Team (IRT), to help identify and propose rights protection mechanisms (RPMs) for trademark holders within the New gTLD Program (see <http://www.icann.org/en/minutes/resolutions-06mar09.htm#07>). The IRT described itself as a group of 18 people experienced in trademark protection on the Internet.

Specifically, the Board asked the IRT to develop a set of solutions that addressed trademark protection and consumer protection in a way that was workable, and that was acceptable to other interests. Other parties were invited to respond to the IRT work, to propose solutions, and an extensive public outreach process was initiated, including several regional events held throughout the world.

In a series of face-to-face meeting, conference calls, and public consultations, the IRT engaged in intensive substantive discussion and developed specific recommendations (<http://icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>), reflecting “the views of business and trademark interests in general.” Those recommendations included proposals for an IP Clearinghouse (“Clearinghouse”), a Uniform Rapid Suspension System (“URS”), a Trademark Post-delegation dispute resolution procedure (“PDDRP”), and a globally protected marks list (“GPML”). Concerns from the broader ICANN Community immediately emerged with respect to several IRT recommendations. After significant public comment, through both the public comment forum and numerous face-to-face meetings, additional refinement of the IRT proposals were needed in order to balance the interests of the community as a whole, the trademark holders, and registrants with legitimate interests in registering domains that might also be the subject of a trademark. Compromises were also required in light of the implementation difficulties of some of the IRT proposals.

The next iteration of the Guidebook included nearly all of the trademark protection mechanisms suggested by the IRT, including the Clearinghouse, the URS and the PDDRP. The GPML was not included in light of the implementation difficulties with, and the significant opposition to, such a list.

After further comment, discussion and revision, the Board sent the Clearinghouse and the URS proposals back to the GNSO. The Board requested the GNSO Council’s view on whether the Clearinghouse and URS recommended by the staff were consistent with the GNSO’s proposed policy on the introduction of new gTLDs, and were appropriate and effective for achieving the GNSO’s stated principles and objectives.

In response to the Board's request, the GNSO established the Special Trademark Issues Review Team ("STI"), consisting of members of each Stakeholder Group, At-Large, Nominating Committee Appointees, and the GAC. The STI issued a final report on 17 December 2009, including several recommended revisions to the Clearinghouse and the URS proposals (see <http://www.icann.org/en/announcements/announcement-2-17dec09-en.htm>), which were unanimously adopted by the GNSO.

In addition, ICANN invited community participation in an open consultation process to discuss and propose revisions to, among other things, the PDDRP. This group was formed as the temporary drafting group ("TDG").

Together, the IRT recommendations, the STI revisions, the TDG revisions, and comments from every section of the ICANN community and broader Internet community were taken into consideration in the development of the current trademark protection mechanisms called for in the Applicant Guidebook. These new trademark protections are unprecedented and are intended to create a balance between all interested parties with a main focus of protecting consumers, including both registrants and Internet users.

These trademark protections now part of the new gTLD Program include:

- The requirement for all new registries to offer either a Trademark Claims service or a sunrise period at launch.
- The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for trademark holders, registries, and registrars.
- Implementation of the URS that provides a streamlined, lower-cost mechanism to suspend infringing names.
- The requirement for all new gTLD operators to provide access to "thick" Whois data. This access to registration data aids those seeking responsible parties as part of rights enforcement activities.
- The availability of a post-delegation dispute resolution mechanism that allows rights holders to address infringing activity by the registry operator that may be taking place after delegation.

And of course, the existing Uniform Domain Name Dispute Resolution Policy (UDRP) continues to be available where a complainant seeks transfer of names. Compliance with UDRP decisions is required in all new, as well as existing, gTLDs.

Each of the recommendations above is intended to provide a path other than defensive registrations for trademark holders.

The application process itself, based on the policy advice, contains an objection-based procedure by which a rights holder may allege infringement by the TLD applicant. A successful legal rights objection prevents the new gTLD application from moving forward: a string is not delegated if an objector can demonstrate that it infringes their rights.

Contrary to the comment that there has been very little substantive discussion on this issue, the likely thousands of emails and hundreds of teleconferences had by the IRT, the STI, the TDG, the GNSO Council, the At-Large and numerous other stakeholder groups and constituencies relating to trademark

protection point to the significant effort and attention dedicated to the evaluation of these new trademark protections. These are in addition to the face-to-face meetings held at each of the ICANN Public Meetings as well as apart from those public meetings, such as those held by ICANN in Marina del Rey, New York and London.

Finally, in response to other trademark protections proposed but not included in the Applicant Guidebook, such as extending applicable trademark protections to registrar conduct, such ideas could be further explored through the initiation of policy development through the GNSO Council.

## TRADEMARK CLEARINGHOUSE

### General

### Key Points

- In terms of entry into the Clearinghouse, all nationally or multi-nationally registered marks are eligible, as well as mark validated by a court, or protected by statute or treaty (subject to some date limitations).
- Steps have been taken to ensure consistency and to prevent similarly situated applicants from being treated differently.

### Summary of Comments

#### Clearinghouse Proposals.

ICANN should share first drafts of the IP clearinghouse process as soon as possible. *dotZON (21 July 2010)*. *HOTEL (21 July 2010)*.

The Clearinghouse section should focus on “what we want” and avoid “how it gets done” as this section will be the nucleus for a later RFP and it is important to stimulate creative and competitive proposals from a wide range of service providers of the trademark industry. *EnCirca (Module 5, 21 July 2010)*.

Evolution of Clearinghouse. There should be a mechanism for the Clearinghouse to evolve in its uses in the future. To enable this, following the sentence “The reason for such a provision would be to prevent the Clearinghouse from using the data in other ways” add the phrase “without undergoing the ICANN public participation process.” *EnCirca (Module 5, 21 July 2010)*.

Support for Clearinghouse as drafted in AGBv4. It was supported by both the IRT and STI, has broad acceptance from ICANN constituencies and received approval from the GNSO Council. *R. Tindal (21 July 2010)*. *Domain Dimensions (22 July 2010)*. *Demand Media (22 July 2010)*.

#### Clearinghouse is not an RPM.

The Clearinghouse is not a protection mechanism—it is merely a database. *VKR Holding (13 July 2010)*. *MarkMonitor (19 July 2010)*. *Comerica (21 July 2010)*. *Solvay (22 July 2010)*. *ETS (22 July 2010)*. *Carlson (21 July 2010)*. *C. Speed (21 July 2010)*. *CADNA (21 July 2010)*. *Sunkist (21 July 2010)*. *Adobe Systems (21 July 2010)*. *LifeScan (22 July 2010)*. *Liberty Mutual (22 July 2010)*. *BC (26 July 2010)*. *NCTA (Module 3, 21 July 2010)*. *AIM (Module 5, 14 July 2010)*.

The Clearinghouse is just a database, and it would promote the need for defensive registrations. *Arla Foods (6 July 2010)*. *LEGO (6 July 2010)*. *LEO Pharma (14 July 2010)*. *Vestas (16 July 2010)*. *Coloplast (19 July 2010)*. *BBC (21 July 2010)*. *Verizon (20 July 2010)*. *PMI (21 July 2010)*. *HSBC (21 July 2010)*. *DuPont (21 July 2010)*. *AIM (Module 5, 14 July 2010)*.

The Clearinghouse provisions in AGBv4 do not fully encompass the IRT recommendations in focusing support of pre-launch service. *USCIB (21 July 2010)*.

#### Burden on trademark owners.

The Clearinghouse potentially obliges the trademark owner to record all of their trademarks from all territories, significantly increasing costs and workload. Since the trademark owner receives no notice of the application for registration and no opportunity to communicate with the registrant prior to registration, one national registration per mark may not be sufficient for inclusion in the Clearinghouse.

The Clearinghouse requires an extra charge for brand holders, does not provide comprehensive coverage given that only identical marks can be registered and common law marks are left out. The Clearinghouse is given unprecedented discretion to validate and authenticate trademarks for registration in the Clearinghouse. *MarkMonitor (19 July 2010)*. *Carlson (21 July 2010)*. *Comerica (21 July 2010)*. *Sunkist (21 July 2010)*. *Solvay (22 July 2010)*. *LifeScan (22 July 2010)*. *ETS (22 July 2010)*. *Liberty Mutual (22 July 2010)*.

## **Analysis of Comments**

There have been some comments about the timing and openness of the Clearinghouse proposal process. It should be noted that each version of the proposal (originating with the IRT proposal) has been published for public comment and continues to be revised and improved as a result of public comment. Importantly, as can be seen from the Clearinghouse proposal, not all aspects have been fully addressed as some are necessarily left to the potential providers to explore and develop.

Some commentators have suggested that the Clearinghouse is simply a database and others suggest it will promote the need for defensive registrations. It is unclear as to why that might be the case. The need for defensive registrations should be reduced if trademark holders register their marks in the Clearinghouse because it will better enable the trademark holder to avail itself of all rights protection mechanisms in the pre-delegation process.

The IRT recommendations with respect to the Clearinghouse have been the subject of substantial review and comment. The GNSO appointed the STI to evaluate the recommendations of the IRT and provide input. The STI then set forth its proposal at <http://www.icann.org/en/announcements/announcement-2-17dec09-en.htm>. That revision was posted in February 2010 and was the subject of public comment. Again the model was reviewed and published for additional comment in April 2010. In balancing the competing comments, not all suggestions could be incorporated as they often reflected opposite ideas, many of which had been considered by the STI. The resulting Clearinghouse is the product of this detailed review and analysis.

Much discussion surrounded which marks should be eligible for inclusion in the Clearinghouse. On the one hand, trademark holders wanted to be sure that they could register their marks but at the same time there were concerns that fraudulently obtained registrations could be used to game the system. The

result of review and input from a variety of constituencies was to create a list of specific criteria for entry. In terms of entry into the Clearinghouse, all nationally or multi-nationally registered marks are eligible, as well as marks validated by a court, or protected by statute or treaty (subject to some date limitations). In creating objective criteria, steps have been taken to prevent the exercise of discretion and to prevent similarly situated applicants from being treated differently.

## Procedural Aspects

### Key Points

- Costs should be borne by the parties utilizing the services.
- In order to protect access to data, providers will be the only entities that have full access to Clearinghouse data.

### Summary of Comments

#### Costs.

Registries and registrars (not most trademark owners) will be the main beneficiaries of the Clearinghouse and they should also contribute to its costs. ICANN should also bear some of this cost. ICANN stands to generate substantial revenues through the new gTLD process and it should bear some responsibility to ensure that the new program does not facilitate widespread infringement of brand owner rights and widespread confusion and deception of the public. *BBC (21 July 2010)*. *CADNA (21 July 2010)*. *NCTA (Module 3, 21 July 2010)*.

The cost of funding the Clearinghouse should be apportioned between the entities that will profit economically from new gTLDs—ICANN, registry operators and registrars (see Clearinghouse, sec. 10). *IOC (21 July 2010)*.

Trademark owners should pay only the transaction costs directly associated with the inclusion of their individual trademarks and they should not pay for elements of Clearinghouse overhead and its fixed operational costs. *IPOA (21 July 2010)*. *AIPLA (21 July 2010)*.

If the cost of the Clearinghouse is to be borne by those using the service, then there should be not additional charges by registries to trademark owners for sunrise/claims services other than the annual domain name registration fee and the fees should be the same as those charged for general landrush registrations. *Grainger (Module 5, 19 July 2010)*.

IBM agrees that the cost of running the Clearinghouse should be borne by the parties utilizing the service and this cost should be nominal. The cost of establishing the Clearinghouse should be assumed by ICANN. Every study indicates that the new gTLD program will be a significant cost to brand owners for enforcement and cessation of brand misuse. The cost of the Clearinghouse should be shared with the new registries via a portion of the funds collected by ICANN for gTLD applications and maintenance. *IBM (21 July 2010)*.

#### Setting Clearinghouse Fees.

Under subsection 4.2 fees for services should be set by ICANN. We also agree under subsection 4.2 that the detailed registrar accreditation agreement is an appropriate model. *IPOA (21 July 2010)*.

Fees relating to the Clearinghouse should be determined as soon as possible so that not-for-profit organizations can budget in advance for the new gTLD process. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

Fees under subsection 4.2 should be set by ICANN. *AIPLA (21 July 2010)*.

Clearinghouse operator. ICANN must choose a third party contractor with extensive experience in trademark protection issues and do so via an open and transparent process. CADNA requests a preview of the proposed contractual arrangement in order to gain a fuller understanding of what this role will entail. *CADNA (21 July 2010)*.

Access to Clearinghouse. Who will have access to Clearinghouse data and services must be clarified. *CADNA (21 July 2010)*.

Deposit of marks. Deposit of marks into the Clearinghouse should be clarified so that it is clear that a trademark owner does not need to register the corresponding domain name in the many new gTLDs. Trademark owners will not have a significant incentive to participate in the Clearinghouse if they have to deposit both their marks and also engage in multiple defensive registrations. *IPOA (21 July 2010)*. *AIPLA (21 July 2010)*.

## Analysis of Comments

Many comments revolve around who will pay for the Clearinghouse and the fees that will be charged. ICANN recognizes that this is an important issue, which has been often discussed, including by the IRT and the STI. As stated by the STI and adopted in the latest version of the Trademark Clearinghouse, “Costs should be completely borne by the parties utilizing the services. ICANN should not be expected to fund the costs of ... operating the TC. The TC should not be expected to fund ICANN from its fees.” The cost of establishing the Clearinghouse is to be borne by ICANN and the Clearinghouse provider(s). As for the fees that the Clearinghouse provider(s) will charge, ICANN will select provider on open bidding process and economical fees will be part of the consideration process.

One commenter notes that the Clearinghouse provider should be experienced in trademark issues and be chosen in open and transparent manner. As set forth in AGBv4, the service provider(s) will be selected on the basis of predetermined criteria which includes the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability and security without interference with the integrity or timeliness of the registration process or registry operations. The process will continue to be transparent and subject to public comment. The details of the contractual relationship as it is currently envisioned is set forth in the AGBv4 at section 4.

In terms of access to data, the Providers will be the only entities that have full access to Clearinghouse data. As set forth in the current AGBv4, it is envisioned that one provider will house the repository and another provider will authenticate/validate the marks. There will be extensive provisions in the contract relating to maintenance of the data.

In terms of use of the Clearinghouse, it is not meant to be a bar to registrations of the trademark TLDs or an automatic registration in each TLD. It is a database that registry operators are required to utilize when offering either a pre-launch Sunrise service or Trademark claims process.

## Authentication and Validation

### Key Points

- ICANN intends to utilize a provider with regional presences so that appropriate expertise exists for complaints from any geographic area.
- Some form of penalty or graduated penalty system will be implemented for a rights holder's failure to keep information current in the Clearinghouse.

### Summary of Comments

Regional Authentication. No basis for the regional authentication service appears in the IRT or GNSO-STI reports. IPOA opposes it unless there is some justification. *IPOA (21 July 2010). AIPLA (21 July 2010).*

Updated information. A trademark owner's failure to respond to a legitimate request from the Clearinghouse Administrator to update could yield a series of warnings and ultimately suspension from the Clearinghouse pending a response. It would be impractical to try to collect monetary penalties from trademark owners who may be out of business or who may have failed to advise their successors in interest of their Clearinghouse entries. IPOA also supports mandated periodic renewals (e.g., perhaps every 5 or 10 years) to maintain the quality of information contained in the database. *IPOA (21 July 2010). AIPLA (21 July 2010).*

Data and Authentication Guidelines.

What is the intent of the last paragraph of Section 7, Data Authentication and Validation Guidelines? Is that a backdoor mechanism for Clearinghouse entry for marks that could not otherwise qualify? *AIPLA (21 July 2010).*

A qualifier is missing in the last paragraph for validation of marks by the clearinghouse. For the sentence that reads "in connection with a bona fide offering for sale of goods or services" should be inserted the phrase "in the goods specified in the trademark registration." This will help prevent the inclusion of sham trademarks in the Clearinghouse (e.g. generic words applied for in obscure trademark classes that have never been used in commerce for the goods specified). *EnCirca (Module 5, 21 July 2010).*

The criterion that a trademark owner must submit a declaration is costly and burdensome. Why does it not suffice to use a certified copy of a valid trademark registration certificate or the official online database record of the relevant trademarks registry? *BBC (21 July 2010).*

We strongly object to the Clearinghouse being used as a validator for marks because this is beyond the intended purpose of the Clearinghouse. The term "Clearinghouse—validated marks" should be removed. *K. Komaitis (21 July 2010). R. Dammak (22 July 2010).*

Evidence of use for mark validation.

ICANN's proposal for the Clearinghouse's validation of marks through the trademark owner's production of evidence of continuous use of the mark is burdensome and inconsistent with national legislation where there is a grace period between registration of mark and the obligation to use it. Such evidence of use, if produced to "validate" the mark, should

not be published in any way or to any person as it could be highly confidential and commercially sensitive. *BBC (21 July 2010)*

A trademark owner should be required to provide evidence of current bona fide use, but should not be required to prove that they had rights “continuously” since registration. *INTA Internet Committee (21 July 2010)*.

## Analysis of Comments

Regional authentication has been the subject of public comment. Because the Clearinghouse will be a central repository that will be tasked with authenticating/validating data from all over the world, it was suggested that a provider with regional presence be enlisted to assist and expedite the process. On balance, given the efficiencies that can be achieved the current proposal suggests utilizing a provider with regional presences to be called upon when appropriate. All will still be subject to the same rigorous standards.

Some have commented on the particular penalties to be implemented for a failure to keep information current in the Clearinghouse. Currently, it is envisioned that some form of penalty or graduated penalty system will be implemented for a failure to keep information current, the details of which will be finalized when the provider(s) are selected. It is understood that monetary penalties will not be practical and will not serve the intended purpose of encouraging prompt communication with the Clearinghouse and keeping information current.

Comments have been submitted surrounding the use and description of the terms “authentication” and “validation”. One commenter requested clarification of the last paragraph of the Data and Authentication Guidelines and another suggested one addition. After careful review, this language will be revised. First, only authentication of registration of marks is required for entry into the Clearinghouse. The “validation” referenced in the final paragraph of this section of the Clearinghouse proposal refers to validation of “use”, which will be needed to ensure protection in a sunrise services offering by a registry. Second, the addition recommended does make the statement more clear and will be included.

In terms of safeguarding data, it is anticipated that to the extent there is confidential or commercially sensitive submissions made to the Clearinghouse for validation purposes, the provider will have the appropriate means in which to safeguard the confidentiality/access to such information. Such means for maintaining confidentiality will be required in the provider(s) contract(s) with ICANN and the tender process will require demonstration of this capability.

One group has commented that a standard for the Sunrise process inclusion that “continuous” use of the mark should not be required. Such level of use was included to ensure that only valid registrations are capable of registration in a Sunrise period. If the rights were not continuous, the registration in some jurisdictions will no longer be valid. Continuous does not mean, however, that it is used everyday, but rather that the use continued over time.

## Eligibility for Inclusion and Protection

### Key Points

- Substantive review by Trademark Clearinghouse validation service provider shall require: (i) evaluation on absolute grounds; and (ii) evaluation of use.
- Both the IRT and the STI agreed that identical match is required for a mark to be protected in sunrise or provide notice under claims services.

### Summary of Comments

Many critical, open issues remain with the Clearinghouse. It still limits the intellectual property that may be registered in the database to text marks that are (1) nationally registered; (2) court-validated; or (3) protected by statute or treaty. Much greater clarification is needed before the Clearinghouse can serve the objective for which it was intended by the IRT. *News Corporation (21 July 2010). IACC (21 July 2010).*

#### Substantive Review or Evaluation.

IOC is encouraged that “substantive review” of nationally registered trademarks is no longer a prerequisite for inclusion in the Clearinghouse (Clearinghouse secs. 5 & 9). But this will be futile if later rights protection mechanisms (e.g. Sunrise Registration Services and the URS) apply any “substantive review” standard. IOC reiterates that if domain name speculators are concerned about the ease by which generic words can be registered in certain countries, then the domain name speculators should bear the onus of initiating the challenge procedures previously recommended by ICANN. *IOC (21 July 2010).*

The “substantive review” or “substantive examination” language should be changed to “examination on absolute grounds”. This should address the problem of gTLD applicants basing applications/objections on trademark registrations for purely descriptive words obtained in countries that conduct no examination on absolute grounds. *C. Speed (21 July 2010).*

Under sec. 4.1.1, the language provides that the entity would “validate” marks from jurisdictions that do not conduct substantive review. If the disparate treatment of such marks remains in the Clearinghouse implementation scheme then the criteria for this validation should be specified. *IPOA (21 July 2010). AIPLA (21 July 2010).*

The term “substantive examination” should be clarified to specify that “substantive review” refers to examination for “inherent registrability” or “on absolute grounds”. *IPOA (21 July 2010). AIPLA (21 July 2010).*

“Substantive review” needs to be clarified to eliminate confusion as to what types of marks qualify for the Clearinghouse. *AT&T (21 July 2010). INTA Internet Committee (21 July 2010).*

ICANN should create a proper definition of “substantive review” or better still abandon the idea in favor, e.g., of “review on absolute grounds.” It is unfair to expect the operators of the Clearinghouse to decide which marks from which jurisdictions can be included. Discriminating between official trademark registries is not a role for the Clearinghouse operator or an appropriate issue upon which ICANN itself

has any standing to influence. *MARQUES/ECTA (21 July 2010)*. *Microsoft (21 July 2010)*. *AIM (Module 5, 14 July 2010)*.

Absence of a proper definition of “substantive review” means that mark owners in some parts of the world will be discriminated against (including the EU). Any Clearinghouse must be nondiscriminatory and the Clearinghouse operators must not be the arbiter of the validity of trademarks. *Com Laude (21 July 2010)*. *PMI (21 July 2010)*. *BBC (21 July 2010)*

ICANN should clarify what constitutes “substantive review” and what validation processes will be required, e.g., for marks registered in jurisdictions that do not require a “substantive” review. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*. *Hogan Lovells (21 July 2010)*. *IPC (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *SIIA (21 July 2010)*.

“Substantive review” clarification is needed as it pertains to eligibility for Sunrise Services. I.e., whether “substantive review” includes: (1) absolute grounds; (2) relative grounds; or (3) absolute grounds plus an opposition period. Trademarks in many jurisdictions (e.g. from some European national trademark offices) could be excluded from eligibility for Sunrise Services if “substantive review” does not include examination based only upon “absolute grounds.” The trend for trademark examination in several jurisdictions such as Europe is moving away from a relative ground review and towards solely an absolute ground review, leaving relative ground review to oppositions. It would be anomalous if such trademarks were only eligible for Sunrise Services if they have been successfully opposed. *IBM (21 July 2010)*.

The current design appears to turn the Clearinghouse into an arbiter of the validity of trademarks legitimately obtained through systems applied in many jurisdictions. The Clearinghouse must be non-discriminatory to counter possible gaming. (The possibility could be explored of treating registered marks as prima facie valid, e.g., where subject to later challenge.) *WIPO Center (16 June 2010)*.

The Clearinghouse falls short because registries are not required to incorporate their pre-launch RPMs protections for all trademark registrations of national or multinational effect. *COA (21 July 2010)*.

The Clearinghouse should not be biased in a selective recognition of valid trademarks. If the Clearinghouse adopts exclusionary standards, many trademark holders will remain unjustly exposed to fraud and abuse. It is not the role of the Clearinghouse to judge the quality of international trademark regulations, but to enforce them. *IHG (20 July 2010)*. *AIPLA (21 July 2010)*. *Nestle (21 July 2010)*.

#### Identical match limitation.

Limiting use of clearinghouse data to identical matches (and only at launch) would miss many abusive domain name registrations. *WIPO Center (16 June 2010)*. *Verizon (20 July 2010)*. *C. Speed (21 July 2010)*. *PMI (21 July 2010)*. *BBC (21 July 2010)*. *Coca-Cola (21 July 2010)*. *Adobe Systems (21 July 2010)*. *Rosetta Stone (21 July 2010)*. *USCIB (21 July 2010)*. *ABA (22 July 2010)*. *NCTA (Module 3, 21 July 2010)*.

The identical match definition should at least be the same as IRT, should take into account the singular and plural of the Mark, and account for typographical variations (for typosquatting). *BC (26 July 2010)*.

The “identical match” for the Clearinghouse should be expanded slightly to avoid numerous potential instances of typosquatting (e.g. plural forms of domain names containing the mark). *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

Given how cybersquatters and phishers operate, it is imperative that the Clearinghouse be broadened to include domain names which are “confusingly similar” not just identical. *IHG (20 July 2010)*.

The failure of Sunrise or Claims Services to recognize confusing similarity and foreign equivalents ignores rampant typosquatting in the domain name system (see Clearinghouse sec. 8). At a minimum, Claims Services should require registries to report domain names that are confusingly similar to, or a foreign equivalent of, trademarks in the Clearinghouse. If registries utilizing a Claims Service simply must provide notice and a mark holder does not obtain an advantage as it does if the registry offers a Sunrise Registration period, then no advantage is obtained in a Claims Service and “similarly situated applications are treated in the same way” regardless of whether the Claims Service protects against confusingly similar or foreign equivalent domain names. *IOC (21 July 2010)*.

Trademark owners should be permitted to deposit into the Clearinghouse names consisting of exact registered trademarks plus generic terms incorporated into their goods or services. We support the solution set forth by the Commercial and Business Users Minority Position under Annex 4 of the STI Work Team Recommendations. Such procedures have been used successfully with prior gTLD launches such as for the ASIA registry. *IPOA (21 July 2010)*. *AIPLA (21 July 2010)*.

Plural and singular forms of marks should be included in the Clearinghouse either through automatic operation or express request of a trademark owner. A substantial portion of abusive domain name registrations take advantage of either variant plural or singular forms, and the current rules do not address this issue. *AIPLA (21 July 2010)*.

The scope of searches for matching should be determined with input from proposed Clearinghouse operators about what searches could reasonably be conducted. ICANN’s rationale for limiting it to “identical matches” has not been supported. At a minimum, a match should include plurals of and domain names containing the exact trademark. *INTA Internet Committee (21 July 2010)*.

Contrary to the language about punctuation or special character replacement in the definition of identical match in this section, “underscores” are not a valid character for a domain name. *EnCirca (Module 5, 21 July 2010)*.

To maintain operational integrity and keep the processing volume manageable, it should not be expanded to include typographical variations of a mark. ICA questions whether any meaningful standard can be established to define the acceptable limits of such variations. Trademark owners should not be given the ability to assert potential control and have the Clearinghouse fire “warning shots” to potential registrants for the many thousands of possible variations of a single mark—especially as trademark infringement involving such names must arise from actual use and cannot be determined from the domain name alone. *ICA (21 July 2010)*.

The identical match definition (2.3) should be widened to catch “obvious misspellings.” *AIM (Module 5, 14 July 2010)*.

The refusal to extend clearinghouse-based RPMs beyond exact matches, or to incorporate any form of a globally protected marks list, means that the impact on reducing the volume of defensive registrations will likely be negligible. *COA (21 July 2010)*.

Design marks with a slight design element should be included in the “identical match” definition. *IBM (21 July 2010)*

Per comments with recommendations previously submitted by the BC: if the applied-for domain string anywhere contains text of a trademark listed in the Clearinghouse, then a TM notice is given to the applicant per the proposal in the Staff recommendation. If the domain is registered then the trademark owner is notified. Trademark owners would also have the option of triggering notices in the event that the applied-for domain string includes the trademark string altered by typographical errors as determined by an algorithmic tool. The domain applicant must affirmatively respond to the trademark notice either on screen or email and the registrar must maintain written records of such responses for every domain name. The trademark owner must get notice of every registration that occurs. The trademark notice should allow registrant the option of stipulating their intended response. *BC (26 July 2010)*.

Marks included in the Clearinghouse should generally include the text elements of marks consisting of stylized text, or designs plus text, rather than only word marks. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*. *BBC (21 July 2010)*.

ICANN should further define the term “text mark” to avoid misinterpretation. *IBM (21 July 2010)*.

Text marks should be defined to include the text elements of design marks where the text in its entirety has not been disclaimed. *IPOA (21 July 2010)*. *AIPLA (21 July 2010)*.

Best practice as used in recent RPMs should be explored with regard to the Clearinghouse. For example, the Clearinghouse scope should be widened to include device marks and plurals. *Com Laude (21 July 2010)*.

ICANN must clarify the definition of a “text mark” included in the Clearinghouse—it should include protection for stylized letters and text with design components. *CADNA (21 July 2010)*. *AT&T (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *News Corporation (21 July 2010)*. *BC (26 July 2010)*.

#### Marks protected by treaty.

ICANN should clarify to which marks “protected by treaty” it refers (page 2). *K. Komaitis (21 July 2010)*. *R. Dammak (22 July 2010)*.

Inclusion in the Clearinghouse of “Any text marks protected by a statute or treaty” should not be limited to those “in effect on or before 26 June 2008.” That limitation discriminates against future Olympic Games in new host cities that will receive statutory protection. *IOC (21 July 2010)*.

The punctuation used in section 2 for the two bullets labeled A and B is unclear. Does the phrase “and that was in effect on or before 26 June 2008” apply only to (iii), as it currently reads? That was not the intent. *EnCirca (Module 5, 21 July 2010)*

Reserved marks list for Olympic trademarks. If and when new gTLDs are introduced, the Olympic trademarks should be put on a list of reserved marks—just as ICANN currently reserves its own trademarks (see Module 2.2.1.2). ICANN is subject to and must act in a manner consistent with the U.S. Olympic and Amateur Sports Act and the Anti-Cybersquatting Consumer Protection Act in deciding whether or not to offer for sale any new gTLDs containing Olympic trademarks. *IOC (21 July 2010)*.

Classes of trademarks. Missing from the Clearinghouse is a provision that allows trademarks to be put in classes mirroring the International Classes of Goods and Services. This is crucial as it will compensate for similar and identical trademarks that under traditional law co-exist harmoniously. This is especially important for small and medium sized businesses and for trademark owners in developing countries. *K. Komaitis (21 July 2010). R. Dammak (22 July 2010).*

#### Dot-Trademark.

Exclusion of registrations that include top level domains as part of the trademark or service mark appears to be discriminating against valid trademark registrations and fails to take into account contemporary business trends. ICANN needs to provide the rationale why such trademarks cannot be included in the Clearinghouse. *K. Komaitis (21 July 2010). R. Dammak (22 July 2010). BBC (21 July 2010).*

The AGB should specifically prohibit any advantage to holders of trademarks for a top-level domain (i.e., a trademark on “dot TLD”). While dot-TLD trademarks are not granted by the U.S. Patent and Trademark office, they are available in other jurisdictions to the detriment of all applicants. ICANN should provide assurances that not only will such TLD-specific trademarks be denied any priority in an application but that they will not be considered a valid ground for objection. *Minds + Machines (21 July 2010). NIC Mexico (21 July 2010). Domain Dimensions (22 July 2010).*

It is important that a “dot TLD” not put an applicant into any unjustified advantage and not be a ground for a later objection. In the case of a geographical application, this would compromise the position of a relevant government that wants to support the initiative that works in the best interest for the geographical area. *Bayern Connect (21 July 2010).*

ICANN offers no protection against the gaming of TLD applicants who have been publicly announced initiatives and have done all the leg work and communications outreach campaigns. Given this, TLD trademarks for publicly announced TLDs with years of exposure, lobbying, participation and business activities are warranted and in the public interest if used legitimately. While trademarks alone should not be the sole determinant of earning a TLD, it is the only means we have of protection since ICANN has not incorporated any mechanisms to prevent TLD applicant abuse, gaming and unfair piggybacking. *.MUSIC (21 July 2010).*

Use of Clearinghouse in URS and UDRP proceedings. The Clearinghouse has a potential to provide authentication of rights for both complainants and respondents in the case of any ICANN dispute proceeding. The Clearinghouse should incorporate a recognition of its use for this purpose in any ICANN dispute proceeding. *AIPLA (21 July 2010).*

## **Analysis of Comments**

The Clearinghouse is intended to be a repository for trademarks. In keeping with that aim, specific criteria for entry and management had to be articulated. The aim was to create a list of criteria that could be verified in a cost effective, consistent and efficient manner while, at the same time, prevent gaming of the system since it is intended to form as a basis for rights protection mechanisms. When the provider(s) are selected further detail will be provided.

Criteria for entry, and later validation, has been the subject of widespread comment and review. Authentication will ensure that all marks submitted for inclusion in the Clearinghouse are in fact nationally or multi-nationally registered. Validation will be required if a trademark holder wants to be ensured protection in a sunrise service - that mark must be either: validated for use at registration or by a court, protected by statute or treaty (subject to some date restrictions), or (if none of these above), validated by the Clearinghouse provider.

To be an effective RPM, the Clearinghouse must operate efficiently. Out-of-date or inaccurate data in the Clearinghouse will harm applicants, trademark holders, and others. To that end, it was agreed that as an additional safeguard to ensure reliable and accurate data, mark holders will verify the accuracy of their information and agree to keep it current. The mere fact that a certified copy of a registration exists does not mean that the named registrant is the mark holder or that the information is current and accurate. A sworn declaration in many cases is less time consuming and much less costly than a certified copy of a registration.

Numerous comments, as seen above, seek understanding and clarification of “substantive evaluation” as it is set forth in the guidebook. In order to make clear what was required for substantive evaluation, the Board adopted the following resolution on 25 September 2010 (see <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6>:

Substantive Evaluation: The Applicant Guidebook will provide a clear description of "substantive evaluation" at registration, and retain the requirement for at least substantive review of marks to warrant protection under sunrise services and utilization of the URS, both of which provide a specific benefit to trademark holders. Specifically, evaluation, whether at registration or by a validation service provider, is required on absolute grounds AND use of the mark. Substantive evaluation upon trademark registration has essentially three requirements: (i) evaluation on absolute grounds - to ensure that the applied for mark can in fact serve as a trademark; (ii) evaluation on relative grounds - to determine if previously filed marks preclude the registration; and (iii) evaluation of use - to ensure that the applied for mark is in current use. Substantive review by Trademark Clearinghouse validation service provider shall require: (i) evaluation on absolute grounds; and (ii) evaluation of use.

The Applicant Guidebook language will be revised to reflect the above clarifications.

A variety of comments suggest that limiting protections to “identical match” under trademark claims or sunrise services is too restrictive. This suggestion has been the topic of much discussion. Both the IRT and the STI adopted this same limitation to identical match. Accordingly, this definition and scope will not be revised.

Clarifying questions have been raised with respect protection for names or marks that are protected by treaty or statute. To address each of the questions above:

- Inclusion into the Clearinghouse does not require protection under statute or treaty.
- The reference to effective date is the effective date of the statute or treaty, not the date of the mark registration (i.e., the punctuation in the AGB paper is correct).
- Only marks under existing treaties are protected. While some future protections might be excluded, the limitation was developed in order to prevent potential abuse.

Two commenters suggest that classification of goods and services must be addressed. The Clearinghouse allows for entry regardless of international classification (“IC”) of goods and services. The description of the goods/services drives whether there is a possibility of confusion, not the class in which the good or service might be assigned. Moreover, not every jurisdiction follows the international classification system so to require it would result in unfair or inconsistent treatment for those registrations which issue from jurisdictions that do not use the IC system.

In response to comment for clarification about national effect, the language in Section 9 should be revised to be of national effect, not multinational effect. (The reference to the word “applications” refers to gTLD applications, not Clearinghouse applications.)

Whether a “dot-TLD” mark (e.g., “ICANN.ORG” or “.ICANN”) should be included in the Clearinghouse has raised differing views. Some do not understand why they should be excluded, while others support the exclusion. The Clearinghouse is designed as a repository for trademarks. To fulfill the objectives of the IRT and the STI, it has been decided that those marks that actually function as trademarks, i.e., indicate source, are those that will be eligible for inclusion. Many safeguards have been established to prevent abuse and to ensure neutral application of validation standards, including objectively verifiable data that the mark does serve a legitimate trademark purpose. It has been successfully argued that TLDs standing alone do not serve the trademark function of source identification. Instead of telling consumers “what” a product is or who makes it, they tell consumers where to get it. Because the TLD does not indicate source, and because allowing marks in the Clearinghouse that include a TLD will increase the likelihood of abuse and gaming substantially, on balance they are excluded. This will obviate the need for registration of defensive trademarks.

In answer to a query about potential uses of the Clearinghouse: the Clearinghouse was designed to serve the Sunrise and IP Claims services specifically. It may or may not also support the URS depending upon the results of the tender of services for the URS.

## Clearinghouse Provider Services

### Key Points

- The Clearinghouse can provide ancillary services but cannot use its position to a competitive advantage.
- Optional services may include post-launch registry services such as IP Watch.
- The standard for “match” to identify Clearinghouse “hits” was developed by the IRT.

### Summary of Comments

#### Pre-launch versus post-launch sunrise and claims services.

Both of these RPMs are pre-launch and they need to be post-launch to have any real value. Limiting the Claims Service to exact matches is clearly insufficient as most cybersquatting is not an exact match. There is no explanation for the different recognition accorded trademark rights for Sunrise Services and Trademark Claims Services (regarding substantive review/examination). *Arla Foods (6 July 2010)*. *LEGO (6 July 2010)*. *VKR Holding (13 July 2010)*. *Nilfisk 913 July 2010)*. *LEO Pharma (14 July 2010)*. *Vestas (16 July 2010)*. *Coloplast (19 July 2010)*. *PMI (21 July 2010)*. *BBC (21 July 2010)*. *DuPont (21 July 2010)*.

Additional protection for trademarks in the Clearinghouse should be extended by requiring mandatory post-launch notification procedures. A substantial portion of cybersquatting can be expected to occur well after a registry has launched. *AIPLA (21 July 2010)*. *Grainger (Module 5, 19 July 2010)*.

The Trademark Claims service should not be limited to pre-launch but should be required for post-launch registration applications, despite whether the registry uses Trademark Claims or Sunrise services at the pre-launch stage. *IPOA (21 July 2010)*. *AIPLA (21 July 2010)*.

Making the clearinghouse-based mechanisms such as trademark claims services wholly voluntary for registries in the post-launch environment kicks the bulk of the abusive registration problem into a later time frame. In many cases the RPMs will be wholly inadequate without these post-launch protections. *COA (21 July 2010)*.

In their present form neither the Claims nor Sunrise services reduces the number of domains being registered in bad faith. To be effective, the services should be mandatory both pre-launch and post-launch. *C. Speed (21 July 2010)*. *BC (26 July 2010)*.

Will not solve cybersquatting. No one should assume that the new gTLD registry operator’s option in the current proposal to have the Sunrise or Trademark Claims Services, while a positive development, will in fact solve the abuse problems given the limitations of these services in deterring cybersquatting and other abuses. *Coca-Cola (21 July 2010)*.

The requirement for registries for claims and sunrise should be standardized so that they are the same. *C. Speed (21 July 2010)*. *BC (26 July 2010)*. *AIM (Module 5, 14 July 2010)*.

Exclusive use of Clearinghouse. It should be made clear that registries must use the Clearinghouse exclusively for the submission of Sunrise or IP Claims submissions. *EnCirca (Module 5, 21 July 2010)*.

The Trademark Claims and Sunrise Services are not feasible for or applicable to all applicants. ICANN should not force a policy that is inapplicable to some entities. E.g. Chinese governmental organizations are prohibited from practicing commercial-related activities. CONAC, the registry for domain names of Chinese governmental organizations and public interest organizations, must pre-check all the domain names before registration. There is no way for a single brand name to be registered as a domain name in such categories, so that it is of no value to utilize Sunrise or Trademark Claims in these circumstances. It would force CONAC to bear the cost of using the Clearinghouse also. *CONAC (22 July 2010).*

Option for “Sunrise Period” or “Claims Service”. A Sunrise is likely unnecessary for a .brand registry operator planning to use its gTLD as a private registry, so it should have the option to implement only a Claims Service rights protection mechanism. *IBM (21 July 2010).*

Notice to trademark owner.

We disagree with the advantage given to prospective registrants by delaying notice to the trademark owner under the Trademark Claims service until after the registration is effectuated. The objective should be to prevent registrations by would-be cybersquatters and innocent prospective registrants to the extent possible before after-the-fact enforcement efforts by trademark owners are required. *IPOA (21 July 2010). AIPLA (21 July 2010).*

The Trademark Claims service should require a waiting period before registration is effectuated following notice to both the prospective registrant and the trademark owner. The notice to the prospective registrant should include the following: “A copy of this Trademark Notice has been sent to the Trademark Owner. If the Trademark Owner deems that granting your requested domain name conflicts with existing trademark rights, it may initiate an ICANN dispute resolution proceeding and/or court action against you.” *IPOA (21 July 2010). AIPLA (21 July 2010).*

The pre-launch proposals are unfairly balanced in favor of registrants. Trademark owners should be able to object prior to registration of a domain name. This could save time and money, instead of forcing parties into the post-grant URS. *BBC (21 July 2010)*

Sunrise fees.

Most registries will continue the established practice of offering pre-launch “sunrise processes” which only work to extract additional fees for defensive registrations most brand owners have no affirmative reason to want. There is no provision to limit sunrise fees; ICANN recommends that they operate “based on market needs” which means the highest fee the market can extract from the trademark holder. *Verizon (20 July 2010).*

CADNA noted the addition of a mandatory sunrise period, which could be beneficial to the trademark community as long as the domain names are not offered for inflated prices. Domains should not be held “hostage” by requiring trademark owners to pay more than anyone else would for their own trademarks. *CADNA (21 July 2010).*

Not-for-profits are concerned that most registries will pick the Sunrise service in order to create a revenue stream for registries. Not-for-profits with limited resources for registering numerous domains may not be able to take part in all or any of these Sunrise services. ICANN should consider suggesting or requiring alternative domain name pricing for not-for-profits. *AAMC (21 July 2010). Red Cross (21 July 2010). NPOC-FC (21 July 2010).*

### Ancillary services.

The proposal allowing the Clearinghouse operator to provide ancillary services is contrary to what the STI recommended. The STI made clear that any ancillary services should be directly related only to trademarks (common law marks, etc.). It was decided that all other intellectual property rights fall outside the scope of the Clearinghouse and therefore should not be included. *K. Komaitis (21 July 2010). R. Dammak (22 July 2010).*

INTA Internet Committee applauds ICANN's recognition that the Clearinghouse operator may offer certain ancillary services and maintain a separate database containing a "panoply" of rights, such as "unregistered trademarks, company names, trading names, designations of origin, family and personal names, etc." These services would be for the purpose of allowing trademark owners to better police their marks. Offering of such services should be mandatory in the evaluation and grant of certain TLDs (e.g. High Security Zone). *INTA Internet Committee (21 July 2010).*

ICANN must reconsider the provision allowing ancillary services to be provided by the Clearinghouse operator on a non-exclusive basis. These services could include release of lists of generic words or common typographical variations of various trademarks—exactly the type of information that facilitates and enables cybersquatting and typosquatting. This data should not be available on a non-exclusive basis; it should be guarded for exclusive use by relevant trademark owners. Third parties should not be able to profit from public confusion by warehousing variant spelling and combination domain names that derive value precisely because of the association with the trademark owner. *CADNA (21 July 2010). INTA Internet Committee (21 July 2010)*

## Analysis of Comments

Comments question that:

- some pre-launch services, such as IP Claims, should also be required post-launch,
- identical match is not sufficient to protect marks, and
- there is no explanation for distinction between marks afforded protection in Sunrise versus those afforded protection in claims services.

With respect to suggestion that pre-launch claims services be extended to post-launch, the IRT stated the following: "The IRT considered whether the IP Claims Service should also extend to the post-launch period. The IRT concluded that it was unnecessary to extend the IP Claims Service post-launch because of the protections afforded by the URS that the IRT also recommends herein." (See <http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>, footnote 6.) Such services will not be mandatorily extended to a post-launch environment. Although post-launch services are certainly something that the Clearinghouse service provider could offer as an ancillary service. Discussion about why exact matches are required for protection is set forth above. As to why there is a difference between marks afforded protection in sunrise versus claims, it has previously been made clear that in Sunrise there is an affirmative advantage, while a claims service is just notification. Other post-launch rights protection mechanisms are available including the URS procedure, the UDRP and the PDDRP as well as any remedy available in a court of competent jurisdiction.

Comments suggest that Sunrise or claims be required. This is the case. As set forth in the AGBv4, all new gTLD registries will be required to use the Clearinghouse to support its pre-launch rights protection mechanisms. These must, at a minimum, consist of either a Sunrise or Trademark Claims Service.

Some have suggested that notice to trademark holders should be provided before someone is allowed to register a name that is in the Clearinghouse, thereby allowing for a pre-registration dispute. As set out by the IRT, the goal of the service is not to be a blocking mechanism, as there are often numerous legitimate reasons for many different people to use the same word or phrase that may be trademarked. In addition, the potential registrant must indicate that it has a legitimate interest in the applied for name.

The Fee structure for Clearinghouse is that fees will be matched to transactions. Mark holders will pay for registrations of a name and registries will pay for administration of a Sunrise or IP Claims service. Matching the transaction to the fee will enable most efficient, economical operation.

Allowing the Trademark Clearinghouse Service Provider to offer ancillary services is something that the STI discussed at length. The Clearinghouse proposal has adopted the intent of the STI to ensure that the Trademark Clearinghouse Service Provider does not obtain any competitive advantage over competitors for ancillary services, such as post-launch claims services, or databases making other information available.

## UNIFORM RAPID SUSPENSION SYSTEM (URS)

### General

### Key Points

- The URS is meant to supplement other rights protection mechanisms, such as the UDRP, and is purposefully drafted to target a very narrow class of clear-cut cases of abuse.
- Further, feedback on the effectiveness of the URS once it is implemented is encouraged so that it can be evaluated in the future.

### Summary of Comments

#### Lack of Support for URS as drafted.

The URS is unlikely to achieve its full potential because it will in many cases be hardly faster than the UDRP and with weaker remedies, without adequate protections against abusive registrants, such as a loser-pays system for cases brought against high-volume registrants. *COA (21 July 2010)*. *Arla Foods (6 July 2010)*. *LEGO (6 July 2010)*. *Nilfisk (13 July 2010)*. *LEO Pharma (14 July 2010)*. *Vestas (16 July 2010)*. *Coloplast (19 July 2010)*. *PMI (21 July 2010)*. *DuPont (21 July 2010)*. *AT&T (21 July 2010)*

The URS is overburdened for just a transfer and the burden consists of a combination of factors including: panel appointment even in default cases; panel examination of possible defenses in default cases; appeal possibility during two years from default; a higher burden of proof; uncertainty as to results (e.g., possible gaming and “revolving door” monitoring); use of the conjunctive bad faith registration and use; limiting marks forming the basis for a URS claim to either so-called substantive

review or clearinghouse validated marks (with cost and time implications); apparent translation requirements; a seeming option for re-filing; the possibility for de novo appeals; and significant timelines. *WIPO Center (16 June 2010)*. We support WIPO's call for the URS to be re-engineered. *JONAS (11 July 2010)*.

The BC has urged ICANN to undertake a feasibility study before making any decision to address whether the URS will be implementable as a sustainable business model and if it would be more sustainable if transfer were allowed (i.e. how many more complainants would use it). *BC (26 July 2010)*.

The URS is not "rapid" and given its required procedural elements it is not inexpensive. Since the ultimate remedy of the URS yields only suspension, it is likely that a majority of brand holders will be forced to buy a domain name in each gTLD corresponding to their trademarks or will be filing requisite UDRPs as opposed to relying on the equally time consuming and costly URS process. *MarkMonitor (19 July 2010)*. *Comerica (21 July 2010)*; *Carlson (21 July 2010)*. *C. Speed (21 July 2010)*. *Hogan Lovells (21 July 2010)*. *BBC (21 July 2010)*. *HSBC (21 July 2010)*. *IPC (21 July 2010)*. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*. *Adobe Systems (21 July 2010)*. *IACC (21 July 2010)*. *Sunkist (21 July 2010)*. *ABA (22 July 2010)*. *Solvay (22 July 2010)*.

Given the intent underlying the URS, it is imperative that the URS not be crippled by unnecessary, burdensome regulations, high expenses and limited remedies. *IHG (20 July 2010)*. *CADNA (21 July 2010)*. *M. Jaeger (22 July 2010)*

As currently structured the URS screams uncertainty for trademark owners and they will rationally choose the certainty and full remedies afforded by the UDRP. *Verizon (20 July 2010)*. *IPOA (21 July 2010)*. *Rosetta Stone (21 July 2010)*. *AIPLA (21 July 2010)*. *NCTA (Module 3, 21 July 2010)*.

All the changes and alterations have turned the URS into a weaker version of the UDRP (cheaper but no speedier and a weak means of redress—i.e. no transfer of the domain to the complainant). *C. Speed (21 July 2010)*. *AT&T (21 July 2010)*.

The URS has been watered down from the IRT version and is not effective: it is not rapid, it has become complex, burdensome and unworkable. ICANN should return to the version proposed by the IRT and improve it by making it faster (21 days at most); simpler (pro forma complaint with copy of Whois and website copy, not a 5,000 word document); practical (only for case with no real contestable issue); efficient (experienced examiners); and reasonable (remove the "questionable fact" defense and dismissal if examiner thinks defense would have been possible). The concept of "loser pays" should be looked at again and the URS should be open to all trademark owners without discrimination provided their registration is current. *MARQUES/ECTA (21 July 2010)*.

The URS has been seriously diluted; ICANN should revert to the URS as proposed by the IRT. *Com Laude (21 July 2010)*. *News Corporation (21 July 2010)*.

#### Support for URS as drafted.

I support the URS as detailed in the DAGv4. Critics who say it will be longer than the UDRP do not make a valid comparison—they compare the longest possible URS action to the shortest possible UDRP action. Similarly it seems very likely that the average URS cost will be substantially less than the average UDRP cost. *R. Tindal (21 July 2010)*. *Domain Dimensions (22 July 2010)*. *Demand Media (22 July 2010)*.

The changes have addressed many concerns of ICA members regarding due process, adequate notice and meaningful appeals. *ICA (21 July 2010)*.

#### Fees.

Fees relating to the URS should be determined as soon as possible so that not-for-profit organizations can budget in advance for the new gTLD process. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

ICANN should firmly commit to the URS being much less expensive than the UDRP—i.e., commit to a “not to exceed” fee (e.g. a URS complaint shall not exceed \$400) in final Guidebook. This would give trademark holders much more comfort. *Domain Dimensions (22 July 2010)*.

Paragraph 2--Fees edit. The phrase “it is thought, more often than not, that no response to complaints will be submitted” should be deleted. This sentence makes it appear that the URS is instructing its examiners to view URS disputes under a presumption of guilt for respondents, which is unfair, and against due process. *K. Komaitis (21 July 2010)*. *R. Dammak (22 July 2010)*.

All URS providers should be put under contract. The STI-RT reached unanimous consensus on this point. This will promote uniformity. *ICA (21 July 2010)*.

Qualifications of examiners. Examiners need only a legal background. How is this to be defined? *Hogan Lovells (21 July 2010)*.

Rotation of examiners. There might be an issue with the rotation of examiners given the variety of jurisdictions and languages. *Hogan Lovells (21 July 2010)*.

## **Analysis of Comments**

Some comments suggest that the URS as currently drafted will be effective. Others suggest it will not be effective, that the burden of proof is too high, that its remedies are not sufficient, that it is not fast enough and that it will lead to uncertainty.

The URS was devised by the IRT, modified by the STI and influenced and revised to take into account significant public comment. This procedure is not intended to be a replacement for any other additional methods of redress that a trademark holder may have for infringement. Rather, the URS is meant to supplement those other methods, such as the UDRP, and is purposefully drafted to target a very narrow class of clear-cut cases of abuse.

Indeed the URS is not intended to provide uncertainty. Different procedures in different jurisdictions provide different types of relief. If immediate relief for clear-cut cases of abuse is the goal the URS may be the right alternative, if transfer of a domain is sought the UDRP might be the right alternative, if damages are sought a court might be the right alternative. The objective of the trademark holder will ultimately drive where an action is brought. The URS provides an additional remedy, not a replacement.

Further, feedback on the effectiveness of the URS once it is implemented is encouraged so that it can be evaluated in the future. As a part of its introduction, as set forth in Section 14 of the URS, a review of the procedure will be initiated one year after the first Determination is issued. It is expected that the

evaluation will cover usage and statistics and will be posted for public comment to gauge the overall effectiveness.

Each of the specific comments as to the deficiency of the URS is addressed in detail in the sections below.

The amount of the fee for a URS has been the subject of comments. The precise amount is still under consideration and will be set by the provider with the goal of being as cost effective as possible. A suggested revision to omit an editorial comment regarding why a loser pays provision has not been adopted for the URS will be adopted.

While one comments suggests that all URS providers should be put under contract, it should be clear that all providers will be required to comply with standards and procedures, regardless of the mechanism under which they are engaged to provide URS services.

There has been one comment on examiners legal background and another on the rotation of examiners. Legal background of examiners will be determined based upon legal training or training in dispute resolution processes. With respect to the rotation and examiners in light of jurisdiction and language variations, this is something that the URS providers will be required to consider in rotating examiners.

## Complaints and Responses

### Key Points

- The trademark holder will have the burden of proof since it is the person or entity that seeks relief.
- Given other safeguards that are in place, the time to respond to a complaint has been changed from 20 days back to 14 days, with an opportunity for an extension of seven additional days.

### Summary of Comments

#### Trademark owner burdens.

The URS is flawed because the burden is on the trademark owner to prove that the registrant has no legitimate interest in the domain name. *Arla Foods (6 July 2010)*. *LEGO (6 July 2010)*. *VKR Holding (13 July 2010)*. *Nilfisk (13 July 2010)*. *LEO Pharma (14 July 2010)*. *Vestas (16 July 2010)*. *Coloplast (19 July 2010)*. *PMI (21 July 2010)*. *Adobe Systems (21 July 2010)*.

The burden of proof should not fall on the trademark holder. The complainant's case should be considered legitimate by virtue of evidence of a valid trademark and in such instances the registrant should be responsible for proving its "good faith". *IHG (20 July)*

#### Response filing fee.

The URS lacks a fee for filing a response to a complaint. *Arla Foods (6 July 2010)*. *LEGO (6 July 2010)*. *VKR Holding (13 July 2010)*. *Nilfisk (13 July 2010)*. *LEO Pharma (14 July 2010)*. *Vestas (16 July 2010)*. *Coloplast (19 July 2010)*.

What is the reasoning behind allowing the respondent to be in default for up to 30 days following a determination before they would be charged any fee with their response? The respondent should be obliged to file a fee in all cases where it files a response to provide some balance between the parties. Even if this is not the case there should be a fee when a response is filed late. *BBC (21 July 2010)*. *NCTA (Module 3, 21 July 2010)*.

A fee should be charged for any response filed after a decision has been entered. No 30-day "grace" period should be allowed as currently proposed. *Grainger (Module 5, 19 July 2010)*.

Notification to registrar (6.2 & 6.5): Is essential that a copy of the notification must also be sent to the domain's sponsoring Registrar by the URS Provider. The Registrar should always be informed of actions that change the domain's status, because the Registrar is the party with the service and contractual relationship with the Registrant. Registry Operators are not in a position to communicate with Registrants. *RySG (21 July 2010)*.

Simple forms. ICANN should develop simple forms for the complaint, answer and decision, with a requirement that complaints that are too lengthy or complex to make use of such a form instead be required to be filed as UDRP complaints or that the complainant seek other remedies. This would reduce burdens and likely expedite the process. *AAMC (21 July 2010)*. *CADNA (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

### Word Limitations.

The 5,000-word limit for the complaint and response is too high for what should be a clear cut case and will increase preparation costs. *Hogan Lovells (21 July 2010). CADNA (21 July 2010).*

Any word limitation should be much smaller, such as 250 or 500 words. AT&T suggests a return to the initial form complaint and response approaches. *AT&T (21 July 2010).*

### Timeframes.

The registrant should have 14 days to file an answer. *AAMC (21 July 2010). INTA Internet Committee (21 July 2010). Red Cross (21 July 2010). NPOC-FC (21 July 2010). Microsoft (21 July 2010). NCTA (Module 3, 21 July 2010).*

The examiner should be required to render a decision within 7 business days, with a goal of providing it within 3 days as a best practice. *AAMC (21 July 2010). NPOC-FC (21 July 2010). Red Cross (21 July 2010).*

At a minimum, a decision should be rendered within 3 business days in cases of default. *INTA Internet Committee (21 July 2010).*

The response and decision-making timeframes are too long. The process needs to be streamlined. *CADNA (21 July 2010). AT&T (21 July 2010). AIPLA (21 July 2010).*

The URS fails to provide an expedited remedy; the URS timeline proposed by the IRT has been so extended in the current draft proposal that the timing for an initial decision may often be equal to or longer than under the UDRP. *INTA Internet Committee (21 July 2010). Red Cross (21 July 2010). SIIA (21 July 2010). USCIB (21 July 2010). Microsoft (21 July 2010). EuroDNS (22 July 2010). BC (26 July 2010). AIM (Module 5, 14 July 2010). Nestle (21 July 2010).*

URS needs to be refocused to immediately take down a website. The role of the URS provider is to act as a rapid check on the bona fides of the complainant and to be a conduit between the complainant and the registry. The URS should operate with dramatically reduced timelines, which will stop the criminal act being conducted and cover probably 99% of URS cases:

- Complaint starts
- 24 hours—URS provider validates bona fides of complaint and notifies registry;
- 24 hours—Registry notifies Registrant that it will act to lock and then prevent resolution of the web site in 24 hours.

If the registrant reacts (defined as confirmation of registrant data and a statement that the complaint is or is not valid) within 24 hours the presumption of bad faith should be reversed and the web site should immediately be allowed to resolve again. If the registrant reacts as defined, the Registry notifies the URS provider who notifies the complainant within 24 hours and the URS finishes. At that point the complainant should then be invited to instead launch a de novo UDRP. *AIM (Module 5, 14 July 2010).*

### Revisions needed.

Section 1.2(f) seems to need revision, as it is inconsistent with the examination standards in Section 8.1(a). *INTA Internet Committee (21 July 2010).*

Paragraph 1.2(f) should be rewritten to place the word “and” in front of (ii), deleting the word “and” after (ii) in the original, and so that “;and” appears before (iii), deleting “and;” before the (iii) in the original. *K. Komaitis (21 July 2010). R. Dammak (22 July 2010).*

This edit does not change the content, seems to make sense.

Split Paragraph 4.3. For purposes of clarity paragraph 4.3 should be split into two sections:

- 4.3—“All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The complaint and accompanying exhibits, if any, shall be served electronically.”
- 4.4—“The URS provider shall also notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.”

*K. Komaitis (21 July 2010). R. Dammak (22 July 2010)*

## Analysis of Comments

Who has the burden of proof and what the standard of proof should be have been the subject of comments. The trademark holder will have the burden of proof since it is the person that seeks relief. To hold any other way would afford the trademark holder a presumption it is not entitled to hold. All use of a trademark is not unlawful or infringing use, as such, the mere ownership of a mark by “A” and use of a similar mark by “B” does not mean that A should prevail.

Whether a respondent should have to pay a fee and at what point in time has been the subject of comments. A loser pays system was rejected by the IRT and STI but is still being discussed. Currently, the respondent needn't pay a filing fee for the action to commence. This is because in most cases the registrant abandons the registered name and does not reply or pay. In other cases, the respondent may respond but not pay. Therefore, waiting for a reply and fee before proceeding would delay righting the wrong while not garnering any extra fees.

Therefore, it was decided there would be no filing fee unless the registrant decides to respond after being in default for a prolonged period of time. The ability to respond after default provides legitimate registrants the right to regain the use of a legitimate domain name. Thus, default responses will continue to be allowed under the URS Proposal.

Some commenters suggest use of “form complaints” and answers, and others suggest a limitation on the submission. While forms can facilitate filings in certain situations, given the fact-intensive nature of the bad faith standard, a form complaint would not be appropriate. In a similar vein, the 5000-word limit was arrived at by balancing the need for the RPM to be rapid against the need of the complainant to be able to plead and prove its case with a clear and convincing standard of review. There is no requirement that a complainant use all 5,000 words.

Many think that the time frame to respond is too long. ICANN agrees. The Board has stated as follows: “URS timing: In response to public comment, change the time to respond to a complaint from 20 days to 14 days, with one opportunity for an extension of seven days if there is a good faith basis for such an extension.” (See <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6>.) The URS Proposal will be revised to reflect this change.

There are other protections available for registrants in the event they cannot respond within 14 days. First, a seven-day extension can be requested. Second, there are opportunities for filing after default and for appeal. It is thought that there will be very few legitimate cases where the registrant will not be able to respond within the prescribed period. For those instances, there are the safeguards of default

filing and appeal. On the other hand, increasing the period to reply from 14 to 20 days means that every harmful registration can be misused for an additional period.

While some have suggested that a URS complainant should be referred to UDRP under certain scenarios, the UDRP and the URS are separate procedures, tying rights to initiate one to the result of another is therefore inappropriate.

Comments relating to language revisions are appreciated, will be considered and made where appropriate.

## Eligibility and Standards

### Key Points

- The URS is meant to provide a quick process in the most clear-cut cases of abuse, thus a clear and convincing burden of proof is appropriate.
- Standing is not limited to certain jurisdictions; standing is afforded to those holding trademarks registered in jurisdictions that conduct substantive review or that are otherwise validated in certain ways.

### Summary of Comments

#### Eligibility requirements.

By requiring that complainants' trademarks be registered in jurisdictions requiring "substantive review", ICANN is making the eligibility requirements for the URS unreasonably high. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

There is no reason why the URS should be available only for certain marks that were registered in countries with substantive review. A procedure for rapid take down of a clearly abusive site is needed regardless of where the mark at issue was registered. Remedies can be put in place (and indeed are in place) against abusive use of the URS proceeding. *Coca-Cola (21 July 2010)*.

The URS, now much weaker than what the IRT report proposed, is apparently only available to owners of trademarks registered in countries conducting a so-called substantive review (para. 1.2(f)), so that all CTMs and most national European trademarks are excluded. *Arla Foods (6 July 2010)*. *LEGO (6 July 2010)*. *VKR Holding (13 July 2010)*. *Nilfisk (13 July 2010)*. *LEO Pharma (14 July 2010)*. *Vestas (16 July 2010)*. *Coloplast (19 July 2010)*. *PMI (21 July 2010)*. *BBC (21 July 2010)*. *Red Cross (21 July 2010)*.

#### Clear and convincing standard.

It will be difficult for many trademark owners to meet and will be easily gamed by defendants to thwart a URS finding. This standard is not only higher than the UDRP but higher than that required in most civil actions. *Verizon (20 July 2010)*. *Hogan Lovells (21 July 2010)*. *News Corporation (21 July 2010)*. *Rosetta Stone (21 July 2010)*. *BC (26 July 2010)*.

A clear and convincing standard is appropriate. *Domain Dimensions (22 July 2010)*. *ICA (21 July 2010)*.

The URS clear and convincing standard is higher than the UDRP; mark owners will continue to use the UDRP as they have in the past with success. The statement that a URS complaint will only be granted in favor of complainant if there is no genuine issue of material fact seems appropriate. *IPOA (21 July 2010)*. *AIPLA (21 July 2010)*.

Dismissal threshold for complaints is far too low. ICANN permits a URS complaint to be dismissed by an examiner based on a vague and exceedingly low threshold—i.e. if "evidence was presented" to indicate a domain name is non-infringing or a "defense would have been possible" to show it is non-infringing. *Verizon (20 July 2010)*. *Hogan Lovells (21 July 2010)*. *IPOA (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Microsoft (21 July 2010)*.

### Bad faith criteria.

To be truly rapid, the URS should use a conjunctive “OR” standard of bad faith. *IOC (21 July 2010).*

Criteria (iii) in paragraph 1.2 (g) should refer to the registrant having registered the name primarily for the purpose of disrupting the business of another, rather than of a competitor. There may be many reasons why someone might register a domain name in order to disrupt the business of a third party that is not a commercial competitor. *BBC (21 July 2010)*

The sale of traffic (5b) should be presumed to be bad faith, not merely a factor for consideration. The Registrant should bear the burden to prove that the sale of traffic is not bad faith, once it has been pled in the Complaint. *IPOA (21 July 2010). AIPLA (21 July 2010).*

“Pattern”. If the registrant exhibits a pattern of abusive registrations, it should not be a point in its favor that this particular registration does not seem to share the same abusive characteristics as those in the pattern (5.8(d)). *AIPLA (21 July 2010).*

## **Analysis of Comments**

Comments suggest that eligibility requirements for utilizing the URS are too high and limited to certain jurisdictions. The IRT developed the URS in order to provide a quick avenue for the most clear-cut cases of abuse. In order to provide such a process, some limitations on standing to file a complaint pursuant to the URS are necessary. Nevertheless, standing is not limited to those holding trademarks registered in jurisdictions that conduct substantive review. There will be a provider to validate use of marks if such validation was not conducted in the jurisdiction of the trademark registration, or the mark is not otherwise protected by statute or treaty. Such limitations are placed on the marks eligible for URS consideration in order to limit gaming of the system by those who simply register marks for no reason other than to obtain a domain name.

Some think a clear and convincing standard is appropriate while others do not. Further, some have pointed out that this is higher than the UDRP standards, and thus complainants will simply bypass the URS for the UDRP. Others suggest that the dismissal threshold for URS complaints is too low. It is true that a clear and convincing standard is higher than the UDRP; that is the intent. In addition, the threshold for dismissal of complaints is intended to be low. As noted above, the URS is meant to provide a quick process in the most clear-cut cases of abuse. Thus, a higher standard is appropriate. Further, as the IRT stated: “If there is a contestable issue, the matter is not appropriate for decision under the URS and the Complainant should pursue a decision in a different forum.” (See page 34 of IRT Final Report at: <http://www.icann.org/en/topics/new-gTlds/irt-final-report-trademark-protection-29may09-en.pdf>).

Therefore, neither the clear and convincing standard, nor the threshold for dismissal of a URS complaint will be revised.

The evidence needed to show bad faith has been the subject of commentary. Some comments have suggested that a disjunctive requirement should comprise the standard of review in a URS case, i.e., that the domain name was registered **or** is being used in bad faith. Further, it has been suggested that the requirement of bad faith reach would reach “disrupting the business of another”, instead of a “competitor.”

While two different types of possibly infringing conduct are captured by the disjunctive standard, the goal of the URS is to reach only the most clear cut cases of abuse. Because of this heightened standard, the decision was made to require a complainant to plead and prove both that the domain was registered and is being used in bad faith. Thus, the conjunctive will remain as the standard for a URS case. This is not the standard in every type of RPM. Further, because of the type of harm the URS is intended to address, the “competitor” standard will be retained.

One question above is, what is meant by 5.8(d). In addition, some think that the sale of traffic data, as referred to in 5.9, should be presumed bad faith. The language as proposed in section 5.8(d) is not meant to provide a way to avoid liability for deviating from previously abusive practices. The standard in this section is meant to capture the good faith registrant that does not register a series of typographical spellings of a registered trademark - it is not meant to provide a safe haven for serial cybersquatters. Further, given that the Complainant must show clear and convincing evidence to prove its case, a presumption against the respondent for a URS case is not appropriate. However, a factor that an examiner can consider as evidence of bad faith is the sale of traffic in the appropriate cases. Thus, the standards set forth in Section 5.9, allowing consideration without creating a presumption in favor of the complainant, will remain as written.

## Defenses

### Key Points

- The purpose of this more restrictive entry standard (as compared to UDRP) is to avoid time-consuming analysis over the question of rights, which would undermine the intended purpose and ability of the URS process to provide a fast inexpensive remedy for cases of clear abuse.
- Evidence of fair use of the disputed name must be analyzed by the Examiner to determine its validity

### Summary of Comments

#### Common law rights.

It is ironic that a complainant can only launch a URS complaint based on trademark rights but a registrant can defend such action on the basis of common law rights. We do not see why the procedure cannot accommodate a consideration of the complainant's common law rights also. *BBC (21 July 2010).*

Wider pattern—defense. We do not agree that the fact that the domain name is not part of a wider pattern or series of abusive registrations should in itself be a freestanding defense. *BBC (21 July 2010).*

Language change from “safe harbors” to “defenses”. ICANN should provide to the community the independent analysis that led to the change of wording from “safe harbors” to “defenses”. Instead of “defenses” the term should be changed to “absolute or complete defenses”, which is closer to the original term “safe harbors”. *K. Komaitis (21 July 2010). R. Dammak (22 July 2010).*

Paragraph 5, section 5.4—addition. Another paragraph (e) “Absolute/Complete Defenses” should be added. *K. Komaitis (21 July 2010). R. Dammak (22 July 2010).*

Fair use defense Paragraph 5, section 5.8(b). The current language implies that the Examiner has discretion to determine whether a fair use defense will be acceptable. This is against due process and would give Examiners too much power. The phrase “that is found by the Examiner” should be removed. Fair use is an affirmative defense and as long as the registrant can provide evidence of such use the Examiner should accept it unwittingly. *K. Komaitis (21 July 2010). R. Dammak (22 July 2010).*

Paragraph 5.9 edit. The word “not” is missing and this appears to be a typographical error. It should read: “Other considerations that are not examples...” *K. Komaitis (21 July 2010). R. Dammak (22 July 2010).*

#### To many defenses.

The current version of the URS adds more factors to support a defense that the registrant has not acted in bad faith, without adding any additional presumptions in favor of trademark owners, which seems to reflect a bias against trademark owners. *NCTA (Module 3, 21 July 2010).*

To be truly rapid, the URS should reduce the number of defenses for panelists to consider. *IOC (21 July 2010).*

## Analysis of Comments

One commenter challenges why a complaint cannot be based on common law rights. The intent for the URS is to be applicable only in cases of clear-cut abuse. The UDRP, which is still available to any URS complainant, allows for determination based upon common law rights. As stated in footnote 38 of the IRT Final report (see <http://www.icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>), the “IRT recognizes that entry standard for utilizing the URS is more limiting than the standard provided in the UDRP, which permits claims to proceed based on any registration of trademark rights or on common law rights. Parties that do not meet the higher entry standard proposed for utilization of the URS may, of course, still proceed with claims under the UDRP or in courts, as appropriate. Exclusion from the URS is not intended in any way to prejudice a party from proceeding under other available avenues. The purpose of this more restrictive standard is to avoid time consuming analysis over the question of rights, which would undermine the intended purpose and ability of the URS process to provide a fast inexpensive remedy for cases of clear abuse.” Thus, the URS will not entertain complaints from those with only common law rights.

Two commenters have asked for an explanation for changing “safe harbor” to “defense.” As explained in the comment summary and analysis posted on 28 May 2010, “[t]he language modification strikes a balance between the trademark holder bringing the claim and the rights of the registrant who remains free to allege a defense of good faith. However just as there is no absolute right for the trademark holder to prevail, similarly there is no absolute right to prevail in the basis of alleged good faith, otherwise all would allege it and no successful claim could ever be brought.” See <http://www.icann.net/en/topics/new-gtlds/urs-comment-summary-and-analysis-28may10-en.pdf>. Therefore, it is thought the term “defenses” is more accurate. These same commenters suggest that a new paragraph for absolute defense should be added. Absolute defenses, if any, are contained within the term defense.

Two comments suggest that that the Examiner must unconditionally accept evidence of fair use for trademarks from jurisdictions without substantive review. This is not correct. The Examiner will be required to determine whether evidence of fair use exists. Evidence of fair use must be analyzed by the Examiner to determine its validity, which is why the phrase “that is found by the Examiner” is included. Accordingly, a change of language in response to these comments is not required.

Two commenters suggest revision to some of the language of 5.9. While the word “not” was never intended to be part of this section, there may be some lack of clarity in the language. Thus, the language will be changed from “Other considerations that are examples of bad faith for the Examiner” to “Other factors for the Examiner to consider.”

One comment suggests that the defenses create bias for trademark holders and another says there are too many defenses for URS respondents. There is no intent to create a bias for trademark holders. The URS was developed by the IRT, subsequently modified by the STI and others, solely for the protection of trademark holders. The result is an attempt to balance the rights of a trademark holder, against a registrant of a domain name that may have the same words as a trademark, but is being used in a non-infringing manner.

## Default

### Key Points

- Full examination, even in cases of default, is intended to ensure all parties, whether or not they respond, are provided an opportunity to a fair analysis of the facts.

### Summary of Comments

#### No panel in cases of default.

Where a registrant fails to present a defense (default), an immediate judgment should be rendered in favor of the complainant. A panel should not be appointed to debate hypothetical points of defense. IHG (20 July 2010). IPOA (21 July 2010). Coca-Cola (21 July 2010). NCTA (Module 3, 21 July 2010).

Respondent default should result in suspension of the domain name. There is no need for panel appointment and substantive review in the event of a default. IPOA (21 July 2010). AIPLA (21 July 2010).

To be truly rapid, the URS should deny panel review in cases of respondent default. IOC (21 July 2010).

Returning name servers upon default response. In case of a default response, name servers should not immediately be returned to the state prior to “hold” status until an initial examination of a default response is completed to prevent frivolous filings and delays in implementing decisions. Allowing the return to initial status would be contrary to the “rapid” intent of the URS and provide a loophole for cybersquatters to extend the process. Grainger (Module 5, 19 July 2010).

No default responses should be allowed. No default responses should be allowed unless, upon initial examination, there is strong and compelling evidence that the decision was in error. As with a UDRP the registrant still has the option of filing suit in court to reclaim the disputed name. Grainger (Module 5, 19 July 2010).

### Analysis of Comments

Some commenters are against evaluation upon default and think an immediate ruling in favor of the complainant should be issued. Others think that default responses should be allowed. One commenter has suggested that until an initial examination of a default response is completed, the name server should not revert to allow the registrant to utilize the domain name.

Examination in case of default is something that was identified by the IRT, and accepted by the Special Trademark Issues Review Team (“STI”). The intent was to ensure that someone other than the Complainant had a chance to at least analyze the claim for merit. Thus, there is full review even when there is no response. Further, given the quick nature of the URS proceedings, the intent is to provide a balance to legitimate registrants that may not have been available to respond in a timely fashion. The ability to respond after default and revert to the same position as if the response had been timely filed, provides legitimate registrants the right to regain the use of a legitimate domain name, at least pending Determination. Thus, default responses will continue to be allowed under the URS.

## Appeals

### Key Points

- If there is an appeal, independent review (rather than review by the same panel that decided the complaint) seems to be in the best interest of all parties given the type of proceeding, and the bad faith standard a complainant must meet.
- The filing of an appeal will not change the domain name's registration until the appeal decision is issued.

### Summary of Comments

De novo appeals—statute of limitations. A proposed 2-year statute of limitations for filing a de novo appeal from a panel decision would address any concern about registrants missing the notice and having a review on the merits of every case. *IOC (21 July 2010)*.

Appeals must be efficient.

In case of any judgment (default or otherwise) the appeals process must be efficient and succinct. Allowing a defendant to appeal up to two years later is counter-intuitive and counter-productive. *IHG (20 July 2010)*. *Verizon (20 July 2010)*. *Hogan Lovells (21 July 2010)*. *IPOA (21 July 2010)*. *Rosetta Stone (21 July 2010)*. *AIPLA (21 July 2010)*. *NCTA (Module 3, 21 July 2010)*.

Two years for a defaulting registrant to reopen the proceeding is much too long. The window should be reduced to 30 days from issuance of the Notice of Default, and subject to a showing of good cause why the default should be lifted. *INTA Internet Committee (21 July 2010)*.

Two years for a defaulting registrant to reopen the proceeding is much too long. The window should be reduced to 90 days from issuance of the Notice of Default. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*. *BC (26 July 2010)*.

De Novo review.

The de novo appeal standard is inappropriate; it allows an unsuccessful appellant to simply hope for a different decision by a new reviewer. De novo appeals will take longer to resolve. *NCTA (Module 3, 21 July 2010)*.

De novo reviews by filing an answer during the life of the registration period should not be allowed. If the abuse is clear cut and obvious enough to warrant a decision in favor of the complainant, there should be nothing compelling enough in a response filed after default, and certainly not months or a year or more later, to warrant automatic reinstatement of the site. *Grainger (Module 5, 19 July 2010)*.

We strongly object to the proposal that a registrant who fails to file a response shall have the right to a de novo review at any time up to two years after the determination. Two years is much too long. We also object to the domain name resolving back to the original IP address where the registrant files a request for de novo review. The domain name should resolve back to the original IP address only where the response has been filed within a limited grace period, i.e. a few months. *BBC (21 July 2010)*

Time for filing appeal.

The window to file an appeal after issuance of a URS decision should be reduced to 14 days. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

There should be a de novo appeal by either party; the filing deadline should be shortened. *AIPLA (21 July 2010)*.

Notice of appeal should be filed within 10 days and a date for a decision on appeal must be set. *INTA Internet Committee (21 July 2010)*.

Limits on new evidence. Any new evidence submitted as part of the appeal should be limited to evidence that (1) was not available at the time of the initial proceeding; or (2) relates to an issue that was not raised by the parties but formed part of the basis for the decision. *NCTA (Module 3, 21 July 2010)*.

Fee for Evidence on Appeal. Making the introduction of new evidence contingent upon an additional fee is unfair and we fail to see the rationale for it. If an appellant pays the required fees for an appeal, there is no justification for another fee for introducing new evidence. ICANN should waive this requirement. *K. Komaitis (21 July 2010)*. *R. Dammak (22 July 2010)*.

Appeal procedures (paragraph 12) are inadequate. 12.5 merely says that “The Provider’s rules and procedures for appeals shall apply.” There must be explicit provision that notices will be sent via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator. The current lack of specificity also exposes Registry Operators to needless liability and unpredictable procedures. If an appeal is successful, URS requires the Registry Operator to unlock the domain and possibly restore back to the previous name servers. Registry Operators should perform domain actions only under explicit and formal notification from the URS Provider, under fully documented procedures. *RySG (21 July 2010)*.

## **Analysis of Comments**

Questions have arisen with respect to why two years for an appeal is permitted. Some have suggested that this time period is too long. The only way in which an appeal can be taken two years later is if the respondent is seeking relief from Default. Otherwise, the appeal must be filed in 14 days pursuant to Section 12.4. To balance any perceived harm and to deter any gaming of the default mechanism, the filing of an appeal does not change the domain name’s resolution. So if there is a determination in favor of the Complainant, the domain will continue to point to the informational page of the URS provider. Given that the status quo is preserved, it is unlikely that the default/appeal procedure will be gamed for the two-year period. Also, the intent of the URS is to address clear-cut abuses. In these clear-cut cases, the appeal will be lightly used and have little effect on process administration.

Other comments have been submitted regarding the de novo review. Some commentators support it while others believe that it will lengthen the appeal process. Given the limited evidentiary submission before the URS examiner, it is unlikely that the de novo review will substantially increase the time in which review and appeal resolution are complete. Moreover, given the type of proceeding at issue, and the bad faith standard a complainant must meet, on balance, independent review of the materials submitted seems to be in the best interest of all parties. As such, the de novo standard should remain.

Additional comments question the right to introduce new evidence on appeal and suggest that it be limited only to evidence unavailable at the time of the initial proceeding or relates to an issue that was not raised by the parties but formed part of the basis for the decision. As the appeal standard is currently drafted, it reflects the intent to prevent handicapping an opponent on appeal with the requirement that the evidence be limited to that which predates the filing of the Complaint. The availability or unavailability of the evidence is a factor that could be considered by the appeal panel.

One commentator has suggested that since the registrant is filing an appeal, it should not have to pay to submit additional evidence. While costs are a concern, merely instituting an appeal does not carry with it the right to introduce new evidence. Also, the additional costs of the hearing associated with the introduction of new evidence must be recovered. As such, a separate payment will still be required.

One group has requested additional rules and procedures on appeal. In response, some additional notice requirements have been included in the current version of the URS posted in November 2010 at the same time as this analysis is posted. Further, the comment about time for filing an appeal seem reasonable and the time for doing so has been reduced from 20 to 14 days. Additional procedures will be developed once URS Providers have been selected.

## Abusive Filings

### Key Points

- The URS attempts to balance benefits and harms by permanently barring those who have submitted two material falsehoods, and barring those submitting two abusive complaints for just a year after the second complaint is deemed abusive.
- If persons have been found to be abusive in the complaint process an appeal of the finding must be only on very limited grounds.

### Summary of Comments

#### Abusive complaints and Deliberate Material Falsehoods.

The definition of “abusive” complaints is not clear; legitimate trademark owners could be labeled as having an abusive behavior and thus barred from using URS. *PMI (21 July 2010)*.

The standard for imposing a penalty on complainants has been unjustifiably lowered, and the process is silent on the burden of proof placed on the examiner making a finding of an abusive complaint. The bar should be set extremely high given the severe consequences of such a finding. *NCTA (Module 3, 21 July 2010)*.

IBM welcomes the clarifications provided for identifying an “abusive” complaint and for identifying a “deliberate material falsehood” (11.4). Clarification is required on what is considered “material”. *IBM (21 July 2010)*.

The abusive complaints section should be removed or reworked; the current section is troubling because it is highly likely that every registrant will plead the abusive nature of the complaint, thereby increasing costs and time to respond. *IPOA (21 July 2010)*. *AIPLA (21 July 2010)*.

The safeguards for abusive complaints go too far. The requirement in Section 11.4 that the false statement would have an “impact” on the outcome is too low for it to be held to be a deliberate “material” falsehood. *INTA Internet Committee (21 July 2010)*. *BC (26 July 2010)*.

No time period is set with regard to the two findings of “deliberate material falsehoods” that can permanently bar a party from using the URS. *INTA Internet Committee (21 July 2010)*.

The threshold for the sanction is too low. Perhaps two abusive complaints or deliberate material falsehoods within a five-year period should warrant the sanction (barred from URS for one year). *AIPLA (21 July 2010)*.

The “two strike policy” is unprecedented in international law (see URS sec. 11). Jurisdictions do not bar trademark owners from filing complaints—under any circumstances—and neither should ICANN. *IOC (21 July 2010)*.

IBM agrees that two findings of “deliberate material falsehood” by a party should permanently bar the party from utilizing the URS. *IBM (21 July 2010)*.

The abusive complaint provisions should not be diluted. Those who make deliberate misstatements of material facts to prevail in a URS should face sanctions stronger than being barred from using the process; such sanctions should include monetary fines for egregious cases. *ICA (21 July 2010)*.

The appeal standard of review for findings of abuse should be *de novo*—as is proposed for a default appeal or appeal of a determination. *INTA Internet Committee (21 July 2010)*.

## Analysis of Comments

There have been several comments about the terms and application of the abusive complaint standards. Some commenters think being barred from utilizing the URS requires a much higher standard or should not ever be allowed, some think that the stated standard is too lenient, and others think simply barring a complainant from the URS is not enough. What was provided for in the URS Proposal attempts to balance all of these positions, by only permanently barring those who have submitted two material falsehoods, and barring those submitting two abusive complaints for just a year after the second complaint is deemed abusive.

It is true that if trademark holders are found to have submitted abusive complaints, as they are defined in the AGBv4, they will be barred from using the URS. This will not bar them, however, from using other enforcement mechanisms, including the UDRP.

One commenter asked for a clarification of the term material and another has stated that a false statement simply having an impact should be insufficient to be deemed a deliberate material falsehood. We used section 11.4 of the URS, where deliberate material falsehood is one that “contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.” Something is material if it would have an impact on the outcome of the URS proceeding. Whether or not something would have an impact on the outcome, however, only goes materiality. This does not discount the fact that it must also be a “deliberate material falsehood,” and not merely a “false statement.”

One commenter has suggested that the appeal standard of review for findings of abuse should be *de novo*. But, the purpose of the URS is to address only the most clear-cut cases of abuse. Thus, if persons have been found to be abusive in the complaint process an appeal of the finding must be only on very limited grounds. This helps ensure that only legitimate trademark holders with legitimate reasons for filing a URS complaint are permitted to use the process in an unfettered manner.

## Remedies

### Key Points

- Both the IRT and the STI called for suspension, not transfer of a domain name in the event a URS complainant prevails.
- In addition to requiring the URS Provider to post the Determination on its web site, the requirement to provide electronic notice to relevant parties has been added.

### Summary of Comments

Notice of Determination. Section 9.2 says that “[i]f the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider’s website. “There is a vital omission here: the procedures do not require any active notice to the various parties involved. The procedure MUST be amended so that the URS Provider sends a copy of the Determination via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator. These formal notices MUST be sent. If the Determination is in favor of the Complainant, the Registry Operator is then required to suspend the domain as per 10.1. Registry Operators should act only under explicit notification from the URS Provider, and this notification should be documented in the URS requirements. And in general, it is only logical that the various parties should receive an e-mail notice of the Determination, as is done with UDRP decisions. *RySG (21 July 2010)*).

#### Remedies not sufficient.

The URS should provide trademark owners with the ability not only to temporarily suspend a domain name but also to have the option to transfer valuable domain names back into their portfolios. At best the URS as now proposed allows only a temporary suspension for the remainder of the registration period with the option to suspend for an additional year. During this time the trademark owner cannot make use of a valuable domain name itself. This forces trademark owners into perpetual monitoring and enforcement obligations as the frozen domain name eventually lapses, falls into the pool and is likely picked up by another cybersquatter. *Verizon (20 July 2010)*. *PMI (21 July 2010)*. *DuPont (21 July 2010)*. *IPOA (21 July 2010)*. *CADNA (21 July 2010)*. *Coca-Cola (21 July 2010)*. *News Corporation (21 July 2010)*. *Rosetta Stone (21 July 2010)*. *AIPLA (21 July 2010)*. *BC (26 July 2010)*. *NCTA (Module 3, 21 July 2010)*.

URS should offer a meaningful remedy—e.g., transfer, placement on a registry-maintained black list, or imposition of a presumption of bad faith for all domains that have already been suspended once (see URS sec. 10). *IOC (21 July 2010)*.

Suspension as the only remedy would not lower costs for the trademark owner because of the risk that the same squatter will or another squatter could register the name upon expiration. If a complainant opts for the 1-year extension of the suspended domain name, will the Whois information continue to reflect that of the respondent after the initial expiration date? Who will monitor suspended domain names to ensure that no changes are made to the Whois or the site during the suspension period? *Grainger (Module 5, 19 July 2010)*.

The URS decision should be binding for life, not a few months. *AIM (Module 5, 14 July 2010)*.

Regarding the remedy (10.2), a successful complainant should have the right to cancel the domain to avoid causing damage to the goodwill associated with its trademark through having the contest url containing its mark resolve to a website not under its control for a lengthy period of time. *IBM (21 July 2010)*.

If the point of the URS is to address blatant abuse, then the domain should not resolve past the point at which initial administrative review is passed in an initiated URS proceeding and internet access should be promptly disabled. *Coca-Cola (21 July 2010)*.

Transfer should not be available under the URS. The UDRP and URS remedies should remain distinct. *ICA (21 July 2010)*. *Domain Dimensions (22 July 2010)*. *M. Jaeger (22 July 2010)*.

No re-registration after an adverse URS decision. To not exacerbate the “revolving door” problem and the need for costly defensive registrations, registrants should not be able to re-register a domain name after an adverse URS decision. *IHG (20 July 2010)*.

Right of first refusal. At the very least the successful complainant should be given the right of first refusal to register the domain name when it next comes up for renewal. *BBC (21 July 2010)*

#### Paragraph 4 Domain lock.

Asking registry operators instead of registrars to perform the domain lock is highly problematic. This paragraph bypasses one layer of the registration hierarchy (registrars) and in this respect conflicts with the way the UDRP operates. Registrars should be the point of contact for the URS panel. Registrars have existing procedures in place to perform similar functions, have a direct relationship with registrants and already have customer services that seek to assist registrants. *K. Komaitis (21 July 2010)*. *R. Dammak (22 July 2010)*.

The lock process could cause substantial ongoing damage to a trademark owner whose rights are being infringed or to the public by virtue of how it operates (name still resolving for a period of time with website visible). There should be some provision for an interim remedy at least in cases of significant potential harm (akin to an interim injunction in court actions). *BBC (21 July 2010)*

Extension of registration period. Section 10.2 says: “There shall be an option for a successful complainant to pay Complainant to extend the registration period for one additional year at commercial rates.” The mechanism for this is unspecified. The RySG notes that Registry Operators are generally precluded from offering registration services directly to registrants, and the RySG assumes this option will be offered without Registry Operator involvement. *RySG (21 July 2010)*.

## **Analysis of Comments**

The method and manner in which notice should be provided to the parties has been the subject of comments. In addition to requiring the URS Provider to post the Determination on its web site, the requirement to provide electronic notice to relevant parties has been added.

Many comments submitted involve the nature of the remedy available to a URS complainant. Some have suggested that the remedy should be a transfer; others have suggested that the decision should be binding for longer periods of time. Both the IRT and the STI called for suspension, not transfer of a

domain name in the event a URS complainant prevails. As noted above, the URS is intended to be a way in which trademark holders can obtain prompt relief from the most clear cut cases of abuse. The remedy reflects the evil it is designed to prevent. If cancellation is sought, that option can be obtained through a different rights protection mechanism, such as the UDRP.

The manner in which registrants losing URS proceedings can continue to register domain names has been the subject of comments. It has been suggested that an adverse ruling should prevent the registrant from re-registering a domain name. Each case would be determined on its own basis. Accordingly, the URS procedure will not include a ban on future participation in the domain name registration process.

Some have suggested that a successful URS complainant should be given a right of first refusal for the domain name when it comes up for renewal. On balance, this remedy was rejected since the purpose is to stop blatant abuse and the remedy of suspension achieves that end. Another has suggested that an interim remedy, similar to that found in injunction proceedings, be imposed. The URS is designed to remedy a very specific harm and the remedy reflects that precise harm—clear-cut cases of abuse, and to do that quickly. Such a rapid process will obviate the need for any interim remedy. Further, the URS is not the only manner in which an aggrieved trademark holder can obtain relief, it is simply one of many different rights protection mechanisms available to it. If injunctive relief is sought, the trademark holder can proceed in the appropriate jurisdiction to obtain it.

With respect to the comment relating to the ability of a successful URS complainant to register a domain name for an additional year, we agree that this mechanism requires implementation details that will need to be resolved in consultation with the registries and the providers.

## ECONOMIC ANALYSIS

### Key Points

- Independent economists retained by ICANN will answer substantive comments.
- Regarding the timing of the analysis, this study is not a new effort but rather part of the ongoing question of whether to undertake the new gTLD program that was first answered in ICANN's founding documents and later in ICANN's policy development process.
- ICANN took the results of earlier studies seriously, implementing trademark protections and malicious conduct mitigation measures.

### Summary of Comments

The economic analysis work is incomplete.

ICANN has not yet performed analysis of the economic effect of the program on trademark holders (e.g., cost of defensive registrations, costs/benefits) nor has it analyzed consumer demand. ICANN has not yet shown that the new gTLD program will achieve its stated goal of creating innovation and competition. MarkMonitor agrees with Economic Framework report's conclusion that new unrestricted gTLDs with traditional business models for domain name registration will not provide any significant competition to .com. Community-based gTLDs and IDN gTLDs should be expedited. It is hard to predict a successful launch of the new gTLD program without further study and analysis. The initial conclusions in the Economic Framework document contradict the original reasoning by ICANN for introducing new gTLDs

(i.e., .com is the dominant gTLD and introducing additional gTLDs may not untether its dominance). *MarkMonitor (19 July 2010). Red Bull (21 July 2010). BBC (21 July 2010). DuPont (21 July 2010). Comerica (21 July 2010). Carlson (21 July 2010). Sunkist (21 July 2010). Solvay (22 July 2010). LifeScan (22 July 2010). ETS (22 July 2010). Liberty Mutual (22 July 2010).*

Report does not add value. The economic report, while professional in appearance, says very little and its main message regarding the issues is “it depends.” The report predicts various possible risks and benefits without quantifying any of them and lacks empirical evidence. *Minds + Machines (21 July 2010).*

ICANN released the Economic Framework report just days before the last ICANN meeting, with little time for review by the community. Before rolling out new gTLDs, ICANN must perform an economic analysis including the cost to trademark holders and users and the actual consumer demand for various types of new gTLDs. It appears that IDNs have the most demand and other gTLDs have little if any. *Verizon (20 July 2010).*

Launch of new gTLDs must be preceded by a more thorough economic analysis that takes into account actual consumer demand and costs to trademark owners. ICANN needs to decelerate its new gTLD launch plans and take time to ensure that the costs do not end up outweighing the benefits of registrants and users. *CADNA (21 July 2010). INTA Internet Committee (21 July 2010).*

The Economic Framework paper cautioned that an open entry process may not lead to the societally optimal number of new gTLDs. Yet ICANN has persisted on following an open-entry process that will certainly lead to an avalanche of new gTLDs that will bury users of the Internet in confusion, abuse and higher costs. *MPAA (21 July 2010).*

The economic analysis findings suggest that far from responding to an economic demand for new gTLDs, the approach ICANN has taken could have devastating consequences for the stability of the DNS. The economic analysis recognizes the tremendous costs imposed by the new gTLD program on brand owners, consumers and ultimately civil society. Further work needs to be done—especially in the area of identifying the risks and impacts on existing markets for gTLDs. *SIIA (21 July 2010).*

It is alarming to see the introduction of an economic analysis at such a late stage of planning. We expect ICANN to fully consider the recommendations now put forward under the Economic Framework and to undertake the relevant pre-launch studies. These results should be factored into the DAG and the overall approach to launching new gTLDs. *HSBC (21 July 2010).*

The Economic Framework study suggested that positive competitive effects from new gTLDs may not be large, while it also suggested some potentially important and beneficial innovations from new gTLDs such as the opportunity for differentiation. ICANN should seek mechanism and applicant structures to maximize competition and encourage innovation in the DNS. DAGv4’s rules on community-based gTLDs both in the evaluation and objection portions represent a good example of the way in which gTLDs can offer innovation in the DNS. ICANN should also be deliberate in its ongoing analysis, rollout and evaluation processes once new gTLDs are launched. USCIB supports the Economic Framework study’s suggestion for ICANN to gather information from any new gTLD program in order to more clearly identify the general benefits and costs of implementing new gTLDs, including those related to consumers. *USCIB (21 July 2010).*

More comprehensive data and study required.

To facilitate a proper economic analysis of the costs and benefits of new gTLDs, AT&T fully supports the Economic Framework Paper's recommendations that ICANN gather much more comprehensive data about new and existing gTLDs, and conduct several types of studies, *before* new gTLDs are introduced. This information will also help in understanding the costs created by malicious conduct and inform the decision making on security, stability and resiliency issues. *AT&T (21 July 2010). ABA (22 July 2010).*

Microsoft supports the Economic Framework study recommendations to ICANN in paragraph 117 (introduce new gTLDs in discrete, limited rounds) and paragraph 118 (require registries, registrars and registrants to provide information, including about trademark disputes, sufficient to allow the estimation of costs and benefits of new gTLDs). *Microsoft (21 July 2010).*

ICANN should not issue a final Applicant Guidebook before the case studies and further analyses called for in the Economic Framework paper are complete and before the community has a chance to comment on their incorporation in another Draft Applicant Guidebook. *News Corporation (21 July 2010). AIPLA (21 July 2010). BITS (22 July 2010).*

#### Introduce new gTLDs in discrete, limited rounds.

AT&T supports the Economic Framework Paper's recommendations that ICANN introduce new gTLDs in discrete, limited rounds with prioritization of IDNs. In this way, ICANN will be able to mitigate consumer confusion and make any necessary adjustments to the implementation plan based on learning from initial rounds. As the economic paper acknowledges, there is no way for ICANN to fully assess and understand all of the potential costs and implications of introducing new gTLDs. By prioritizing introduction of IDNs, ICANN will be facilitating new gTLDs that are likely to deliver new benefits to global Internet users. *AT&T (21 July 2010).*

Until we have achieved a rollout of a substantial number of domains there will be no evidence to study regarding competition in the name space. Therefore the BC recommends that ICANN continue its practice of introducing new gTLDs in discrete, limited rounds. *BC (26 July 2010).*

Certainty not realistic. There will never be certainty about future extensions of the domain name space. *dotZON (21 July 2010).*

#### Do not delay the new TLDs launch and proceed with the implementation plan.

Nothing in the economic study should cause further delay in introduction of new TLDs or change the implementation plan. ICANN is, in fact, recommending in DAGv4 that it introduce new TLDs in discrete, limited rounds: there will be a discrete window which will open and close; all applicants must pass a background check, meet qualifications, establish their technical ability and meet all financial criteria and will have to have about \$1 million to file a new TLD application. This round will thus be limited in duration to a discrete group of entities that can meet very limiting qualifications. Due to the nature of the evaluation, objection and approval processes, all of the names applied for in this round will, in practice, enter the root in batches or phases. ICANN could use the experience of this round and make any necessary adjustments prior to future rounds, as recommended in the economic study. *Domain Dimensions (22 July 2010).*

## **Analysis and Proposed Position**

These comments have been forwarded to ICANN retained independent economists for response. However, some response can be made now regarding the timing of the reports and the comments that this analysis should have occurred earlier in the process. The current study is the last in a series of many investigations as to whether new markets should be opened and gTLDs should be delegated in an open way.

This is not the first opening of markets by ICANN. ICANN has opened up competition and opportunity on the marketing/distribution end of the spectrum (registrars), with spectacularly good results for consumers and entrepreneurs. It has, in contrast, been very measured in opening the market on the manufacturing side (registries), because of technical and other concerns that have been addressed.

It has always been ICANN's mission, as defined in its founding documents, to open up competition in the DNS – that has been one of the principal reasons for ICANN's existence from even before its beginning. After two initial rounds and learning lessons on benefits and costs there, ICANN undertook an intensive policy development process where all the stakeholders groups in ICANN's GNSO endorsed the opening of this market – after extensive discussions regarding costs and benefits.

After the ICANN Board approved the policy, ICANN undertook several independent economic studies regarding: price controls, vertical integration and the possible benefits of the program.

The previous studies and community discussion indicated potential social costs in the program. As a result, ICANN has tried very hard to take into account input from trademark interests, resulting in a thorough program of trademark protections and malicious conduct mitigation measures built into the Guidebook.

After all of these, there was a call for additional analysis and this study was launched. The timing of the report is not due to a late realization but rather it is an additional undertaking of an ongoing effort.

## **MALICIOUS CONDUCT**

### **Key Points**

- Working Groups have developed two added methods to deal with malicious conduct in relation to the new gTLD program: the High Security Top Level Domain (“HSTLD”) and the Centralized Zone File Access (“ZFA”) programs. See updated HSTLD Snapshot published under separate cover.
- Liability for invalid or inaccurate Whois information may receive future consideration for inclusion within amendments to the RAA.

### **Summary of Comments**

Integrated approach to trademark protection and malicious conduct. ICANN should integrate its consideration of malicious conduct and trademark protections as they are directly related. Additional proactive measures are needed to keep deceptive gTLDs out of the system in the first place, and they

should be an essential component of ICANN's comprehensive plan for avoiding end user confusion and the associated harms resulting from malicious conduct. *AT&T (21 July 2010)*.

Mandatory baseline for registries. The main problem is the voluntary nature of many of the key safeguards that ICANN has proposed to deal with malicious conduct. At a minimum, ICANN should require registry operators of new gTLDs to implement basic procedures to help prevent, or to expedite response to, malicious conduct involving registrations that they sponsor. *Time Warner (21 July 2010)*.

Proxy and privacy registrations. Measures should be taken prior to the launch of new gTLDs to deal with the increased use of proxy and privacy registrations by bad actors for unlawful purposes. If this issue is not dealt with prior to the new gTLDs launch, the scale of use for unlawful purposes could spiral out of control. *Hogan Lovells (21 July 2010)*.

Liability for invalid or inaccurate Whois data. If a registrant is untraceable due to invalid or inaccurate Whois data, liability should be passed on to the Registrar or Privacy Whois providers. This could reduce the harm to Internet uses and be leveraged to improve the accuracy of Whois data. *HSBC (21 July 2010)*.

Built-in mechanisms and compliance efforts to combat malicious conduct. The rollout of new gTLDs and accompanying structures in DAGv4 should, where possible, build-in mechanisms to limit further criminal activity, including spam, malware, WHOIS abuse and other illegal activities. Ensuring strong contract compliance and increasing funding for ICANN compliance efforts will help in this regard. *USCIB (21 July 2010)*.

Additional measures for vetting registry operators. The background check is a positive addition to the process for vetting registry operators. Additional measures would decrease the likelihood of malicious conduct, including: (i) rendering denial of an application automatic as opposed to discretionary as suggested by the wording of the notes to question 11; (ii) extending the class of persons to include persons who operate, fund or invest in the registry operator; (iii) eliminating the temporal restrictions in (d) regarding disqualification by ICANN such that any disqualification at any time is relevant; (vii) revise (e) to read "is the subject of a pattern or practice of either liability for, or findings of bad faith in connection with, trademark infringement or domain name registrations, including." (viii) add a new category (f) that covers "has materially breached an existing registry agreement or the Registrar Accreditation Agreement." *Microsoft (21 July 2010)*.

Rapid takedown or suspension systems. It is extremely disappointing that ICANN has failed to take the opportunity to require registry operators to adopt and implement rapid takedown or suspension systems to combat malicious conduct. Microsoft reiterates the proposal it made for this in its version 3 comments, including being amenable to having one or more Microsoft employees with relevant expertise to work on an ICANN-convened expert group to develop a required rapid takedown or suspension system. *Microsoft (21 July 2010)*.

Support for malicious conduct efforts in DAGv4. I support and commend ICANN for its work on malicious conduct concerns in the DAGv4 and that this issue should be considered resolved. *Domain Dimensions (22 July 2010)*.

High Security Zone TLD Program—application-based incentives.

A specific evaluation question should be included to provide application-based incentives for applicants to protect the public by adopting the more rigorous protections spelled out in the High Security Zone

TLD Program. Applicants should be awarded one or more optional points for a positive response, or alternatively points could be deducted from the evaluation score of an applicant who declines to take these additional steps to protect the public. *COA (21 July 2010)*.

## Analysis of Comments

As stated in various comments, the issues of trademark protection and malicious conduct have some overlap, and while the progress on those issues has been discussed separately, the solutions generated work in tandem. Controls and processes for both are included in the current Applicant Guidebook. The issue of malicious conduct is addressed with nine separate measures designed to mitigate the potential increase in phishing, spam, malware, botnets, and other abusive activities. It is thought that all these measures will work for the protection of rights holders and all registrants.

Mitigation of malicious conduct issues, as they relate to the new gTLD space, was worked through the active participation of multiple expert sources, including the Registry Internet Safety Group (RISG), the Security and Stability Advisory Committee (SSAC), Computer Emergency Response Teams (CERTs), Intellectual Property Constituency (IPC), and members of the banking/financial, and Internet security communities.

As a result of this work, nine measures were recommended and included in the Applicant Guidebook for the benefit of registrants and users to increase trust in new gTLD zones:

- Vetted registry operators (background checks)
- Demonstrated plan for DNSSEC deployment
- Prohibition of DNS redirection of “wildcarding”
- Removal of orphan glue records to eliminate a tool of spammers and others
- Requirement to maintain thick WHOIS records
- Centralized method of zone-file access
- Documented registry abuse contacts and procedures
- Participation in an expedited registry security request process

Comments requested that ICANN place an emphasis on the accuracy of Whois information and suggested methods of enhancing Whois accuracy. In response to earlier public comment, the proposed registry agreement now contains a requirement for the maintenance of a thick Whois database. ICANN is actively reviewing the new gTLD program and its compliance regimes overall to consider where enhancements can be made to promote Whois accuracy or ease access to Whois information.

Liability for invalid or inaccurate Whois information may receive future consideration for inclusion within amendments to the RAA and is an issue for ICANN’s policymakers. Requirements for removal of malicious domains may address this issue in a more efficient fashion.

Several comments on malicious conduct described: the need for more stringent focus on the overall issue, support and questions for the High Security Zone TLD (“HSTLD”) program, contract enforcement, and suggestions for control activities. See the recently-posted explanatory memorandum on Malicious Conduct and HSTLD Snapshot Summary and Analysis for an additional report on all aspects of the Malicious Conduct Mitigation effort and results. Several changes were made to the Guidebook in relation to and in anticipation of the HSTLD program or one like it. High security designations are

encouraged for TLDs that raise an expectation of security, such as providers of financial services. As the launch of new gTLDs becomes imminent, ICANN is augmenting staffing in compliance, registry liaison, IANA, and other functions to provide a full suite of enforcement and other services to new gTLD registries and for the benefit of DNS users.

Implementation of some built-in mechanisms is underway, such as monitoring the availability of Whois services.

The processes for vetting of registry applicants have been further reviewed. Specific, significant changes have been made in background screening to make that tool more effective in preventing future potential abuse and to provide applicants and others with certain requirements.

Comments requested the development of a rapid domain name suspension process to address abusive domain names that host or support malicious conduct. Currently, the guidebook requires all applicants to establish and maintain a dedicated abuse point of contact responsible for addressing matters requiring expedited attention, and for providing a timely response. Although the specific policies and procedures might vary according to the needs of particular TLDs, all applicants are expected to have a well-developed plan for abuse prevention and mitigation in the TLD to pass the evaluation. Community work on standardizing or coordinating takedown or other mechanisms could take place in the policy space, or informally among TLD operators. In addition, significant work has been done by the IRT and STI (see Trademark sections) to develop a Uniform Rapid Suspension system for the takedown of names that are blatantly abusing trademark rights, where this type of behavior can be addressed.

## Background check

### Key Points

- The basis of the background screening was borne from public concern about potential for malicious conduct with the introduction of new gTLDs.
- The term “terrorism” has been removed from the background check criteria.
- The focus of background screening is now limited to general business diligence, criminal history, and improper domain-name-specific behavior.

### Summary of Comments

#### Background checks.

It is welcomed that the DAGv4 has added a background check for applicants, where a number of circumstances could disqualify a person or entity from running a new gTLD. *COA (21 July 2010). Hogan Lovells (21 July 2010). R. Tindal (21 July 2010). ABA (22 July 2010). BITS (22 July 2010).*

Instead of a case by case approach, we would prefer a more systematic approach to the background checks given the importance of mitigating the risk of participation in the new gTLD process by criminal actors. *BITS (22 July 2010).*

Section 2.1 details a reasonable background check process regarding individuals and entities applying for any new gTLD. The approach of a “case by case basis depending on the individual’s position of influence on the applying entity and registry operations” should alleviate fears that ICANN will look for any

connection to nefarious conduct, no matter how remote, to bring down a gTLD applicant. The background check language is also appropriate provided that ICANN will not be looking to exclude an applicant for anything but serial intellectual property violations that have been adjudicated in a court of law. We believe that ICANN will be reasonable in this aspect of the applicant review process. *Demand Media (22 July 2010)*.

CADNA welcomes the background check requirement but seeks more information about how high a priority background checks on past intellectual property violations will be. *CADNA (21 July 2010)*.

No basis was provided for the introduction of this additional step in the application process. The least intrusive check is one on the applicant itself in relation to its financial, technical and operational capabilities. If it is necessary to check the applicant's management, this should be limited to active officers, directors and possibly majority shareholders of the applicant.

The word "partners" in this context is confusing as the legal meaning is different from the broader, more general meaning in ordinary use. In addition, some of the grounds upon which a background check is to be based appear overly vague or disproportionate to the objectives. While the scale of serious matters such as terrorism and war crimes cannot be denied, how would these affect the deployment of new gTLDs and the operation of the DNS? *M. Wong (21 July 2010)*. *R. Dammak (July 2010)*.

There is no provision for informing the applicant that it has triggered alarm bells in the course of its background check or even that it has failed because of a negative background check. There is no provision for appeal or review of a decision to disallow the application because of a failed background check. *M. Wong (21 July 2010)*. *R. Dammak (July 2010)*.

ICANN should remove the background check requirement unless community feedback indicates strong, substantiated and principled support for it. If the community supports a background check, it should be strictly limited to, at most, cases of proven financial irregularity or fraud, and possibly clear-cut proven cases of cybersquatting. *M. Wong (21 July 2010)*. *R. Dammak (July 2010)*.

The background check is inappropriate, prejudicial, and should be deleted. This was not something the GNSO recommended but is something that ICANN staff created. Preventing "terrorism" is widely outside of ICANN's scope and mission and there is no internationally agreed definition of terrorism. This policy will prejudice non-westerners. In addition, including "intellectual property violations" in the same category of harm as "terrorism" seems to be a gift to the intellectual property community that is not grounded in reality, proportionality or community support. *R. Gross (21 July 2010)*. *R. Dammak (22 July 2010)*.

#### Third party firm conducting background checks.

We are concerned about the standard and approach for selecting the third party firm that will conduct background checks according to the DAGv4. ICANN must select a neutral, authoritative organization as a third party through wide community consultations. An organization under the frame of the UN should be selected to undertake this job. *ISC (21 July 2010)*.

CADNA requests more information about the process of selection of the third party to perform the background check. *CADNA (21 July 2010)*.

#### Inclusion of the word "terrorism" without standards or definition.

Regarding the DAGv4's Section 1.2.1 "Eligibility" and 2.1 "Background Check" the insertion of the word "terrorism" so arbitrarily as part of the background check on applicants, and without providing any definition or criteria that would be measured against approving or denying an applicant for a new gTLD or IDN gTLD, causes deep personal concern. Background checks in this area of terrorism, as it is presented in the DAGv4 without any definition, are unacceptable to many people, language communities, and faith communities around the world. It is a surprise to see ICANN involving itself in the area of terrorism while its mandate is only being a technical coordinator. Clear and internationally recognized definitions and measures should be included in this section or it should be removed. *A. Al-Zoman (19 July 2010). A. Al-Zoman (21 July 2010).*

ICANN has arbitrarily added Terrorism verification checks to be conducted on all applicants for new gTLDs (including IDN gTLDs) in the DAGv4 with no definitions or standards whatsoever upon which these checks will be done, a clear indication that little thought was given to this matter, if any, or to its grave international implications. This requirement is offensive to many in the international community and some will boycott the ICANN process. If implemented it would clearly indicate that ICANN has gone well beyond its mandate. It suggests that ICANN is still operating in the shadow of the U.S. government, casting damage on the Affirmation of Commitment.

ICANN should urgently address this issue by either:

Option 1—retract "terrorism" as an area of verification checks in the guidebook; or

Option 2—if "terrorism" remains as an area of checks, ICANN must

(A) indicate how it intends to carry out such an evaluation and provide clear definitions of what type of terrorism (e.g., cyber, Islamic, state, etc.);

(B) adoption definitions congruent with international, local community and local jurisdiction accepted laws and standards on terrorism upon which fair and unbiased measurements of applicants can be conducted;

(C) if ICANN staff or "experts" cannot come up with appropriate definitions or protocols that meet the above criteria, ICANN would be better served to post a 30 or 45 day period Request for Comment for community feedback for definitions and advice on protocols, as it does for other issues.

(D) ICANN should provide an explanation as to how and why "terrorism" was added to the DAGv4 in the first place—i.e. on whose request? ICANN should indicate in which policymaking forum this request was made, when and by whom, for "bottom-up", transparency purposes.

If this offense of arbitrarily adding "terrorism" was unintentional, an apology by ICANN with a commitment to correcting it would go a long way to show how magnanimous ICANN can be when realizing it made a mistake. *Multilingual Internet Group (19 July 2010).*

Background check—clear terms needed. The background check section contains ambiguous terms prone to subjective interpretation. This could provide third parties seeking to interfere with, delay or block specific applications with attack vectors. Clear and internationally recognized definitions and measures should be included in this section. *Arab Team (21 July 2010).*

## Analysis of Comments

The term “terrorism” has been removed from the Applicant Guidebook. The term was not meant to single out or identify a group of potential applicants; rather, it was meant to provide some guidance on what could be checked and to indicate that ICANN must comply with certain laws.

Several comments welcome the addition of a background screening process, while others question the basis and necessity of such a review given the extensive analysis to be performed by the Evaluation Panels. Other comments are concerned with the definition of terms and the potential that the process could be prejudicial depending on how those terms are interpreted by who is providing the background screening service. These comments have merit and have been carefully considered in redrafting this section of the Applicant Guidebook.

The basis of the background screening was borne from public concern about potential for malicious conduct with the introduction of new gTLDs. There have been specific comments that allowing “bad actors” to own and/or manage TLDs would perpetuate malicious conduct on the Internet. As is explained in the next version of the Applicant Guidebook, the background screening process is part of an overall approach to mitigate such behavior. All Applicants have been and continue to be required to disclose any potential concerns about their background. However, the focus of background screening is now limited to general business diligence, criminal history, and improper domain-name-specific behavior. Specific criteria are provided in the guidebook.

The third-party organization conducting the background screening will check publicly available data to determine if the Applicant has made all disclosures. Gaps between Applicant disclosures versus the third party check may require clarification from the applicant.

## ROOT SCALING

### Key Points

- ICANN published two studies to inform the root scaling discussion.
  - The *Delegation Rate Scenarios for New gTLDs* <http://www.icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf>
  - The *Summary of the Impact of Root Zone Scaling* <http://www.icann.org/en/topics/new-gtlds/summary-of-impact-root-zone-scaling-06oct10-en.pdf>
- The Delegation Rate study describes a process-imposed limit that the delegation rate of new TLDs will not exceed 1000 new gTLDs per year, regardless of the number of applications.
- The planned delegation rate and other factors contribute to a conclusion that the new gTLD program will not pose root zone stability issues.

### Summary of Comments

Limit initial pool to community-based gTLDs and IDN gTLDs. MarkMonitor agrees with the root scaling study that a slow limited release of new gTLDs might be prudent until DNSSEC implementation is completed since there is no indication as to how many gTLDs will be introduced and ICANN has yet to

formally limit the size of the initial pool. The convergence of DNSSEC, IDNs, IPv6 and the new gTLDs could potentially destabilize the root. Given that potential negative effect to security and stability, ICANN should limit the pool of gTLDs (to allow ICANN to evaluate the potential pressure on the root) and significantly limit the initial round to community-based gTLDs (designed for and supported by clearly delineated, organized and pre-existing communities) and IDN gTLDs only. *Mark Monitor (19 July 2010). Red Bull (21 July 2010). BBC (21 July 2010). HSBC (21 July 2010). DuPont (21 July 2010). Carlson (21 July 2010). Comerica (21 July 2010). Sunkist (21 July 2010). Solvay (22 July 2010). LifeScan (22 July 2010). ETS (22 July 2010). ETS (22 July 2010). Liberty Mutual (22 July 2010).*

The root scaling study concluded that more work was needed to fully understand the implications of the introduction of new gTLDs and develop effective responses to these concerns. The Root Scaling Team recommended a staged approach to new gTLD introduction as a way to help manage the risks to the root zone servers. *AT&T (21 July 2010).*

USCIB is eager for ICANN to finish and release the expected root scaling study that will provide insight into important security and stability considerations with respect to introducing a range of both ASCII and non-ASCII domain names and the impact on a single authoritative root. A focus on differentiation could help limit some of the potential negative consequences for a rapid introduction of new gTLDs into the root. *USCIB (21 July 2010).*

We suggest deferring the implementation of new gTLDs until the final root scaling study report is available and any issues it identifies are adequately addressed. *BITS (22 July 2010).*

## Analysis of Comments

Comments raised a concern regarding the impact of the new gTLD program on the stability of DNS. Specifically, comments focused on the introduction of “unlimited” new gTLDs to the DNS. It is important to note that the current “unlimited” status for new gTLD applications does not necessarily tie with an immediate and unlimited delegation of those new gTLD applications that are approved and contracted. ICANN has devised an appropriate plan for delegation rates of new gTLDs into the root zone as a component of the overall gTLD program. The plan was created with both the expected and maximum number of applications in mind.

In releasing the two reports related to Root Zone Scaling, ICANN states the proposition that the many of the issues raised have been addressed by:

- metered delegation rates;
- the fact that DNSSEC, IDNs and IPv6 are already deployed; and
- analysis of L-root behavior.

The analysis of the “Delegation Rate Scenarios for New gTLDs” seeks to address the concern that with many new TLDs being delegated, the stability of the root server and distribution system could be in question. It is calculated that the expected rate of new TLDs entering the root in the first round would be in the order of 200 to 300 annually - and not exceeding 1,000 delegations/year even if there were thousands of applications. As a result, no meaningful technical stability issues were identified and advice from the root zone operators indicated that delegation rates of up to 1000 could be accommodated. Based on this analysis, and taking into consideration the results of the studies into the effects of scaling the root summarized in “Summary of the Impact of Root Zone Scaling,” we have no evidence (reason to believe) that the root system will not remain stable. The report also recommends that monitoring of

root management systems as well as communications between the various stakeholders involved in root management should be improved to ensure that changes relating to scaling of the root management systems don't go unnoticed prior to those changes becoming an issue. This is not technically difficult given the relatively low delegation rates, and is currently under consideration.

## SECURITY AND STABILITY

### Key Points

- Contractual compliance will be staffed to effectively deal with audit and enforcement issues arising from the introduction of new gTLDs.
- Introduction of new gTLDs will be conducted in a manner consistent with ICANN's commitments to preserve the security, stability and resiliency of the DNS.
- Divergent views have been received on whether the High Security Zone Verification Program should be mandatory or voluntary. The program will continue to be pursued by ICANN; standards and program administration will be adopted by an independent agency.

### Summary of Comments

Compliance issues. ICANN already has substantial existing critical compliance challenges and per a recent report (KnujOn) ICANN is not devoting enough resources to them. Compliance issues are a serious red flag and specter over any planned expansion of the DNS. Serious questions remain about whether ICANN can effectively deal with security, stability or malicious conduct when it increase the number of registries, registrars and gTLDs operating on a global scale. The DAGv4 provides no assurance that the rollout of new gTLDs will not spawn further criminal and illegal activity or how ICANN will prevent and address these issues. *Verizon (20 July 2010).*

Trust and reliability of the Internet. The success of the Internet is based on its openness and constant adoption to users' needs. Consumers can rely on its availability and have trust in registrars and registries and the constant developments to accommodate users' needs. This achievement should not be put at risk. *dotZON (21 July 2010).*

High Security Zones Verification Program.

This program appears unlikely to materialize and, if it does, to be effective. The HSZ TLD program must be mandatory for all new gTLDs or, at a minimum, ICANN should subtract points from any applicant that does not state its intention to seek HSZ TLD certification. *Microsoft (21 July 2010).*

High security verification should be mandatory for financial services domains. *ABA (22 July 2010). BITS (22 July 2010).*

The HSZ program should remain voluntary so that consumers can make their own assessment of its worth. If there is real consumer value then market forces will drive its broader adoption. *R. Tindal (21 July 2010).*

### Analysis of Comments

## Compliance issues

With regard to compliance issues, ICANN will continue to aggressively enforce ICANN's registrar and registry contracts in the interest of protecting registrants and encouraging public confidence in the DNS. Additional resources are planned and will be secured to effectively serve the new gTLD registries.

## Trust and reliability of the Internet

ICANN acknowledges these comments, and recognizes that the introduction of new gTLDs should be conducted in a manner consistent with ICANN's commitments to preserve the security, stability and resiliency of the DNS. The application process and evaluation of new gTLD proposals is intended to follow a process to ensure that trust and reliability of the Internet's unique identifier system is not put at risk.

## High Security Zones Verification Program

ICANN received divergent views on whether the High Security Zone Verification program should be mandatory or voluntary.

In general, and in other sections of the Applicant Guidebook, comments suggested that the HSTLD program should be voluntary and that if there is perceived value in it, the marketplace will evolve to accommodate the demand. The HSTLD program is currently being explored and its viability is under review and consideration. On 22 September 2010, ICANN in coordination with its HSTLD AG issued a Request for Information (RFI) on the HSTLD Program. The purpose of the RFI is to assist the ICANN community in understanding potential frameworks and approaches for evaluating TLD registries against the HSTLD criteria, determine where improvements to draft criteria and the overall program may be necessary to ensure its success, and to assess the viability of the proposed HSTLD Program.

### Next Steps:

ICANN and the HSTLD AG agreed there is value in conducting a RFI on the program, and as noted above it was published on 22 September 2010. After the RFI period closes on 23 November 2010 and ICANN and the HSTLD AG have had adequate time to respond to questions and to summarize and analyze the responses, a determination about next steps will be made.

ICANN remains committed to mitigating malicious conduct in new gTLDs and supports the development of the HSTLD concept as a voluntary, independently operated program. Some in the community have taken ICANN Board Resolution 2.8 Mitigating Malicious Conduct<sup>1</sup> as a lack of support for the concept. While the Board said it will not be signing on to be the operator of such a product, it does support its concept just as it has other measures (e.g., URS, prohibition of wildcarding, centralized zone file access, etc.) to mitigate malicious conduct in new gTLDs.

## **VARIANT MANAGEMENT**

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<sup>1</sup> Board Resolution is viewable at <http://icann.org/en/minutes/resolutions-25sep10-en.htm#2.8>.

## Key Points

- It is understood that script cases and practices vary around the world, and that delegation of variant TLDs is critical to good user experience for a number of Internet users.
- ICANN continues to support study and development activities toward a variant management solution for the top level, including testing of DNAME, creation of policy, and other mechanisms, so that users around the world will be able to take advantage of increased opportunities in a secure and reliable DNS.

## Summary of Comments

Chinese characters. Variants must be treated fairly in the new gTLD process. The current policy where variants have to be blocked or reserved until there is a proper solution may advantage some variants over others and cause user confusion. In Chinese script strings of simplified and traditional form share the same meaning and are used equally among Chinese Internet users. Block or reservation of either form will deprive certain groups of Chinese users of the right to access the Internet in Chinese scripts. CNNIC appeals to ICANN to consider a proper solution to Chinese characters before launching new gTLDs. It may be that if applicants abide by similar requirements on “.China” that ICANN will approve the applications of the two string requests in a bundle. *CNNIC (21 July 2010).*

Delegation of Variants. Variant TLDs should be supported and delegated to the same TLD holder. Blocking or reserving them will deprive certain user groups of the right to access the Internet in their language using the available input device (e.g., keyboard). *A. Al-Zoman (21 July 2010).*

## Analysis of Comments

ICANN agrees that treatment of variant strings should occur according to a fair procedure. The current approach is designed to be uniform and avoid advantaging or disadvantaging any user group as compared to another. It is understood that script cases and practices vary around the world, and that variants are critical to good user experience for a number of Internet users.

It is expected in the long term that variant TLDs will be supported and delegated to the same TLD operator. The task is to define a clear and globally supported understanding of the definition of variant TLDs, and what policies and user expectations can attach to these.

It is noted that IDN ccTLDs involving the simplified and traditional Chinese scripts have been delegated, and it is expected that the experience gained through the IDN ccTLD Fast Track will inform these community discussions going forward and help enable a workable approach for the gTLD namespace.

In authorizing the delegation of these IDN ccTLDs, the Board resolution noted that the methodology to be taken by the IDN ccTLD manager to handle these particular instances of parallel IDN ccTLDs is, in the short-term, the only option available, but there are serious limits to where such an approach is viable in practice, so that it cannot be viewed as a general solution. Consequently, long-term development work should be pursued. The Board directed that “significant analysis and possibly development work should continue on both policy-based and technical elements of a solution for the introduction on a more general basis of strings containing variants as TLDs.” (See <http://www.icann.org/en/minutes/resolutions-22apr10-en.htm>).

ICANN continues to support study and development activities toward a variant management solution for the top level, including testing of DNAME and other mechanisms, so that users around the world will be able to take advantage of increased opportunities in a secure and reliable DNS.

## STRING SIMILARITY

### Key Points

- Whether exceptions should be made to rule excluding delegation of “confusingly similar” TLD strings is a complex issue requiring additional policy discussion.
- The policy work should examine whether there should be exceptions for “non-detrimental” similarity (e.g., cases of common ownership or in view of context).
- The diversity in the make-up of evaluation Panels will match the anticipated diversity of the new gTLD applications.

### Summary of Comments

Section 2.2.1.1. No changes were made to this section. Strings that may be judged similar but in a non-detrimental way should not be eliminated in the initial evaluation. In case that does happen, the opportunity for correcting the possible error could be provided. The focus should be on a good user experience; it is very possible that two strings could be similar but not create confusion and instead provide for a better user experience. *RySG (10 Aug. 2010). VeriSign (22 July 2010).*

Foreign language equivalents (1.1.2.8, 2.2.1). String contention should include foreign language equivalents of applied for names (e.g. “bank” and “banco” should be considered equivalent). *BITS (22 July 2010).*

Review methodology (2.2.1.1.2). I agree that a higher visual similarity score could be indicative of greater difficulty in passing the string similarity review. I support the DAG’s conclusion that “final determination of similarity is entirely up to the Panel’s judgment.” *R. Tindal (21 July 2010).*

String similarity—panelists. Panelists reviewing for string similarity should include both trademark practitioners and personnel experienced in the workings of not-for-profit organizations. *Red Cross (21 July 2010).*

String similarity review should include aural (sound) and commercial impression (meaning) as well as visual similarity. *Red Cross (21 July 2010).*

An extended review should also be available following the String Similarity Review process, at the Applicant’s request. *Red Cross (21 July 2010). V. Petev (Module 2, 21 July 2010).*

“Average, reasonable Internet user”. This term in Section 2.1.1.1.2 should be more clearly defined. *Red Cross (21 July 2010).*

Evaluation criteria for confusingly similar strings--IDNs. A major point ICANN is missing in their current evaluation criteria for confusingly similar strings is that they do not review the TLDs, especially IDNs, in the context they will be used in (e.g., Cyrillic). When reviewing an IDN in context, the evaluation of the string (and its alphabetical differentiation) becomes much easier. *V. Petev (Module 2, 21 July 2010)*,

## Analysis of Comments

The proposal to allow for exceptions for "non-detrimental" similarity is certainly worth consideration. Comments have requested that exceptions be granted from findings of confusing similarity. The reason for granting an exception would be that a string pair that has been found to be confusingly similar constitutes a case of "non-detrimental confusion", for example if the applicant/operator is the same for both strings or if there is an agreement between the involved applicants/operators that provides for improved user experience.

One result of the GNSO idea may be the delegation of variant TLDs – given that variant TLDs are very similar.

Similar strings should not be delegated absent an in depth policy examination of the issues. The suggested modifications raise a complex set of policy issues (similar to those discussed regarding variants). The proposal should not be considered as plain implementation matters.

This is a conservative approach. If appropriate, the outcome of the work listed above can be considered for implementation when completed. Policy work in this area should be encouraged.

The GNSO policy states that strings resulting in user confusion should not be delegated: avoidance of user confusion is a fundamental objective to protect end-user interests and promote a good user experience.

The criteria and requirements for operation of similar TLDs in a “non-detrimental” manner is not obvious or straightforward. The exact criteria and requirements for such a situation to be unequivocally fulfilled have to be defined and need to be agreed by the wider community.

The String Similarity review and the String Confusion objection provisions already protect delegated TLDs against applications featuring confusingly similar strings. To confer a right to delegated TLDs to use such strings themselves is a change in principle and of importance. Such rights can be used to introduce chains of successively similar TLD strings, potentially reaching far away from any direct similarity with the original TLD string. The appropriateness of such consequences, and any limitation to impose, need to be discussed and agreed by the wider community.

The actual operation of "non-detrimentally" confusingly similar strings raises issues regarding user experience and user expectations already identified in discussions about "equivalent" and "variant" strings. Operational requirements to safeguard such aspects need to be developed, introduced and enforced. For example, should they resolve to the same address or not?

If exceptions for "non-detrimentally" confusingly similar strings are granted, there must also be safeguards to guarantee that the necessary conditions remain permanently fulfilled, calling for particular

contractual conditions as well as for compliance measures. These need to be developed and agreed by the wider community. The requirements in this regard would be even more pronounced for any exception granted for strings to be operated by different operators under any particular agreement aimed at improved user experience.

The changes proposed by the GNSO deserve proper consideration and may ultimately prove to be beneficial. However, this is not a foregone conclusion and requires positive outcomes of all the investigations mentioned above. While the necessary investigations are taking place, such strings will not be delegated. In the meantime, the available protection against applications with confusingly similar strings will safeguard both user and operator interests, so there are no obvious justifications for haste in modifying the existing approach.

The requirement for diversity in panel expertise is well taken, especially in view of the ultimate decision power of the panel, and is already a foreseen criterion for the selection of service provider to populate the panel.

As to the requirement for a more precise definition of "average, reasonable Internet user", it deserves to be mentioned that diversity in the panel would include linguistic diversity to ensure familiarity with the scripts involved. This in order to avoid undue findings of confusing similarity, as for example two strings in Chinese may look visually confusingly similar to a Westerner but not be visually confusable at all for a Chinese. The "reasonable person" standard is commonly used and it is thought that adding detail might serve to denigrate the intent.

The requirements to increase the scope of string similarity assessment beyond visual similarity have already been addressed in earlier comment rounds and no new aspects have been put forward to consider. The Guidebook assessment in Initial Evaluation is limited to visual similarity only as a pre-screen for the objection process that covers all types of potential confusion (as detailed in earlier comment analyses and public statements).

## **STRING CONTENTION**

### **Key Points**

- Multiple comments refer to the scoring threshold for community priority evaluation, some arguing in favor of keeping it at 14 out of 16, some favor lowering it to 13.
- Multiple comments propose various changes in the scoring, notably: using a finer scale, extending scoring for community delineation, modifying scoring for nexus and uniqueness, adding points for policy-making/governance structure and adding points for early establishment.
- Some comments address the situation with two or more winning community applications in final contention, proposing alternatives to auction: a) highest scorer wins, b) await voluntary resolution, c) supplementary scoring system.
- One comment proposes a process change in view of a potential outcome of the discussions regarding Vertical Integration.
- One comment claims that legal rights should play a role in contention resolution
- One comment proposes separate treatment for not-for-profit organizations

## Summary of Comments

Existing legal rights. Existing legal rights should also be considered when resolving string contention. Where there are legitimate competing rights, a more sophisticated mechanism (than, e.g., an auction) should be adopted for allocating the relevant gTLD which reflects the nature, breadth and longevity of those rights. *BBC (21 July 2010)*

Community priority evaluation—revisit standards.

ICANN staff should revisit the community priority evaluation standard. Previous public comments overwhelmingly sided with the 13-point threshold. ICANN staff has not satisfactorily explained the basis for its insistence on a 14-point threshold, which will be almost impossible for most community applications to achieve. *COA (21 July 2010).*

In addition, to reduce the likelihood that the community priority evaluation process will be nothing more than anteroom to an auction hall, the criteria for a top score on the following evaluation criteria, as set out in DAGv4 Section 4.2.3, should be modified to read as follows (adding the underlined text)”

- Nexus: The string matches the name of the community, is a well known short-form abbreviation of the community name, or is otherwise strongly associated with the community.
- Uniqueness: String has no other significant meaning beyond identifying the community described in the application. (This criterion to be applied in the language associated with the described community, if applicable.) A meaning unrelated to any community would not be considered significant.

*COA (21 July 2010).*

Community priority evaluation--clarity of revisions. Notable clarity has been provided in DAGv4. *Big Room (21 July 2010). R. Tindal (21 July 2010).*

Community priority evaluation--support for 14 point threshold. I strongly support maintaining that an applicant must score at least 14 points to prevail in a community priority evaluation. Lowering the score can harm registrants. If the scoring threshold is lowered it will be easier for applicants to obtain community status on strings that should be available at the second level to a wide variety of registrants. The scoring only happens when there are two or more applicants for the string; in this situation a high scoring threshold is the best way to protect real communities because it will be more likely that the string is awarded to the applicant who most closely represents the community in question. A low score will allow successful objections to legitimate communities—it will be easier for groups who may not be closely associated with the community to object successfully and block the applicant—i.e. the standards for successful objection are based on the standards required to achieve the 14 point score. *R. Tindal (21 July 2010). Domain Dimensions (22 July 2010). D. Schindler (22 July 2010).*

The community priority evaluation scoring should be set at 13 of 16 points to allow one point for evaluator (subjective/human error). This would be a more fair and equitable approach. The narrow approach currently proposed will undoubtedly lead to a significant number of unfair and unnecessary auctions. *BC (26 July 2010). R. Andruff (Module 4, 21 July 2010).*

Community evaluation priority—clarifications requested. ICANN should more clearly delineate the notion of “clearly delineated community” and the scoring process. An applicant should not be penalized in the process for accidental similarity. If ICANN wants to keep the current scoring system, then eligibility rules should have an extended range allowing for more granularity and/or all registration policies should be examined together. There should be a wider range under community delineation bringing the total to 17 or 18. Under this system that somehow imposes double penalties (delineation and eligibility for non-membership communities, e.g.) and provides for accidental “fails” outside the control of the applicant (lack of “uniqueness” due to some coincidence or similarity in any other language), having the ability to miss a third point is critical even for most reasonable, responsible proposals. *A. Abril i Abril (Module 4, 21 July 2010).*

Community priority evaluation—change the scoring scale to tenths of a point. The evaluation procedure for community priority ratings should not use a gross integer measure that will miss nuances in these difficult and crucial criteria. The scale should be changed to allow for discrimination in terms of tenths of a point instead of whole points. Making this change will make the procedure more sensitive while still providing a bright line between those applications that merit community priority and those that do not. *A. Doria (Module 4, 22 July 2010).*

Community evaluation—Scoring based on accountability and transparency. If a scoring system is used, the largest number of points awarded should be based on the credibility of the TLD governance model with respect to accountability and transparency for community stakeholders. In addition, ICANN cannot handle all the policymaking. Community-based TLDs are precisely the kind where policymaking, policy oversight and policy enforcement must be delegated to the TLD’s own governance model. ICANN must evaluate the viability of delegating authority as the key criterion for recognizing a community-based TLD. *W. Staub (Module 4, 21 July 2010).*

Community evaluation—comparison of contending applications and limits of absolute scoring. If the use of a scoring system cannot be avoided, it is best to add a supplemental scoring mechanism to deal with contending community-based applications which should eliminate contenders that do not deserve to be treated at par (such as cases of blatant gaming). Criteria for comparing the contending community-based applicants between each other would include: relative relevance of: the supporting community institutions and the community (in cases of contention between communities; the relative ability for Internet users outside the community to understand the purpose of the TLD; the degree to which the TLD’s governance model ensures accountability and transparency to the underlying community. *W. Staub (Module 4, 21 July 2010).*

Community-based contending applications—avoiding auctions. Where both contending applications are found to be community-based, instead of an auction making the determination, non-delegation for as long as contention formally persists is a better solution. Applications subject to unresolved contention should remain open until the subsequent gTLD round unless agreement is reached. At that point, each applicant should be allowed to lodge an updated application at no charge. These updated applications would not be evaluated unless a modest re-evaluation fee is paid (e.g. \$5,000 per application). One party can be allowed to pay the re-evaluation fees for the other party as well. The result of re-evaluation may still be no delegation for the time being. *W. Staub (Module 4, 21 July 2010).*

Community evaluation and potential vertical integration exception. If a higher standard or threshold results from a Community-based exception to a general policy on Registry-Registrar Separation for delegated Registry Operators, the application of this standard should be limited to the exception

application, not the string contention outcome resolution. If the vertical integration working group process results in a second use of a Community priority evaluation, then community-based applicants that did not elect it at the time of application should be allowed to elect it at the time of application for exception so that it is not mandatory in fact at application time. *E. Brunner-Williams (Module 4, 21 July 2010)*.

GeoTLDs and Community Priority Evaluation Criteria (4.2.3). One extra point should be given in the Community Priority Evaluation if the organization of a GeoTLD applicant is based on a sound multi-stakeholder community of the GeoName concerned. *dotBERLIN (13 July 2010)*. *dotBayern (20 July 2010)*. *dotHamburg (21 July 2010)*.

Multistakeholder governance structure. One extra point should be awarded in the Community Priority Evaluation if the applicant/organization adopts a sound neutral multistakeholder governance structure to ensure fairness and representation of both commercial and non-commercial constituents. Multistakeholder governance is in the best interest of all stakeholders by providing a public service to both the community

Applicants established prior to 26 June 2008 or prior to March 2009. Given the long delays in launching the new gTLD program, and that recently emerged new gTLD applicants may take advantage of it by copying existing concepts and projects, one extra point in the Community Priority Evaluation should be given if organization of an applicant was already established before the approval of the new gTLDs program by the ICANN Board on 26 June 2008 or before the first communicated application window in March 2009. *dotBERLIN (13 July 2010)*. *dotBayern (20 July 2010)*.

Applicants established prior to March 2009. Two maximum points should be allocated in the Community Priority Evaluation section if the applicant/organization was established before the first communicated application window of March 2009 and has conducted a significant communication outreach public campaign that is considered beyond reasonable for the best interests of both the public and awareness of the ICANN gTLD program. Public proof must be provided in these cases to substantiate these claims. This would be a sound method of minimizing gaming and be fair regarding the public interest, transparency, accountability and business ethics. *.MUSIC (20 July 2010)*. *.MUSIC (21 July 2010)*.

Unfair participation in auction for highest scoring application. The highest scoring application in a contention set on the basis of the scoring system set out in the Attachment to Module 2 (or at least an application that scores significantly more than the other application it finds itself in contention with) should prevail. Currently it would seem that in the case of an application scoring very high that is in a contention set with another application scoring just above average that both applicants would ultimately have to participate in an auction. *Hogan Lovells (21 July 2010)*.

Auctions—disadvantage for not-for-profit organizations. The auction procedure will likely put not-for-profit organizations with limited budgets at a distinct disadvantage in acquiring new gTLDs that are desired by two or more parties. One solution is for ICANN to offer a third application category for not-for-profit organizations in addition to standard and community priority applications with consideration given to the not-for-profit's mission when the string is in contention. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

Self-resolution (4.1.3). I support the new language that gives greater flexibility to applicants who may be in string contention. *R. Tindal (21 July 2010)*.

## Analysis of Comments

Regarding the comments expressing preference for 13 and 14, respectively (three each), as winning threshold on a 16 point scale, it is obvious that interests and opinions diverge. No new arguments for either solution have been raised in this comment round. Some previous concerns, regarding for example the risk of failing due to unfounded obstructionist objections, have been addressed in the explanatory comments in version 4. This discussion has resulted in considerable and intensive discussions with the community. The Guidebook will keep the scoring threshold at 14 out of 16 points.

The comments suggesting modifications in the scoring are addressed below

- To use a finer scale, with decimals instead of integer numbers as proposed in one comment, may appear to facilitate the assessment but goes against the grain of experience, where more granular criteria with fewer scoring steps for each criterion have proven to be more reliable in the sense of being reproducible when used by different panelists. Experienced assessment consultants have advised that we adjust the scoring granularity in the opposite direction, to use a pure binary scale for scoring each criterion. Based on experiences, this is something that may be considered for future rounds. The proposed position for the first round is to keep the scoring unchanged in this respect

- To modify the scoring for nexus (highest score also for "string is otherwise strongly associated with the community") and uniqueness ("meaning unrelated to any community would not be considered significant") as proposed by one comment would be equivalent to a considerable lowering of the winning threshold. These arguments are counterbalanced by other comments that these modifications increase the likelihood that community applications will capture generic words. While these issues are fairly close and either side can be argued, the current Guidebook scoring mechanism seems to strike the right balance between the goals to favor communities during string contention while assuring those communities are well established, identified and supportive of the application.

- To add points for a multi-stakeholder governance structure in general, or regarding policy development in particular, certainly has some merit but would add considerable complexity to the assessment and require additional compliance measures post-delegation. The proposed position for the first round is not to modify the scoring in this way. One consideration to keep in mind is the sTLD approach, which featured such considerations, and was not retained in the New gTLD policy development outcome.

- To add points for "early" (although post-New-gTLD-PDP-conclusion) establishment of applicants seems inappropriate from two perspectives. First, the crucial criterion regarding "pre-existence" is already included. Second, the "pre-existence" criterion relates to the community, not to the applicant per se. The community is the central concept of interest here, while the entity/ies representing the community may change over time for various reasons, without dates for such changes reasonably justifying any differences in scoring. The proposed position is not to modify the scoring in this regard.

The comments regarding alternatives to a forced auction in a case where multiple community applications in a contention set score above the threshold are well taken. In particular, the proposal to allow an extended time for voluntary resolution, as is currently contemplated in the Guidebook, could well serve the winning applicants in such situations, although other applications in the contention set would be on hold awaiting the outcome. The latter would be a drawback in the case where the strings of

the winning applications are not identical (but confusingly similar) and another application is only in direct contention with a winning string that's not the one of the finally and voluntarily selected application. That other application would become eligible for delegation, but have to wait before being able to proceed. The benefit of a voluntary outcome seems to outweigh that risk.

The other alternative proposals put forward, to select the highest scoring application among the winners or to add supplementary criteria in such cases, seem inappropriate since all community applications scoring above the threshold have reached a pre-determined level as validated for preferential treatment and should be considered equal in that respect for any subsequent process step. The proposed position is not to take score differences among the winners into account nor to introduce supplementary criteria.

The comment regarding potential consequences of the outcome of the Vertical Integration discussions is appreciated and will be taken into consideration in the light of the actual outcome of those discussions.

The comment requiring consideration of legal rights has been addressed in conjunction with earlier public comment periods. String contention resolution takes place after all legal rights objections for all applications in a given contention set have been addressed and resolved. It would be illogical to reopen any such claims during the string contention resolution phase. The proposed position is not to introduce any additional consideration of legal rights in string contention resolution.

The comment proposing separate treatment of non-profit organizations as applicants requests a similar preferential handling of such applicants in string contention resolution as provided for community applications. However, there is no policy ground for granting any preferential treatment in string contention situations based on the applicants' legal or organizational structures, might be subject to abuse, and the proposed position is not to modify the process in this regard.

## **GEOGRAPHICAL NAMES**

### **Key Points**

- Much of the treatment of geographic names in the Applicant Guidebook was developed in response to the GAC Principles regarding new gTLDs.
- Geographic terms not defined in the Applicant Guidebook can be protected through the community objection process.
- The definition of country and territory names appearing in the Applicant Guidebook has sought to ensure both clarity for applicants, and appropriate safeguards for governments and the broad community.
- Country and territory names are protected at the second level.

### **Summary of Comments**

#### Definition.

Geographical names should be defined in a broader sense, and all gTLD strings containing the geographical names listed in the ISO 3166-1 standard should also be considered geographical names. There are special cases in China where provinces, municipalities directly under the Central Government

and autonomous regions all have full name and abbreviation name. The abbreviation name should be handled as the full name consistently. *ISC (21 July 2010)*.

In Section 2.2.1.4.2, it should be added that not only an “exact match” but also a “representation” of a sub-national place is considered a geographical name. E.g., this will solve the issue for NRW (German state that stands for NordrheinWestfalne). *Bayern Connect (21 July 2010)*.

ICA remains concerned that Section 2.1.4 of the DAG concedes unwarranted authority to nations that already control their own ccTLDs by imposing an absolute bar on use of country or territory names at the top level and that applications for capital and other city names as well as sub-national place names (counties, states, provinces, etc.) will require endorsement or non-objection of government entities. ICA is gratified that ICANN has resisted past calls from the GAC to impose similar restrictions on geo names at the second level of new gTLDs and ICA urges continued adherence to that policy. *ICA (21 July 2010)*.

Country or territory names (2.2.1.4.1). I support the new protections for country or territory names and the rationale for their inclusion. *R. Tindal (21 July 2010)*.

City TLDs. Cases of string contention between two different cities of the same name, where both cities have the appropriate letter of non-objection and did not apply as a community applicant, should be clarified in the final guidebook: does it go to negotiations and auction, or would it remain with the parties to work out and if they did not, the name would not be assigned? The same would be true for a city name in contention with a non-city name. If such contention is not resolved through negotiations and auction, small cities with generic names could be used to “game” the system. *Domain Dimensions (22 July 2010)*.

English “short name”—Macedonia and Hellas (Module 2, Annex, p. 36). “Macedonia” must be removed as the record with the class B1 indication of the respective cell under the “separable name” column of the table. There is an ongoing dispute between the Hellenic Republic (Greece) and FYROM, the Former Yugoslav Republic, over the official name of FYROM, which has been discussed for many years in the U.N. without resulting in any conclusion so far. There is no official “short name” for this country and since we believe that the DNS should be kept outside of such sensitive issues, the word “Macedonia” must be removed. “Hellas” should be added next to Greece with the class B1 indication because this is a commonly used “short name” of our country, Hellenic Republic (Greece), which we believe should be equally protected. *P. Papaspiliopoulos (Module 2, 20 July 2010)*.

## Analysis of Comments

### Should there be a broader definition of geographic names in the Applicant Guidebook?

The exact match of sub-national place names such as states, provinces or territories, listed on the ISO 3166-2 list are afforded the protection of requiring support. There are almost 5000 names (many of which are shared or generic words) on the ISO 3166-2 list, and providing protection for a ‘representation’ or ‘abbreviation’ of the names on the list would multiply the number of names and the complexity of the process many-fold. Abbreviations or representations of names are protected through the community objection process rather than as geographical labels appearing on an authoritative list.

Throughout the process of developing a framework for new gTLDs the Board has sought to ensure a combination of: clarity for applicants; appropriate safeguards for the benefit of the broader community; a clear, predictable and smooth running process. A considerable amount of time has been invested in working through the treatment of geographic names to ensure these objectives are met, and also addresses, to the extent possible, the expectations of the GAC and the community. It is felt that the current definition of geographic names contained in the Applicant Guidebook, combined with the community objection process, provides adequate safeguards for a range of geographic names.

Geographic names were discussed during the GNSO Policy Development Process, and the GNSO Reserved Names Working Group considered that the objection process was adequate to protect geographic names. The Working Group did not find reason to protect geographic names. The GAC expressed concerns that the GNSO proposals did not include provisions reflecting important elements of the GAC principles and did not agree that the objection and dispute resolution procedures were adequate to address their concerns.

Much of the treatment of geographic names in the Applicant Guidebook was developed around many conversations and correspondence with the GAC on this issue that started following the Board's acceptance of the GNSO recommendations on the introduction of new gTLDs in June 2008.

On 2 October 2008, (<http://www.icann.org/correspondence/twomey-to-karklins-02oct08.pdf>) following a teleconference with the GAC on 8 September 2008, the then CEO & President, Paul Twomey, wrote to the GAC explaining proposed principles to guide a procedure for implementing elements of paragraph 2.2. Place names were split into two categories, as follows: 1) sub-national geographical identifiers such as countries, states, provinces; and, 2) city names.

During the teleconference of 8 September 2008, GAC members identified the ISO 3166-2 List, as an option for defining sub-national names. Accordingly, the Guidebook provides protection for all the thousands of names on that list. Also during this call the idea of the GAC creating a list of geographic and geopolitical names was discussed, however, it is understood that the GAC moved away from this suggestion because it would be a resource intensive effort for all governments to undertake.

Implementing protections for regional language or people descriptions was considered difficult because it would be difficult to determine the relevant government or public authority for a string which represents a language or people description as there are generally no recognised established rights for such descriptions.

As described in the 2008 letter, city names were considered challenging because a city name can also be a generic term, or a brand name, and in many cases no city name is unique. Therefore, where it is clear that an applicant intends to use the gTLD for purposes associated with the city name evidence of support, or non-objection is necessary. However, provision is made in the Guidebook to protect sovereign rights by requiring government approval for capital city names in any language, of any country or territory listed in the ISO 3166-1 standard.

### **Why are there protections for country and territory names at the second level?**

The existing protections for country and territory names at the second level were developed as a compromise between the positions of ICANN's policy making bodies. The compromise is that

protections are limited to a definite list of names and not the GAC request for all names with national or geographic significance.

In the new gTLD process, there is limited protection for country and territory names at the second level, that was developed as a result of consultation with the GAC regarding the implementation of paragraph 2.7 of the GAC principles regarding new gTLDs, states:

Applicant registries for new gTLDs should pledge to:

- a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD;
- b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLDs.

At the Board's request, Paul Twomey (who was ICANN's CEO and President), wrote to the GAC on 17 March 2009 (<http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf>), requesting the GAC's input on possible options to resolve the outstanding implementation issues regarding the protection of geographic names at the second level. The end result of this request was a letter from the GAC to Paul Twomey, dated 26 May 2009 (<http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>), which proposed a solution, that was accepted by the Board and ultimately reflected in the draft Registry Agreement developed for new gTLDs.

### **Are the common names of countries protected in the new gTLD process?**

The definition of country and territory names, in the context of the Applicant Guidebook is consistent with the ISO 3166-1 standard and provides protection for the short and long form of a name appearing on the list including translations. Country and territory names will not be approved in the first round of the new gTLD process.

The treatment of country and territory names in version 4 of the Applicant Guidebook was developed specifically to adhere to paragraph 2.2 of the GAC principles on new gTLDs, i.e., the GAC view that governments should not be denied the opportunity to apply for, or support an application for, their respective country or territory name. However, the GAC's clarification of their interpretation of GAC principle 2.2<sup>2</sup> has resulted in a reconsideration of the treatment of country and territory names in the new gTLD process. This has resulted in a change of approach as reflected in the recently published draft version 4 of the Applicant Guidebook: namely, that country and territory names will not be available for delegation in the first round of the new gTLD application process.

With regard to the definition of country names, the Board has sought to ensure both clarity for applicants, and appropriate safeguards for governments and the broad community. A considerable amount of time has been invested in working through the treatment of country and territory names to ensure it meets these two objectives. Following discussion at the Mexico City meeting, the Board recommended that the Applicant Guidebook be revised in two areas regarding this subject: (1) provide

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<sup>2</sup> “The GAC interprets para 2.2 of the GAC gTLD principles that the strings that are meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccTLD PDP, and other geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.”

greater specificity as to what should be regarded as a representation of a country or territory name in the generic space, and (2) provide greater specificity in defining the qualifying support requirements for continent names, with a revised position to be posted for public comment.

The resulting definition for country and territory names is based on ISO 3166-1 and other published lists to provide clarity for potential applicants and the community. It removes the ambiguity created by use of the term ‘meaningful representation.’ Therefore, the definition of country and territory names has not been amended in the recent Guidebook draft and remains consistent with the Board goals and resolution on this issue.

While the revised criteria may have resulted in some changes to what names are afforded protection, there is no change to the original intent to protect all names listed in ISO 3166-1 or a short or long form of those names (and, importantly, translations of them). In addition, the Separable Country Names List was developed to protect common names of countries derived from the ISO 3166-1 list, but not identified as the short name, for example, one such short name is “The Bolivarian Republic of Venezuela” for a country in common usage referred to as “Venezuela”. This level of increased clarity is important to provide process certainty for potential TLD applicants, governments and ccTLD operators – so that it is known which names are provided protections.

We acknowledge the comments from the GAC representative from Greece requesting the removal of Macedonia from the Separable Country Names List due to unresolved issues regarding the use of the name. An amendment has been made to the Separable Country Names List which continues to provide protection for the name “Macedonia” but recognizes that due to the ongoing dispute between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name “Macedonia” until the dispute over the name has been resolved.

While Hellas will not specifically be called out as the commonly used “short name” for the Hellenic Republic (Greece) in the list of separable names, we believe it is provided protection through the ‘translation in any language’ as Greece translates to Hellas in Norwegian.

### **What process is applied for string contention of ‘city’ names not designated as a community application?**

An auction will not take place to resolve contention in the case where there are contending applications for a geographic name as defined in the Applicant Guidebook. In the event that two applications are received for the same geographic string, and the applications are considered complete (ie. they have the requisite government approvals) the applications will be suspended pending resolution by the applicants.

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

#### *Capital city names*

Since the approval of the national government is required for capital city names, as defined in the Applicant Guidebook, contention is not expected. In the unlikely event that the national government of France supports two applications for .paris the applicants will be asked to resolve the issue.

### *Other city names*

In other cases where applications for the same city name, but representing two different cities (and most likely in different countries), which both have the documentation of support of non-objection from the respective relevant government or public authority, and the applications are considered complete, the applications would be suspended pending resolution by the applicants.

### *City versus Generic*

Applications for the same name, but one is being used to leverage a city name and has support of the relevant government or public authority; and the other is for generic purposes, they would undergo the “String Contention Procedure” contained in Module 4 of the Applicant Guidebook.

There is no priority given to an application for a city name with documentation of support or non-objection over an application for a generic or brand name with the same name, if both are submitted as standard applications. However, the ‘community’ designation for applications was developed to view such applications more favorably if the applicant can prove, through the community priority evaluation procedure, that it represents a defined community. Applicants intending to use the TLD primarily for purposes associated with the city name are encouraged to apply as a ‘community’ application, understanding that additional criteria applies.

## **MORALITY AND PUBLIC ORDER (M & PO)**

### **Key Points**

- ICANN will accept the Recommendation 6 Cross-Community Working Group recommendations that are not inconsistent with important objectives of the program,
- One suggestion for a new title for the objection (“Limited Public Interest Objection”) has been included in the current version of the Applicant Guidebook.
- ICANN has included several Working Group recommendations and plans additional consultations with the Working Group before and during the Cartagena meeting to achieve agreement in additional areas.

### **Summary of Comments**

M& PO Objections—procedure needs improvement. The procedure proposed by ICANN leaves much to be desired and would likely be inordinately costly. It requires a response and payment of a response filing fee before any “quick look” would occur, and postpone a “look” until any full complement of adjudicators had been empanelled. COA understands that the entire morality and public order objection process is likely to be revisited in light of strong objection from the GAC. This review should include developing a more expeditious and lightweight means of disposing of frivolous objections. *COA (21 July 2010).*

Current M&PO process is highly problematic. ICANN fails to understand the dangers that this provision will create and its impact on fundamental rights and liberties. Historically these issues have been associated with the right of sovereignty. ICANN seeks to assign an independent panel. The ICC is not the right entity for this process. M&PO issues cannot be determined according to business practices or

rationales—they are domains of national states. The criteria ICANN has proposed is also problematic. E.g. how can a domain name registration “incite” anyone to do anything? The only way to determine if a domain name registration incites people to commit an unlawful act would be to also check content. ICANN needs to produce for the wider community examples of names that incite users to commit unlawful acts. A review panel should provide recommendations that the applicant may use before the European Court of Human Rights or the International Criminal Court. Panels will have to be composed according to geography, cultural divergence and will not be associated with any business interests but will represent the interests of states/regions. The ICC is not the appropriate forum but international courts are—they are the bodies we can turn to for such delicate and controversial issues. *K. Komaitis (21 July 2010)*. *Blacknight Solutions (21 July 2010)*. *R. Dammak (22 July 2010)*.

Remove M&PO objection absent solution from GAC. ICANN should remove the morality and public order objection from AGBv4 absent a proposed solution being presented to the Board from the ICANN GAC. This would be consistent with ICANN’s bottom-up, community-driven approach and is in line with the Board’s approach to other challenging issues, such as registry-registrar separation. *Big Room (21 July 2010)*.

M&PO is out of scope. The ALAC echoes the At-Large Community in our disappointment with the retention in the Draft Application Guidebook V4 of the so-called Morality and Public Order (MAPO) language as part of the preparatory scope for new gTLDs. We reiterate our principled position: Even as we accept that there is no single definition of what is moral, determination of a moral string and a public order encroachment are not within ICANN’s competence and its remit in the Internet governance space. The ALAC’s disappointment is moderated with the knowledge that other support organizations are equally bothered and have proposed a cross-Community group to address and grapple further with this matter. *ALAC (September 2010)*

Delete the M&PO objection. The sooner that ICANN realizes that the only practical course is to throw out the M&PO objection, the sooner it can get on with introducing new gTLDs. The M&PO objection is illegitimate, outside of ICANN’s scope and chilling to free expression. It is strongly opposed by the NCUC. It is likely to expose ICANN to constant litigation. Issues of morality and public order are matters of national law to be decided in national legislatures and national courts. Creating an additional level of M&PO objections only invites arbitrariness, subjectivity and global censorship. ICANN has an obligation to respect the free expression rights of Internet users which are nearly universally guaranteed through various national constitutions and international treaties (e.g. Article 19 of the Universal Declaration of Human Rights). *R. Gross (21 July 2010)*. *R. Dammak (22 July 2010)*.

Need for GAC involvement. The M&PO issue threatens to be the major stumbling block to a successful and timely initiation of the new gTLD program. The GAC, with encouragement from the ICANN Board, should participate in a multistakeholder group to find a solution. *Minds + Machines (21 July 2010)*.

Need for an M&PO objection. It is unclear that an M&PO objection is needed. A joint AC/SO group has been formed to discuss M&PO issues; any further work should be taken only with reference to the work to be done by that group. *M. Wong (21 July 2010)*. *R. Dammak (July 2010)*.

Keep current options. ICANN should stay with the current options in the AGBv4 and not extend the M&PO discussion any further. A M&PO black list won’t solve problems. *dotZON (21 July 2010)*.

Legal standards. Compliance with the M&PO should be determined according to both the principles of international law and the laws of each sovereign state. If judged only by principles of international law, it is likely to approve some gTLDs which conflict with laws of some countries, which is unfair to those countries and even damages their national interests. *ISC (21 July 2010).*

ICC adjudication of M&PO objections—limitations. The grounds for an M&PO objection are in areas that contravene the concern, scope and expertise of the International Chamber of Commerce. Would the neutrality and global representativeness of the ICC be recognized by each country? The same problem exists with ICC adjudicating the community objection. Adjudications on M&PO and community objections involve a broad range of subjects and are of great significance. It would be unfair for a certain international organization in some business areas to perform adjudications. More representative and neutral organizations should be selected or at least added to complete this job. *ISC (21 July 2010).*

M&PO Objection fee—developing and undeveloped countries. The fee for an M&PO objection is set too high and would stifle the initiative of developing and undeveloped countries. *ISC (21 July 2010).*

“Denial of service” via duplicative M&PO objections. The lack of standing restriction for M&PO objection opens applicants to the equivalent of a distributed denial of service attack whereby a well-funded opponent or astroturf group could generate multiple complaints, delaying the application and taxing the resources of the decision forum. Along with quick dismissal of “frivolous or abusive” objections, the process should consider a means of speedy dismissal of duplicative objections. *W. Seltzer (21 July 2010). R. Dammak (July 2010).*

Board role. Since there is no objective standard for what is to be applied, the Board, after appropriate community input, must make what is essentially a political decision about the most suitable M&PO mechanism—e.g., current AGB provisions, some variation of that, or a scaling down/removal of the objection process. I support any reasonable approach by the Board. *R. Tindal (21 July 2010).*

Rapid resolution.

If the current M&PO objection process is problematic to the GAC and others, we need to work together as a community to reach a new resolution very quickly. *Domain Dimensions (22 July 2010).*

The M&PO issue needs to be firewalled from creating further delays in the gTLD program. *J. Frakes (22 July 2010).*

Incitement clause. The incitement clause of the MP&O objection, if it remains in the Guidebook, should be rewritten to include, at least, disability and actual or perceived sexual orientation or gender identity, and political or other opinion, and modified to read: “Incitement to or promotion of discrimination based on race, color, gender, disability, actual or perceived sexual orientation or gender identity, political or other opinion, ethnicity, religion, or national origin.” *A. Doria (Module 3, 22 July 2010). S. Seitz (22 July 2010).*

## **Analysis of Comments**

Since the closure of the public comment forum, recent events have dealt with several issues related to the treatment of the Morality and Public Order recommendation, and thereby addressing many comments above. In August 2010, a cross-community working group was formed with members of the

GNSO, At-Large and GAC communities to provide recommendations on how to improve the implementation of Recommendation 6. Many of the concerns raised in the public comment forum were evaluated and, where appropriate, addressed through this cross-community effort. A Report on Implementation of GNSO New gTLD Recommendation No. 6 (Rec6 Report) was published for [public comment](#) on 22 September 2010, and included several recommendations supported by a consensus of the members of the working group. This Report was [endorsed](#) by ALAC on 1 November 2010.

At its retreat in Trondheim the Board passed the following resolution with regard to the M&PO issue:

The Board acknowledges receipt of the Working Group report. This is a difficult issue, and the work of the community in developing these recommendations is appreciated. The Board has discussed this important issue for the past three years.

The Board agrees that ultimate responsibility for the new gTLD program rests with the Board. The Board, however, wishes to rely on the determinations of experts regarding these issues.

The Board will accept the Working Group recommendations that are not inconsistent with the existing process, as this can be achieved before the opening of the first gTLD application round, and will work to resolve any inconsistencies. Staff will consult with the Board for further guidance as required.

The “existing process” as described in the Board resolution is interpreted as an objection process (such as described in versions 2, 3 and 4 of the Applicant Guidebook) that satisfies the following goals: (1) providing a predictable path for applicants; and (2) mitigating risks by having: (i) an independent dispute resolution process; (ii) dispute resolution panels with the appropriate expertise; and (iii) the clearest and most uniform set of standards possible.

The Applicant Guidebook published with this analysis in November 2010 incorporates several recommendations from the Rec6 Report, including:

- A suggested revision of the title of the objection
- Change of references to “principles of international law”
- A note encouraging applicants to pre-identify possible sensitivities related to M&PO
- A procedure for governments to send notifications with regard to national laws to applicants or through the public comment forum
- Inclusion of additional treaties as suggested by the Rec6 Report
- Additional elaboration on terms in the Quick Look Procedure, including the term “manifestly unfounded”

In addition, ICANN has encouraged further discussion and has scheduled a meeting with the cross-community working group to discuss how other recommendations found in the Rec6 Report can be incorporated into the Applicant Guidebook to the extent they are consistent with the existing process. Additional consultations are contemplated in Cartagena with the intent of coming to resolution on the material aspects of the dispute resolution process for this objection at the end of the Cartagena meeting,

Some principles reflected in the Rec6 Report are not included in the Applicant Guidebook as they are contrary to the goals described above. These largely relate to the Board’s desire to rely on the determinations by independent expert panels, and the role of the Independent Objector.

With respect to the use of independent expert panels, it has been suggested that the grounds for a morality and public order objection “contravene the concern, scope and expertise of the International Chamber of Commerce” and that it would be “unfair for a certain international organization in some business areas to perform adjudications”. However, it should be recalled in this context that the ICC International Centre for Expertise, as DRSP, would administer the dispute resolution procedure; it would not “perform adjudications” itself. It is the expert panel (appointed by the DRSP) that hears the dispute and issues an expert determination. ICANN considers that the ICC and its International Centre for Expertise, with their extensive experience in administering various types of international dispute resolution proceedings, are well qualified to act as a DRSP. The rules of the International Centre for Expertise are available at: <http://www.iccwbo.org/court/expertise/id4379/index.html>.

## OBJECTION AND DISPUTE RESOLUTION PROCEDURES

### Procedural Aspects

#### Key Points

- Multiple objections may be consolidated at the discretion of the dispute resolution provider.
- The deadline for filing an objection must be balanced with ensuring there are no unnecessary delays and providing some level of certainty of process for applicants.

#### Summary of Comments

DRSP access to public comments (1.1.2.7). It would seem appropriate to provide the public comments to DRSPs directly, particularly for applications already subject to active objections. *BITS (22 July 2010)*.

Time for filing objections too short (1.1.2.4).

ICANN set a reasonable period for filing objections by adopting a model similar to what is used for objecting to a new trademark application (e.g., two months). A two week window is too short for filing objections. With such a short timeframe objectors will have to do all the work in advance in preparing an objection, only to find that an application may fail at the initial evaluation stage. There also needs to be a provision for objection after an extended evaluation; currently the two week window for filing an objection will close before the outcome of an extended evaluation is known and there appears to be no opportunity to object to applications which fail initial evaluation but are subsequently successful in the extended evaluation process. *BBC (21 July 2010)*

An additional two weeks to file objections after the Initial Evaluation results are posted would help to address the shortage of adequate time for objecting in the current proposed process, so that a potential objector has a full month following the posting of the complete Initial Evaluation results to review those results and consider whether an objection is needed under all the circumstances. This additional two weeks will not unduly delay the application process. *Coca-Cola (21 July 2010)*.

Consolidation.

If there are two or more applications by a single applicant to which a single objector is objecting on the same grounds, these should be the subject of a single objection. If a single objector has two different grounds to object to an application (e.g., legal rights and community grounds) this should also be a

single objection, not two separate objections administered by different bodies and subject to two objection fees. *BBC (21 July 2010)*

If objections are consolidated before responses are filed, then the Applicant should pay one response filing fee. If objections are consolidated after responses are filed, the Applicant should be entitled to a refund of some of the response fees paid. In the latter case, the refund may not necessarily be all fees in excess of a single response fee if further administrative steps have occurred. *IBM (21 July 2010)*.

The many to one relationship between possible objectors and a single applicant is an inherent scaling problem in the application process that needs to be addressed with time limits and batch costing. The procedures could act as a Denial of Service or Distributed Denial of Service attack against an applicant (e.g. an applicant challenged by many similar objections, with no extension of time while they may be consolidated, or a very large number of similar but non-consolidated objections where it may be impossible for the applicant to respond to all of them, each one requiring a separate response and a separate fee). *A. Doria (Module 3, 22 July 2010)*.

Dispute resolution costs (3.3.7). Clarification is needed as to what costs paid by a prevailing party will be refunded, including whether the costs for the panel are refunded and whether fees for objections and responses (described as nonrefundable in 3.2.2 and 3.2.4) are in fact refundable as appropriate to a prevailing party. *IBM (21 July 2010)*.

Corrections to objection filings (3.2.1). Objectors should be given a brief opportunity to rectify any errors where their objection does not comply with procedural rules, especially if the window for filing is so unreasonably short. *BBC (21 July 2010)*.

Extensions of time (3.3.3). While negotiation and mediation is encouraged, parties should be limited to 30-day extension requests. Trademark proceedings could be used as a model also, where parties are encouraged to put the proceedings on hold in order to facilitate settlement. *BBC (21 July 2010)*.

Full and fair adjudication (3.3.5). Rapidity of resolution should not take priority over full and fair adjudication. The time limits throughout the dispute resolution procedures are very short. *BBC (21 July 2010)*.

#### Number of Panelists.

Three member panels should be available for all disputes if requested; additional costs could be covered by the party requesting three panelists. The number for both String Confusion and Community disputes is still restricted to one panelist. There is an option for 3 panelists for Legal Rights disputers and a requirement of 3 panelists for a M&PO objection. *RySG (10 Aug. 2010)*. *VeriSign (22 July 2010)*.

By definition we find it hard to understand how a “panel” can consist of only one person. Each panel should consist of at least two individuals. *BITS (22 July 2010)*.

Filing procedures (3.2). The “Rules for Expertise of the International Chamber of Commerce” to be used for the Community Objections appear to be missing from the Attachment to Module 3. *BITS (22 July 2010)*.

## **Analysis and Proposed Position**

It has been suggested that certain deadlines for objection be extended, in order to give potential objectors more time prepare their objections. They argue that the time for objection extends beyond initial evaluation by only 14 days. This is true. However, there are several months to object from the time the application is posted. This is much greater than the suggested time in the comment of two months. While that may require some preparation before one determines if the TLD application has passed evaluation, it must be balanced with need to not delay the process once initial evaluation is complete. Providing for objections beyond extended evaluation would be detrimental to the overall time line of the process.

The entire objection procedure is intended to be fair and has safeguards. Accordingly, the DRSP and/or the Panel have the discretion to extend certain deadlines. See Procedure, Art. 16(d) (possibility of extension of a deadline or suspension of the proceedings upon request of the parties); Art. 17(b) (possibility to grant a time limit for written submissions that is greater than 30 days); Art. 21(a) (possibility to extend the 45-day deadline for the expert determination). Note also that objectors do have an opportunity to correct errors that are found in the DRSP's administrative review of the objection and are given an additional five days to file the corrected objection, pursuant to Article 9(c) of the Procedure.

Several comments addressed issues arising from multiple objections or multiple applications and possible consolidation. As set out in Article 12 of the New gTLD Dispute Resolution Procedure (the "Procedure"), multiple objections may be consolidated at an early stage of the dispute procedure. In the event that a large number of similar objections were filed against a single application (a situation that has been compared to a "denial of service" attack), the objections could be consolidated, pursuant to Article 12. Moreover, multiple objections aimed merely at harassing or overwhelming an applicant might constitute an abuse of the right to object and thereby be subject to dismissal in the "quick look" procedure.

If an objector wishes to object to a single application on more than one of the four available grounds, separate objections must be filed, because there are different procedures for different objections (e.g., legal rights objections will be administered by the WIPO, while community objections will be administered by the ICC International Centre for Expertise). In addition, the qualifications and experience of the experts will relate to the nature of the objection. In addition to the consolidation of multiple objections against the same gTLD, it would be possible to consolidate multiple objections against similar gTLDs. This latter possibility is implicit in Article 12(a) of the Procedure and is explicitly stated in Article 7(d)(i) of the draft WIPO supplementary rules for gTLD Dispute Resolution.

Consolidation of multiple objections would normally occur before the Applicant has paid its filing fee(s). The DRSP will have discretion to refund a portion of the amounts paid as filing fees in the case of consolidation occurring later. See, e.g., Article 7(c) of the draft WIPO supplementary rules for gTLD Dispute Resolution.

Some have commented on the dispute resolution panels. The question whether to provide for three-member panels of experts for all dispute procedures has been discussed in the comments relating to previous drafts of the Applicant Guidebook. ICANN continues to favor a rule that would require all parties to agree to three experts for Legal Rights Objections, as provided by Article 13(b)(ii) of the New gTLD Dispute Resolution Procedure (the "Procedure"). For convenience of reference in the Procedure and elsewhere, the term "Panel" refers to one or three members, as appropriate. Further, as panel are

meant to have the appropriate expertise, to the extent any particular organizational structure is relevant to the objection, the dispute resolution provider should take that into consideration, as should the parties, when selecting panel members.

It would not be appropriate to provide public comments to a DRSP directly but the panel will have access to public comments through the TLD Application System and have the discretion to rely on them.

Providing free dispute resolution for governments, as suggested, is not contemplated at this time. The process is based on cost recovery. Relieving the requirement to pay fees by one would result in higher fees to others. How to do that accurately is problematic and the result is discriminatory.

## COMMUNITY OBJECTIONS

### Key Points

- After extensive review and consideration of public comments, the complete defense has been eliminated.
- However, in order to prevail against a defense that an applicant would have had standing to object, objector must prove an elevated level of likely detriment.
- The Independent Objector may choose (although would not be required) to file an objection upon the request of governments or entities that are unable to afford the costs of the dispute resolution proceedings.

### Summary of Comments

Legal rights objection—defenses. As is the case with the community objection, the fact that an objector has not chosen to apply for the same or any other string does not constitute any element of a defense to a legal rights objection. *BBC (21 July 2010)*

Community objections—standing.

The following should be added to Section 3.1.2.4: “Where more than one entity joins together to file a community objection, or where more than one community objection is consolidated pursuant to 3.3.2, the qualifications of the objectors shall be cumulated for purposes of determining standing. Business and trade associations, and membership/affiliate organizations, are eligible to demonstrate standing to file a community objection under the above criteria.” *COA (21 July 2010)*.

The requirement to support and/or endorse a particular community application may create the possibility of conflict of interest, whereby a supporter of one community-priority application could file a community objection against a competing community-priority application to assist the one they support, rather than for legitimate reasons. Therefore, any community institution/member organization that supports a particular community-priority application should not be given standing to file a community-priority objection against any other community-priority application for the same TLD. *Big Room (21 July 2010)*.

Community objection –definition (3.1.2.4). BITS believes that the text defining a community is well written. *BITS (22 July 2010)*.

Community objections—“detriment” standard.

In lieu of the first paragraph under “Detriment”, insert the following in Section 3.4.4: “An objector that satisfies the preceding tests shall be presumed to have established a likelihood of detriment to the rights or legitimate interests of its associated community. However, this presumption may be rebutted by the applicant. Ultimately, for an objector to prevail, the panel must determine that such detriment is likely if the objected-to application were approved. Factors that could be used by a panel in making this determination include, but are not limited to:” *COA (21 July 2010)*.

Community objections—complete defense.

In the same section (3.4.4) provision should also be made for defining the circumstances under which “satisfaction of the standing requirements for filing a Community Objection...by a community-based

applicant is a complete defense to an objection filed on community grounds.” An applicant asserting this defense should be required to affirmatively prove that the community it claims to represent is substantially identical to the community expressing opposition. While it should not be possible for a community-based applicant to assert the complete defense by claiming to represent a community that is not substantially identical to the one expressing the objection, proof of satisfaction of the standing requirements may also provide an element of a defense to the objection even if the complete defense is not available. *COA (21 July 2010)*

ICANN should qualify the complete defense with a “relative representativeness” requirement by which if the complainants are clearly more representative of the intended community than the applicants, the complete defense should not apply and the complaint should be examined on its merits. *A. Abril i Abril (Module 3, 21 July 2010)*.

ICC adjudication—limitations. The grounds for a community objection are in areas that contravene the concern, scope and expertise of the International Chamber of Commerce. Would the neutrality and global representativeness of the ICC be recognized by each country? Adjudications on M&PO and community objections involve a broad range of subjects and are of great significance. It would be unfair for a certain international organization in some business areas to perform adjudications. More representative and neutral organizations should be selected or at least added to complete this job. *ISC (21 July 2010)*.

Objection fee—developing and undeveloped countries. The fee for a community objection is set too high and would stifle the initiative of developing and undeveloped countries. *ISC (21 July 2010)*.

No fee for government objections. ICANN should not impose any fees to individual governments including local governments that intend to submit objections to individual applications. Such objections are based on the public interest and therefore should be exempted from general commercial practices. *JIDNC (21 July 2010)*. *A. Al-Zoman (21 July 2010)*.

Not-for-profit organizations concerns. Participation in dispute resolution procedures during the new gTLD application process would be burdensome on resources of not-for-profit organizations, increasing the likelihood that they will be subject to DNS abuses by bad actors. Factors considered by panels deciding legal rights objections should be clarified (e.g., “relevant sector of the public,” recognition of the “sign”, “intent”) and should not provide a “how to” guide for formulating arguments against accusations of infringement. “Experts” appointed to dispute resolution panels should include individuals well versed in the operations and specific needs of not-for-profit organizations. Fees for filing and adjudication of objections should be determined as soon as possible so that not-for-profit organizations will be able to budget adequately in advance for the new gTLD process. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

## Analysis of Comments

As stated in one of the comments, business and trade associations and other organizations are indeed eligible to demonstrate standing to file a community objection. The Objector is “one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted”. New gTLD Dispute Resolution Procedure (the “Procedure”), Art. 2(b). Entities that join together to file a single objection could cumulate their qualifications as a single “Objector”. However, it would not be

feasible to cumulate the qualifications for standing of multiple Objectors whose objections may be consolidated. Even when consolidated, multiple objections are considered on their individual merits.

Contrary to one commenter's suggestions, there does not appear to be any conflict of interest in a situation where the supporter of one community application files an objection against a competing community application. Indeed, it would be inappropriate to add a rule that an objector to a gTLD application must not have any interest in any other gTLD application. A person or entity with an interest in one application who objects to another application would still be required to satisfy all of the applicable rules for standing, and meet the standards for an objection.

The question whether the objector who files a community objection must prove that there is a likelihood of detriment to the rights or legitimate interests of its associated community has been raised and addressed in connection with previous drafts of the Applicant Guidebook. ICANN does not consider that the satisfaction of other elements of the community objection (community, substantial opposition and targeting, as set out in § 3.4.4) should create a presumption of detriment. The likelihood of detriment is an independent element of the objection that must be proven by the objector. If the objector cannot prove the likelihood of detriment, there does not appear to be any reason why the objector should be entitled to block the applicant's application. Simply not wanting another party to be the applicant or obtain the name is not sufficient to be deemed a detriment.

The complete defense to a community objection (§ 3.4.4 *in fine*) has also been raised and addressed in connection with previous drafts of the Applicant Guidebook. After extensive review and consideration, the complete defense has been eliminated. However, in order to prevail against a defense that an applicant would have had standing to object, objector must prove an elevated level of likely detriment.

The costs that the parties must pay in the dispute resolution proceedings continue to attract comments. It has been suggested that the costs are too high for developing countries and that governments should be excused from paying any costs, since their objections would be based upon the public interest. In considering this issue, it must be recalled that the costs paid by the parties cover the administrative expenses of the DRSPs and the fees and expenses of the experts. These costs must be paid by someone. If certain categories of objectors pay reduced or no fees, some other person or entity would have to pay in their place. In general, it is not unusual for governments to pay their respective shares of the costs of dispute resolution proceedings. In the specific instance of governments or other entities (including non-profit organizations) that may be unable to afford the costs of the dispute resolution proceedings, the Independent Objector may choose (although would not be required) to file an objection upon their request; that function is part of the IO's mandate. Of course, in that circumstance, the IO would remain independent and would be acting generally in the public interest and not on behalf of any particular entity or government. Finally, it should be recalled that the prevailing party will be reimbursed the full amount of the advance payments of costs that it paid during the proceedings, pursuant to Article 14(e) of the New gTLD Dispute Resolution Procedure.

It has been suggested that the grounds for a community objections "contravene the concern, scope and expertise of the International Chamber of Commerce" and that it would be "unfair for a certain international organization in some business areas to perform adjudications". However, it should be recalled in this context that the ICC International Centre for Expertise, as DRSP, would administer the dispute resolution procedure; it would not "perform adjudications" itself. It is the expert panel (appointed by the DRSP) that hears the dispute and issues an expert determination. ICANN considers that the ICC and its International Centre for Expertise, with their extensive experience in administering

various types of international dispute resolution proceedings, are well qualified to act as a DRSP. The rules of the International Centre for Expertise are available at:  
<http://www.iccwbo.org/court/expertise/id4379/index.html>.

## INDEPENDENT OBJECTOR (IO)

### Key Points

- An objection filed by the IO is subject to the same scrutiny by the experts as any other objection.
- The IO's status and rights will be no greater than those of any other objector.

### Summary of Comments

IO Accountability. There is a troubling lack of specificity in DAGv4 regarding the accountability of the Independent Objector. E.g. the potentially limitless renewable terms of the IO cause concern. There is no process by any person aggrieved or harmed by the IO's decisions and actions or inactions as the case may be to object or appeal. These concerns are magnified given the IO's mandate to file M&PO objections. At a minimum, specific provisions relating to an appeal and review process for the IO as well as either non-renewable tenure or a maximum number of terms ought to be included in the final applicant guidebook. *M. Wong (21 July 2010). R. Dammak (July 2010).*

Experience. In choosing the one IO, ICANN should consider the candidates' experience with not-for-profit organizations and the way they use the Internet. *Red Cross (21 July 2010).*

Malicious Behavior Vulnerability Objection needed. Some objection mechanism needs to be created to fill a significant, critical safeguard gap in the objection process—dealing with the situation where an application, while meeting baseline standards for successfully passing through evaluation, nonetheless would leave members of the public excessively vulnerable to risks of malicious activities (e.g., a .kids gTLD, where the applicant does not include a registrant vetting process before registration in order to have heightened security procedures for .kids). Because a concern could arise outside of the community context in some cases, it should be possible to raise a concern without having to meet the standards for standing to file a community-based objection. One approach could be to assign this duty to the Independent Objector who would be in a position to evaluate public comments that raise a concern, consult with relevant experts and then launch an objection if needed. Other approaches should also be considered. *COA (21 July 2010).*

### Analysis and Proposed Position

Two people comment on IO accountability. There is no question that accountability is extremely important. Thus, it should be remember that objections filed by the IO are heard by an expert panel the same as any other objection. For example, if the IO submits a Community-based objection that is manifestly unfounded or an abuse of the right to object, the objection will be dismissed. An objection filed by the IO is still subject to the same scrutiny by the experts as any other objection. In the dispute resolution proceedings, the IO's status and rights would be no greater than those of any other objector. The IO would not have a privileged position, or wield unchecked power.

ICANN agrees with the suggestion that experience with non-profit organizations could be a useful qualification for the position of IO. This will be a consideration in the tender.

The comment regarding the problem of malicious behaviour refers to actions and misuse of a gTLD that occur post-delegation. To the extent that such misuse of the gTLD could be discerned in the application for the gTLD, it could potentially support an infringement of rights objection. Otherwise, there are other remedies (including, post delegation dispute resolution and criminal prosecution) that are available post-delegation.

## POST DELEGATION DISPUTE RESOLUTION PROCEDURE (PDDRP)

### General Process Comments

### Key Points

- The Trademark PDDRP should be enforced to hold registries liable for their own (or their affiliate's) bad acts; it should not hold registries liable for acts of unaffiliated registrants.
- One implication of non-use is that the trademark holders have one more effective deterrent in place to protect their marks.
- Marks protected through the PDDRP, will meet the same test as those protected in URS and Sunrise protection.

### Summary of Comments

PDDRP fails to make registry operators accountable.

Registry operators have an inherent responsibility to ethically manage their domains; as it stands, the PDDRP relieves them of that responsibility. If registry operators fail to monitor their registration process, whether due to financial interests or simple negligence, they should be held accountable. *IHG (20 July 2010).*

The PDDRP needs to be revised to make registry operators accountable. The standards section now effectively relieves registry operators of an enormous amount of liability and gives them no incentive to monitor domain names being registered or those already within their registries for infringement. *CADNA (21 July 2010). Microsoft (21 July 2010). NCTA (Module 3, 21 July 2010).*

It is up to ICANN to take responsibility to police bad actor registries. ICANN should not shift this responsibility to users. *Nestle (21 July 2010).*

PDDRP as currently drafted will discourage any actual, widespread use by potential complainants. *Verizon (20 July 2010). CADNA (21 July 2010). INTA Internet Committee (21 July 2010). Rosetta Stone (21 July 2010). BC (26 July 2010).*

PDDRP and RRDRP should be combined. *Verizon (20 July 2010). CADNA (21 July 2010). AT&T (21 July 2010). INTA Internet Committee (21 July 2010). Rosetta Stone (21 July 2010).*

The PDDRP must apply to all gTLDs. *W. Staub (22 July 2010).*

Registrars not addressed. The PDDRP is not a full remedy because it does not address the bad faith, specific or otherwise, of registrars who inevitably will be involved in illicit activities working in collusion

with registries. This loophole will encourage black hat registries to set up arms-length relationships with registrars and other third parties to engage in bad faith conduct. *Verizon (20 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Rosetta Stone (21 July 2010)*.

The PDDRP is not adequate as currently drafted. ICANN should appoint a third party agency to conduct an annual audit of each registry operator including on-site visits. The accreditation agreements should specifically ban “warehousing” and other bad practices. A registry operator that breaches its obligations should face a heavy fine or a first offense and suspension for a second offense. *MARQUES/ECTA (21 July 2010)*.

Burdensome for not-for-profit organizations. AAMC values the PDDRP as a potentially more affordable and expedient means to resolve conflicts, but it requires improvement. As currently proposed, participation in the PDDRP is likely to be burdensome for not-for-profit organizations, increasing the likelihood that they will be subject to DNS abuses by bad actors. *AAMC (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

The PDDRP is premature and should not be adopted. It lacks the same level of multistakeholder process and it lacks mechanisms to ensure that the rights of legitimate registrants will be secured. It could potentially upset the whole registration culture. It raises issues of intermediary liability and directs the registration of domain names towards a more controlled system of content. Free speech and expression could be jeopardized. *K. Komaitis (21 July 2010)*. *R. Dammak (22 July 2010)*.

Support for PDDRP as drafted in AGBv4. I support the PDDRP as detailed in ABGv4 and strongly endorse the principle that it should only be used against registries that are actively involved in cybersquatting. *R. Tindal (21 July 2010)*. *Domain Dimensions (22 July 2010)*.

Registered and unregistered marks. The PDDRP should operate like the Clearinghouse and make a distinction between registered and unregistered marks. The inclusiveness of the PDDRP as currently proposed poses danger because almost every word is or can be a common law trademark and that would give the trademark community the opportunity to turn against registries for every single word that is part of our vocabularies. *K. Komaitis (21 July 2010)*. *R. Dammak (July 2010)*.

Trademarks should not be required to have undergone “substantive review” to be eligible to be the subject of a PDDRP complaint. Under global trademark law there is no single standard for what constitutes “substantive examination”. For purposes of the PDDRP, a registration that is valid in the eyes of the sovereign nation that granted it should be a valid registration. The PDDRP should be amended to accept trademark registrations from any valid sovereign nation as a basis for a PDDRP complaint. *AAMC (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

## **Analysis of Comments**

Once again, thanks to all of those who have commented on the Trademark PDDRP. As can be seen from the differences between the most recent version and prior versions of the PDDRP, the public participation process has been extremely productive. This round of comments is no exception. While the changes to the PDDRP are much less voluminous in the newest version to be posted, they are no less important.

Although not all suggested revisions have or could have been included in the PDDRP, in that some were either or not implementable or were directly at odds with each other thereby requiring some middle ground to be proposed, they have all been carefully considered.

General comments about the PDDRP are highly varied. Some suggest that the PDDRP fails to make registries accountable, that it is premature, that it is burdensome and therefore will not be used. Still another states that the PDDRP strikes a proper balance and is an appropriate level of enforcement against registries because it only holds them accountable to the extent registries are involved themselves in cybersquatting. Some suggest that the PDDRP should make a distinction between registered and unregistered marks, and others assert that there should be no substantive review requirement for marks to be addressed by the PDDRP. Finally, one commenter states that the PDDRP must apply to all gTLDs and another states that it should apply to all registrars.

The Trademark PDDRP should be enforced to hold registries liable for their own (or their affiliates') bad acts; it should not hold registries liable for acts of unaffiliated registrants. If a trademark holder's rights are being infringed, there are other mechanisms already in place, such as the UDRP or judicial proceedings, in which they can seek redress from the direct source of infringement. Further, with the new gTLD Program, the avenues to take against a registrant have expanded to include the Uniform Rapid Suspension System (URS). Thus, the PDDRP is not an exclusive avenue to challenge trademark infringement.

In terms of the marks that can be addressed, the PDDRP does distinguish between registered and unregistered marks. Please see Section 9.2.1 in the latest version of the PDDRP, posted with the Applicant Guidebook in November 2010. Further, as the Board has clarified, in the new gTLD protection mechanisms (see <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6>), review for use of a mark in many circumstances is important to help diminish gaming. It makes sense that marks capable of being addressed through the PDDRP, will be equivalent to URS and Sunrise protection.

We again see a comment that, as written, the PDDRP will not be used very much and its effectiveness will be judged by its non-use. As noted in the last round of comment analysis, if this is the result, it may be an indicator of need for evaluation or of success. One implication of non-use is that the trademark holders have one more effective deterrent in place to protect their marks.

Finally, while expansion to existing gTLDs, as well as registrars, may be something to consider in the future, such expansion is not at issue here and will not be considered at this time.

## Standards

### Key Points

- Willful blindness is not enough to hold a registry liable under the Trademark PDDRP. There must be affirmative conduct on the part of the registry. To hold otherwise will lead to some incorrect results and irrevocable harms.
- The PDDRP was developed to prevent systematic abuse by the registry itself, and the standards are purposely written to do just that.

### Summary of Comments

#### “Willful blindness” standard.

Trademark owners should not be relegated to second-level enforcement tools in a digital age where registration authorities may choose to act as de facto registrants or turn a blind eye while facilitating and profiting from cybersquatting. The PDDRP encourages new gTLD registries to take root in countries with weak legal protection for IP (e.g., nations that lack theories of secondary liability or remedies for cybersquatting). The PDDRP should utilize a “willful blindness” standard and extend to registrars as well (see PDDRP, secs. 6 & 1). *IOC (21 July 2010)*.

The scope of the current PDDRP as limited to affirmative conduct undermines the intended effect of encouraging responsible TLD management and DNS credibility. Stakeholders have called for consideration factors to address the real possibility of willful blindness occurring in the course of management of new domains. *WIPO Center (16 June 2010)*.

The PDDRP, without explanation, fails to reflect a widely held position in the submitted comments regarding willful blindness, a position expressed not only by WIPO and the IPC, but also INTA and MARQUES/ECTA, which collectively represent a significant global share of trademarks. *WIPO Center (21 July 2010)*. *Hogan Lovells (21 July 2010)*. We support WIPO’s call for the PDDRP to be re-engineered. *JONAS (11 July 2010)*. *Com Laude (21 July 2010)*.

The “affirmative conduct” limitation discourages best practices by registries (including those who intentionally design their operations to engage in bad faith activities through passive mechanisms). The “affirmative conduct” definition should be broad enough to include both knowing and intentional bad faith conduct on the part of registries and registrars whether “affirmative” or otherwise. *Verizon (20 July 2010)*. *Rosetta Stone (21 July 2010)*.

The following clarifying definition should be added: “Affirmative conduct” may consist of affirmative steps taken by a registry operator to deliberately shield itself from full or exact knowledge of the nature and extent of infringing activity, after it knows or strongly suspects that infringing activity of the type contemplated by this PDDRP is occurring or is likely to occur. *INTA Internet Committee (21 July 2010)*

“Affirmative conduct” engaged in by the registry operator must be clarified; if the threshold is set too high then the risk is that the PDDRP’s effectiveness will be put in doubt. *C. Speed (21 July 2010)*.

As proposed by WIPO there should be “safe harbor” defenses to protect registry owners who are exposed by registrants. However, the PDDRP must address “willful blindness” if ICANN is serious about protecting consumers and IP owners. *MARQUES/ECTA (21 July 2010)*.

WIPO’s proposed amendments to the PDDRP relating to willful blindness should not be adopted. They are contrary to established laws of jurisdictions that have addressed this issue and are an expansion of international law. ICANN should not be creating dispute processes or even contractual requirements based on how intellectual property owners would like to see the law in the future. It is not for ICANN to pre-empt the state of existing law by incorporating this notion of willful blindness in to the PDDRP. *Neustar (21 July 2010)*.

The PDDRP as proposed does not offer realistic examples of what behavior, if any, may qualify as affirmative conduct by the registry operator. NCTA supports a somewhat less stringent standard than “willful blindness” which would require that the registry have first been put on express notice of abusive registrations. NCTA had previously provided examples that should suffice to make the required showing that a gTLD operator has been acting in bad faith—i.e. a failure to act after being put on express notice of abusive registrations of domain names; and a failure to require complete and accurate Whois information, either on a frequent or a regular basis. Reasonable persons would be hard-pressed to justify excluding, at a minimum, these situations, from those for which registries should take responsibility. *NCTA (Module 3, 21 July 2010)*.

Material harm. The definition of material harm may prove challenging. ICANN should provide information as to the interpretation of material harm. By using this term the PDDRP is recognizing abuse that does not require actual or threats of trademark infringement. *K. Komaitis (21 July 2010)*. *R. Dammak (22 July 2010)*.

“Clear and convincing” and bad faith.

The clear and convincing standard higher than that in most civil actions. It is unlikely that complainants, without access to the discovery available in full-blown litigation, will be able to meet this evidentiary standard. The bad faith standard is unreasonably stringent. It is unclear how a complainant could establish “specific” bad faith. This implies that a registry operating with general bad faith intent to profit is free to carry on its illicit activities. Moreover, a complainant must establish a “substantial” pattern of “specific” bad faith. *Verizon (20 July 2010)*. *AAMC (21 July 2010)*. *DuPont (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*. *IBM (21 July 2010)*. *Rosetta Stone (21 July 2010)*. *BC (26 July 2010)*.

Pattern and Practices and Joinder.

The language that requires the complainant to prove that a pattern of registering domain names that specifically infringe one of the complainant’s marks should be deleted, revised to lower the threshold for harm to the complaining trademark owner, and/or that the proposal be revised to allow some form of joinder of class action status for aggrieved trademark owners. Under the current provision, despite the degree of abusive conduct, there would be no basis for a PDDRP complaint against a gTLD operator where no one trademark owner has one mark that is specifically affected by abusive registrations. *NCTA (Module 3, 21 July 2010)*.

Given the “substantial pattern” requirement, among other things, ICANN should consider whether the PDDRP would allow for joinder or class action status between aggrieved parties. This would allow parties

to share the cost of the PDDRP and to combine efforts to more efficiently gather and present evidence to the Expert Panel. *IPOA (21 July 2010)*.

Affiliated Entities. To take into account the issues of vertical integration and PDDRP liability, conduct of a registry operator should be defined to include: “Conduct by entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.” *INTA Internet Committee (21 July 2010)*

There is an imbalance between the stringent standard for complainants and the leniency toward registries that is troubling and difficult to justify. *DuPont (21 July 2010)*.

Reference to “infringement.”

The described standards should not necessarily involve trademark infringement as is the case for UDRP complaints. Also, since the parties may not be in the same jurisdiction, reference to the concept may raise conflicts of law issues. Instead, reference should be made to the breach of standards or a similar neutral term. *IPOA (21 July 2010)*.

The phrase “in fact infringes the trademark of the complainant” should be added to the sec. 6 second level complaint standard; this ensures that complainant proves actual infringement, as is required for cases of secondary liability in court. This is important because there may be no discovery and there is some uncertainty about the panel/arbitrator. *RySG (21 July 2010)*.

## Analysis of Comments

In terms of the standards, there has been much discussion and comment on whether registries should be found liable under the PDDRP for willful blindness to malicious conduct, i.e., the fact that there are infringing names in its registry. As set out in the last in the current version of the Trademark PDDRP proposal, and set forth in the last version of the PDDRP Comment Summary and Analysis:

willful blindness is not and properly should not be included as part of the standard under which the registries will be reviewed. The portion of the PDDRP that can hold a registry liable for infringement at the second level is a large step in providing trademark protections. It must be done carefully. Registries do not have a direct interface to customers, that happens at the registrar level. Registries maintain the database. In any large registry there will be a relatively large number of “infringers,” the registry may be aware of some of them but will also be unaware of others. To hold registries accountable for all instances of infringement would have unknown effects on the ability of the registry to conduct business. A standard to hold them liable for that cannot be implemented understanding all of the effects, including the interplay and renegotiation of agreements between and among, registries, registrars, and ICANN. In the meantime, it is reasonable to hold registries accountable for affirmative conduct with regard to second-level names. That is what this standard does; it hasn’t been done up to now; it is a substantial step.

<http://www.icann.org/en/topics/new-gtlds/pddrp-comment-summary-and-analysis-28may10-en.pdf>

One commenter request further explanation of “material harm.” Material generally relates to having consequence, but it is difficult to provide more explanation in the abstract. It will up to the Expert Panel to determine if something is material to the Complainant.

Some believe that the clear and convincing standard is too high because it is higher than most civil actions. Some also think the bad faith requirement calling for the pattern of registration of infringing domain names within a registry is too limiting because a complainant could not go after the registry for infringement of a single or a few trademarks or just their own marks. While both the requirements for clear and convincing evidence and a bad faith requirements are high, that is how they are intentionally crafted. The PDDRP was developed to prevent systematic abuse and thus the standards are purposely written to do just that. If there is just one or a few infringing names in a registry (or even many), the complaint can use other mechanisms available to it, the UDRP and the URS, as well as the judicial system. The suggestion of allowing joinder is certainly something that can be considered and will be included in discussions with the PDDRP provider(s); however, that will not eliminate the need for proof of a pattern and practice along with systematic registrations of one trademark holder’s names.

One commenter suggested that not only registries, but their affiliated and commonly controlled entities must be required to refrain from conduct that would lead to infringement of trademarks. We agree. This point is well taken and this has been incorporated into the version of the Applicant Guidebook posted in November 2010 with this analysis.

## Procedures

### Key Points

- ICANN shall refrain from determining whether to implement a remedy until conclusion of the appeal
- No member of the evaluation panel shall serve as an appeal panel member

### Summary of Comments

#### Fees and Costs.

The explanation of costs is vague and fails to mention any limit on the cost of PDDRP proceedings. ICANN's passing statement that costs will be reasonable does not mean that they will be. ICANN needs either to implement a maximum cost or provide the parties with more say in how the costs will stack up. Otherwise complainants will have no incentive to use the PDDRP and will look for alternative methods to solve their disputes. *CADNA (21 July 2010)*.

The rules should be altered to provide a cap on estimated costs, and the nature of such costs must be more fully defined. The requirement for a full complainant outlay in the initial stage should be replaced by policies requiring that no payment (beyond the filing fee) be required until after the Threshold Review is completed. *INTA Internet Committee (21 July 2010)*.

IBM agrees that if the complainant is the prevailing party, the registry operator is required to reimburse complainant for all fees incurred, but if the registry operator is the prevailing party, then the registry operator may recover its filing fees. *IBM (21 July 2010)*.

The PDDRP mechanism and its costs unfortunately seemed to have been passed to brand owners. *Hogan Lovells (21 July 2010)*.

Registry Operators should not have to pay to respond; the Registry Operator should only pay if/when it loses an entire PDDRP complaint. *RySG (21 July 2010)*.

Prior notice to registry operator of a potential complaint. We question the need for the proposed 30 day period of prior notice to registry operators by would-be complainants. The length of the notice period makes it likely that the bad faith actions will continue, and mark owners will look more seriously at litigation as the more expedient and effective enforcement route. The 30-day period should either be stricken or, at a minimum, shortened to a term sufficient to provide only notice, as opposed to an advantage, to registry operators. *INTA Internet Committee (21 July 2010)*.

#### Complaint.

Expected elements of a PDDRP complaint and evidence required to support it should be described in greater detail. *AAMC (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

The complaint should include a statement regarding the actual economic and other harms the registrations have caused to the trademark owner. *RySG (21 July 2010)*.

#### Appeals.

Section 21 reference to URS should be removed. In its place should be PDDRP or alternatively reference to either the URS or PDDRP should be removed altogether. In addition the nature of the appeal is not clear. Presumably, members of the Appeal Panel should not have been involved in the initial proceeding or perhaps other similar proceedings at first instance. There is also no indication of the timing of the appeal, discovery and Appeal Panel decision except for the deadline for the initial appeal. Basic dates should be incorporated into the PDDRP itself. *IPOA (21 July 2010)*.

The registry operator has multiple and possibly redundant avenues of appeal. The registry operator may either appeal the Expert Determination through the provider's process; initiate a separate dispute resolution procedure under the provisions of the Registry Agreement; or both. Neither of these two additional avenues of appeal is necessary. *INTA Internet Committee (21 July 2010)*.

RySG would modify the appeal provision in sec. 21 to provide: Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the PDDRP proceeding for a reasonable fee to cover the costs of the appeal. If an appeal is sought, ICANN shall refrain from determining whether to implement a remedy until conclusion of the appeal. *RySG (21 July 2010)*.

New evidence should be allowed to be introduced at appeal stage. Later facts may be highly relevant to any remedy recommended by the Panel. Also because the appeal is de novo, there is no reason to restrict the timing of the evidence. *RySG (21 July 2010)*.

#### Threshold Review.

INTA Internet Committee supports the threshold review concept but the current proposal is unacceptable in several ways. If the Threshold Review panel determines that the complainant has not met the threshold review criteria, then the provider should state the grounds of the determination. The complainant should be allowed to amend the complaint at the threshold review stage without the need to file an additional filing fee. By contrast, the current process would require forfeiting the filing fee and a second process of procedures which is punitive and a waste of resources. The parties should have the capacity to suspend the Threshold Review process by joint stipulation (e.g., for settlement discussions). *INTA Internet Committee (21 July 2010)*.

Generally, the RySG believes that (1) the Administrative Review and the Threshold Review can be conducted by the same or related parties; and (2) The Threshold Review and the Expert Panel should be separate parties. The rationale for (2) is to avoid the appearance of impropriety and to remove the financial incentive of the Threshold Review automatically approving complaints. *RySG (21 July 2010)*.

The Threshold Review should include considering the factor of whether the Complainant has asserted that there is no current or previous PDDRP for the same asserted facts. RySG would like to avoid multiple review of the same facts and proposes to have joinder of similar complaints. *RySG (21 July 2010)*.

#### Default.

RySG recommends change of the language of Default (which under the UDRP in practice leads to a finding in favor of the complainant) to Failure to Respond. Failure to Respond will still allow the case to proceed to an Expert Determination on the merits, but without the stigma of a Default. *RySG (21 July 2010)*

Default cases should not be decided on the merits as this will stretch out the process unnecessarily. Registries are sophisticated businesses that can avoid this result simply by filing a response. *NCTA (Module 3, 21 July 2010)*.

#### Expert panel.

To make consistent with the URS, add that PDDRP panelists within a Provider shall be rotated so as to avoid selection of Providers that are thought to be likely to rule in a certain way. *RySG (21 July 2010)*.

Three member expert panels should be the default rule given the importance and seriousness of PDDRP disputes. *K. Komaitis (21 July 2010)*. *R. Dammak (22 July 2010)*.

#### Joinder of complaints against the same registry.

A mechanism should be added that will provide for complainants who file similar complaints against the same registry to request that the matters be joined into a single proceeding. *AAMC (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

Reply opportunities for the trademark holders (paragraph 11). ICANN needs to explain why the PDDRP gives the trademark holder two opportunities for a reply. This seems not to follow the paradigms of the URS and UDRP. *K. Komaitis (21 July 2010)*. *R. Dammak (22 July 2010)*.

Discovery (paragraph 16). Discovery should not be discretionary but should be an option that operates irrespective of panels. *K. Komaitis (21 July 2010)*. *R. Dammak (22 July 2010)*.

Suspension of Proceeding. Parties should be able to jointly stipulate that the PDDRP proceeding be suspended at any point. *INTA Internet Committee (21 July 2010)*.

## **Analysis of Comments**

Several comments have been received relating to procedural aspects of the Trademark PDDRP. Fine-tuning of a newly developed procedure is always appreciated and some are already included in the current version of the PDDRP posted in November 2010 simultaneously with this analysis.

Many have commented on the uncertainty of costs and the payment or refundable nature of fees. While costs at present are somewhat uncertain, that is unavoidable given that this dispute resolution procedure will be based on administrative costs of providers and hourly rates of selected panelists. The fees should be within current standard practices of dispute resolution providers deciding cases with the same amount of complexity. As there is flexibility as to whether one or three panelists will be chosen and given the broad range of possible evidence that could be presented, in any given matter, estimating would be difficult at best. One can look to the broad range of fees and costs estimated for community based or other objections for guidance found in Module 1 of the Applicant Guidebook. With respect to fees, it has now been clarified that registry operators need not pay unless and until the trademark holder is deemed the prevailing party, and all fees will be refunded to the prevailing party.

Some suggest that the elements of a complaint are not sufficiently stated and one group thinks a statement of harms should be required. With respect to the elements of a complaint, there is no suggestion as to what is not sufficient and the elements have been reviewed for sufficiency by experts in

dispute resolution. In agreement with one suggestion, there will be an inclusion to state that the complainant has been harmed, although it will not require the precise level of harm.

In terms of appeals, some suggest:

- more clarity in terms of timing and panelists who may preside over an appeal,
- when ICANN will implement a remedy,
- whether evidence can be presented.
- there are too many avenues of appeal or that they are redundant with the dispute resolution term in the registry agreement.

Revisions will be made to the appeal section of the PPDRP to clarify issues about timing and scope of an appeal, the timing of the imposition of a remedy, as well as which panelists may preside over an appeal. The nature of appeals, however, are not redundant as one commenter suggests. An appeal of the Expert Determination is about the panel statements, while the invocation of dispute resolution via the Registry Agreement is about ICANN actions with respect to imposition of remedies.

With respect to the Threshold review, one group suggests that if Administrative review finds a complaint deficient, that the Complainant should have an opportunity to amend without forfeiting a filing fee. Another group suggests that the Threshold Review Panel and the Expert Panel should not have the same panelists. We agree with both these suggestions.

Allowing for a short time to amend a Complaint for procedural deficiencies seems reasonable and has been included. So too has the indication that no member of the Threshold panel shall serve as an Expert Panel member.

One group suggests changing the term Default to Failure to Respond, to avoid the stigma of the word Default. Another suggests that no determination on the merits should be made if a party defaults. No changes will be made to the default section with respect to these comments. While a failure to respond should be considered a default, the party that failed to respond should still be given the opportunity to prevail on the merits.

One group's suggestion that panelist should be selected on a rotating basis will be incorporated. Two have suggested that a three-member panels should be the default position, but since a three member panels can be requested by either party, the current position seems sufficient and more economical unless one of the parties makes an affirmative request.

Other comments discuss joinder, reply opportunities, discovery, and suspension of the proceedings. Joinder, when appropriate, is always encouraged, but will be left to the Providers to make that determination. If the facts and circumstances are sufficiently similar, it is anticipated that the Provider will have rules in place to address such circumstances. In those cases, those rules should apply, although Providers will be encouraged to consolidate matters to the extent consolidation is appropriate. As for reply opportunities, the trademark holders should have the right to ensure each of their points is heard. In terms of discovery, because the parties are incented to provide as much information as they cans, it should be left to the panel to determine more information is required, but this dispute resolution mechanism should not be an opportunity for parties to conduct discovery for any particular purpose. As for suspension in connection with settlement discussion, there is no reason that, in a post-delegation mechanism, that the panel should not consider a stay pending such discussion. That, however, will be left up to the relevant panels.

## Remedies

### Key Points

- Panels' Determinations will be given great deference, however, ICANN is in the best position to understand the effectiveness and effect of recommended remedies and will make the final determination.
- While a remedy shall not be inconsistent with those available under the Registry Agreement, there must be flexibility that it can be one not referenced in the Registry Agreement.

### Summary of Comments

#### Advisory nature of panel conclusions.

Widespread use of the PDDRP is seriously undermined given that ICANN can treat panel conclusions as merely advisory with no obligation on ICANN's part to take any action against a registry. If a finding of specific bad intent, including even that established by a *substantial* pattern of misconduct, does not result in serious consequences for the registry operator, what else is required to trigger ICANN taking action? At a minimum, such a finding should trigger immediate action by ICANN against the registry, to provide certainty to all ICANN stakeholders and justify the legitimacy of the PDDRP/RRDRP process. *Verizon (20 July 2010)*. *IPOA (21 July 2010)*. *CADNA (21 July 2010)*. *Rosetta Stone (21 July 2010)*. *BC (26 July 2010)*. *NCTA (Module 3, 21 July 2010)*.

Why is ICANN afforded such discretion especially given that ICANN is not a party of the dispute? This raises issues of privity of contract that we have raised with ICANN but to which we have not received any response. *K. Komaitis (21 July 2010)*. *R. Dammak (22 July 2010)*.

Decisions by a PDDRP expert panel should be considered final in most cases. ICANN's discretion to make its own determination on what remedies to impose should be limited to cases where the panel decision contradicts or falls outside the scope of the substantive terms of its Registry Agreements. Otherwise, the Registry Agreement should include a provision that parties must abide by the decision of an expert panel in the case of a PDDRP. *AAMC (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

Deletion of domains names. The expert panel adjudicating a PDDRP complaint should have discretion to delete domain name registrations in certain cases (e.g. where the registrant is the registry, or where a relationship can be shown between the registrant and the registry at issue) and thereby prevent the domains in these cases from remaining with the registrar. *AAMC (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*. *Microsoft (21 July 2010)*.

Panel authority. A panel should not be able to influence the adoption of a remedy that a court cannot order or that ICANN cannot implement under the terms of an applicable Registry Agreement. *RySG (21 July 2010)*.

Determining Malice. "Malice" is a term which ranges in meaning across UK and US jurisprudence and may not have meaning at all to those in countries without the common law. Further, its definition ranges from actual intent to disregard. RySG strongly recommends defining the term clearly so that its meaning is clear and unequivocal. Also, we advise that in the extraordinary remedy of terminating the

Registry Agreement, the value of the gTLD to the community and the existing registrants be considered and weighed (e.g. revised language: "the clear and unequivocal intent to cause great economic harm to the trademark owner and provided no value to the Internet community or the domain name registrants independent of this intended harm" and that in making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for the registry operator and other, unrelated, good faith domain name registrants operating within the gTLD). RySG (21 July 2010).

#### Challenge to remedy.

Under Sec. 22 the registry operator may challenge ICANN's imposition of a remedy. This means that the initial determination may be subject to both an appeal and a challenge relating to the remedy, both of indeterminate length. This seems unpalatable from the complainant's point of view. IPOA (21 July 2010).

RySG would move the language about ICANN waiting to impose a remedy to the "challenge to remedy" section (sec.22) and requests clarification on how the 10 day period in this section interacts with the 20 day appeal timeframe in sec. 21. RySG (21 July 2010).

RySG suggests the following language added to sec. 22 to create consistency with the provision that the Expert Determination shall be reviewed de novo and so that the registry operator should receive the same protections for alleged violations and claims of termination under the PDDRP that it has for alleged violations of the Registry Agreement: "Any arbitration shall be de novo and determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor decision of ICANN to implement a remedy shall serve to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement, including any and all provisions providing for notice and an opportunity to cure breaches of the Registry Agreement." RySG (21 July 2010).

Availability of Court or Other Proceedings (sec. 23). For consistency with the UDRP, RySG proposes that Sec. 23 be amended to read:

"Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability. Neither an Expert Determination or other proceedings under the PDDRP shall operate in any way to prejudice or otherwise affect the position of any party to a court proceeding, which shall be conducted independent of the PDDRP and according to the standards of trademark law.

In those cases where a Party provides the Provider with documented proof that a Court action was instituted prior to the filing date of the Complaint in the post-delegation dispute proceeding, the Provider shall suspend or terminate the post-delegation dispute resolution proceeding. In all other cases in which a Court action is instituted before the conclusion of the PDDRP proceedings, the Provider shall determine whether a stay is consistent with the interests of justice, including considering whether there is a possibility of inconsistent findings or results if a stay is not granted, the presence of any third parties in the Court proceeding and the scope of the claims and relief sought in the Court proceeding." RySG (21 July 2010)

## Analysis of Comments

The imposition of remedies following an expert determination in a Trademark PDDRP has been the subject of many comments. Indeed, there is a great appreciation for the difficult nature of potential remedies and a concern that legitimate registrants not be harmed in the process. Such concerns are the most important and are taken extremely seriously in the development of the PDDRP available remedies.

Some question why ICANN should have so much discretion to impose remedies recommended in the Expert Determinations. Protection of registrants is precisely the reason for such discretion. The Expert Panel is in place because of its expertise in dispute resolution and fact finding. The Panels' Determinations will be given great deference during the imposition of remedies against the registries. However, ICANN is in the best position to understand whether those recommended remedies might harm legitimate registrants in some fashion. Thus, for the protection of those legitimate registrants, it is important to maintain discretion.

The protection of registrants' rights, is also the reason why deletion of names is not a remedy, although some suggest it should be. Registrants are not a party to the Trademark PDDRP. The trademark holder can always use the URS or UDRP to prevail in having a domain name suspended or transferred.

The current PDDRP model requires a finding of malice in order to recommend a remedy of termination. Inclusion of malice was an earlier recommendation of the RySG. Another member of that stakeholder group now recommends alternative language ("intent to harm the trademark holder and failure to benefit the Internet Community") now. We elect to retain the original recommendation of the RySG.

Finally, comments have been made suggesting revisions to the language regarding the ability and timing to challenge remedies and availability of court proceedings. Some of the additional language will be adopted and some will not as it is felt it provides too much protection to the registry operator or improperly imposes requirements on courts or arbitration panels. The suggestions involving timing of when ICANN will implement remedies will be incorporated, as will the fact that a remedy is not intended to prejudice the registry appointed arbitrator in an arbitration. Others will not be incorporated. In particular, the fact that a decision on imposition of a remedy will be heard de novo if an arbitration is filed. ICANN is not qualified nor is it appropriate to have ICANN re-argue the Complainant's case in the PDDRP proceeding. Further, while a remedy shall not be inconsistent with those available under the Registry Agreement, there must be flexibility that it can be one not specifically referenced in the Registry Agreement.

## REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)

### Key Points

- Instituting a RRDRP is not intended to replace ICANN’s contractual compliance responsibilities.
- While an Expert Determination will be given great deference, ICANN must have discretion to impose remedies because ICANN is in the best position to understand whether recommended remedies might harm legitimate registrants in some fashion.

### Summary of Comments

#### Standing.

The RRDRP should be available to any interested party to enforce the requirements agreed to in a community gTLD in its registry agreement. The standards of “defined communities” in Section 5 and “strong association” in Section 6 may preclude legitimate claimants from having standing who are outside these definitions. *AAMC (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

ICANN should delete the standing requirement or adopt the same threshold used for oppositions under the Lanham Act, namely “any person who believes that he would be damaged by” the ultra vires actions of the registry. Section 7 should also be amended to add a requirement that the complaint include a statement of standing. *INTA Internet Committee (21 July 2010)*.

Registry protections. The PDDRP processes and procedures have evolved more than those of the RRDRP. Each of the protections for registries in the PDDRP should also be applied to registries under the RRDRP, including those related to review and appeal of RRDRP decisions. *RySG (21 July 2010)*.

PDDRP and RRDRP should be combined. *Verizon (20 July 2010)*. *CADNA (21 July 2010)*. *AT&T (21 July 2010)*. *INTA Internet Committee (21 July 2010)* *Rosetta Stone (21 July 2010)*.

Evidentiary standard lower than PDDRP. It is unclear why the RRDRP has the lower “preponderance of the evidence” standard—i.e., why is one stakeholder group allowed a reasonable standard of proof for one set of bad faith registry abuses over another stakeholder group with an equally valid set of claims. *Verizon (20 July 2010)*. *AAMC (21 July 2010)*. *Rosetta Stone (21 July 2010)*. *BC (26 July 2010)*.

#### Use of Experts.

The discretion to add experts to RRDRP proceedings, in addition to the already-appointed expert panel, should be eliminated or greatly curtailed to extraordinary cases pursuant to strict limitations. It is unfair to add testimony from an expert or experts that neither party has solicited nor which neither party will have a chance to cross-examine, and for which the parties must shoulder the unknown expense. The strict limitations under which a panel would have discretion to select an expert would be: a predetermined scale of fees for experts so that parties can assess costs in advance; the panel’s intention to appoint an expert should be communicated to the parties at the earliest possible stage so that parties can lodge objections; and any appointed expert should prepare a report summarizing their conclusions which is provided to the parties in sufficient time to allow them to present contrary arguments and evidence, possibly including a rebuttal from another expert. All of these materials should be part of the

record presented to the panel for its consideration. Further, Section 13 should be revised to provide that disputes under the RRDRP will usually be resolved on written submissions and without appointing experts and that if the panel believes that appointing an expert is appropriate, the panel will not appoint more than one expert without the stipulation of the parties to the proceeding. *INTA Internet Committee (21 July 2010)*.

#### Remedies.

Decisions by an expert panel should be considered final in most cases, without ICANN setting aside the decision in favor of a different determination. ICANN's discretion to make its own determination on what remedies to impose should be limited to cases where the panel decision contradicts or falls outside the scope of the substantive terms of its Registry Agreements. *AAMC (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

The expert panel adjudicating the RRDRP should have discretion to delete, transfer or suspend domain name registrations in certain cases (e.g., an affiliated registry and registrant). *AAMC (21 July 2010)*. *INTA Internet Committee (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

Suspension of accepting new domains as provided in Section 16 should be permitted to include registry operators that acted in bad faith, with gross negligence, with malice, or that are repeat offenders of the agreement restrictions. *INTA Internet Committee (21 July 2010)*.

Fees. The potential expenses and outcomes of the RRDRP are highly unpredictable. Expert panels can appoint experts at their complete discretion and over the parties' objection. There are no caps on expert fees and the potential expenses of the proceeding are highly uncertain. These factors are likely to drive potential complainants away from using the RRDRP and toward litigation. *INTA Internet Committee (21 July 2010)*.

## **Analysis of Comments**

The RRDRP has attracted comments with respect to standing. Some suggest that anyone who can claim harm should have standing, and not just those who are associated with the community. Standing is limited because the nature of the claim is limited to when a registry fails to comply with its own restrictions and there is harm to the community or community member. If, for example, trademark holders believe a domain is infringing its rights, there are several avenues for redress, including the URS, the UDRP and the Trademark PDDRP.

Furthermore, it should be remembered that instituting a RRDRP is not intended to replace ICANN's contractual compliance responsibilities. ICANN will continue to pursue its contractual compliance activities and enforcement for all of its contracted parties. A robust RRDRP will, however, be an additional avenue for protecting the interests of legitimate and eligible registrants within community-based restricted TLDs who otherwise could see their interests in their registrations tarnished by registrations made in violation of the promised restrictions associated with the TLD.

Some think that the RRDRP should be combined with PDDRP, and that the provisions under both should be the same, including the evidentiary standard. While the current versions of each posted in November 2010 with this analysis are now quite similar, there are some distinctions given the nature of the claims and therefore are set out separately. Indeed, because the RRDRP addresses limitations

specifically placed on the registry operator, it makes sense to have a lower evidentiary standard. In practice, it is possible that the same providers will administer both dispute resolution processes.

One group suggested placing some limitations on the ability of a Panel to appoint independent experts. Some of those suggestions are appropriate and will be incorporated into the RRDRP.

The imposition of remedies following an expert determination in a RRDRP has been the subject of comments. Some question why ICANN should have so much discretion to impose remedies recommended in the Expert Determinations. Protection of registrants is precisely the reason for such discretion. The Expert Panel is in place because of its expertise in dispute resolution and fact finding. The Panels' Determinations will be given great deference during the imposition of remedies against the registries. However, ICANN is in the best position to understand whether those recommended remedies might harm legitimate registrants in some fashion. Thus, for the protection of those legitimate registrants, it is important to maintain discretion.

The protection of registrants' rights is also the reason why deletion of names is not a potential recommended remedy in most circumstances, although some suggest it should be. Registrants are not a party to the RRDRP. That said, the suggestion that such a remedy be permitted if the registrants are affiliated with the registry operator is appropriate and will be incorporated.

## REGISTRY AGREEMENT

### Vertical Integration

#### Key Points

- The community continues to be significantly divided on the proper approach to vertical integration of registrars and registries;
- The Vertical Integration PDP Working Group has submitted a Revised Initial Report on Vertical Integration Between Registrars and Registries (available at <http://gnso.icann.org/issues/vertical-integration/revised-vi-initial-report-18aug10-en.pdf>), which sets out several potential approaches to this issue;
- No consensus at the GNSO has been developed on this issue;
- The ICANN board of directors has directed the ICANN staff to remove restrictions on registry-registrar cross ownership, subject to certain safeguards.

#### Summary of Comments

The 2% figure in the DAGv4 is unreasonable. CORE proposes the following: a general rule limiting cross ownership (and control) between registries and registrars with a 15% limit makes sense. We also propose a presumptive acceptance of greater than 15% cross-ownership (up to 100%) provided that the entity/group does not act as both a registry and registrar/reseller under the condition that they have relatively low market relevance (well below market power standards). There might be a need for an exception to the principle, allowing a registry to act as a registrar for its own TLD and we would propose a mechanism and guidelines for such exceptions (in some cases not just for the vertical separation rule but also for the need to use ICANN-accredited registrars). *A. Abril i Abril (Module 1, 21 July 2010).*

It is worth noting that the DAGv4 language does not prevent ICANN registrars from owning an entity that applies for a TLD as long as not more than 2% of their shares in the applying entity are not “beneficially owned.” If there is no consensus on the cross ownership issue, ICANN has an obligation to approve a position that ranges between the Nairobi resolution (strict separation up to 2%) and the status quo for the majority of existing contracts (strict separation up to 15%). Choosing a position outside that range would represent policy making by the Board without community support. *R. Tindal (21 July 2010).*

ICANN should consider exemptions from the restrictions on registrar cross-ownership as currently discussed in the Vertical Integration Working Group, such as SRSU scenarios, small community TLDs, and orphan registry operators. The proposed 2% threshold for cross-ownership appears unduly low. *eco (21 July 2010).*

Exceptions to the vertical integration policy are needed. It is not fair to mandate no vertical integration especially for non-commercial, registrar-based TLDs. We propose an open market with full competition. Vertical integration protects small registries who serve specific customer groups (like government organizations and public interest organizations). They may focus on perfecting the pre-check rules and procedures for registrants’ equity and authority, rather than fight for their market share. *CONAC (22 July 2010).*

Barring ICANN-accredited registrars from assisting new gTLD applicants or from applying for their own TLD is discriminatory and bad policy. The heavily restrictive language of Article 1.2.1 of Module 1 and Articles 2.9a-c of the proposed new gTLD agreement arbitrarily discriminates against ICANN-accredited registrars in preventing them from providing assistance of any kind to prospective new gTLD applicants. This restriction seems to contradict the goals of the new gTLD program to foster diversity, encourage competition and enhance DNS utility. The language in Article 1.2.1 of Module 1 and in the proposed new gTLD agreement should be amended to delete this prohibition. INDOM (7 July 2010). Key-Systems (21 July 2010). eco (21 July 2010). EuroDNS (22 July 2010). TLDDOT (22 July 2010). A. Abril i Abril (Module 1, 21 July 2010).

Single user or corporate TLD—exception.

There is little need to relax the strict prohibition on common ownership of new gTLD registries and registrars that the ICANN Board adopted in Nairobi. The main significance of the debate on vertical integration concerns single user or corporate TLDs (sometimes referred to as “.brand”) for which different treatment is appropriate. There is no evident reason why TLD registries in this category should be barred from controlling their own accredited registrar; from entering into exclusive arrangements with an independent accredited registrar; or from dispensing with accredited registrars altogether and allocating second level domains as they see fit. Defining the contours of this category is challenging and whether ICANN meets it successfully could have a major impact on the viability of the new gTLD launch. COA (21 July 2010).

Concerns over common ownership of registries and registrars in the open domain market do not apply to private registries (such as a .brand for private use). IBM is pleased that this concern has been noted and ICANN has not foreclosed the issue as to whether one entity may act as both a registry and registrar in all circumstances. IBM (21 July 2010).

At a minimum, the vertical integration issue should be clarified so that individuals who control an accredited registrar for purposes of managing their own domain and who do not offer registrar services to the general public are in no way barred from playing a major role in a new gTLD applicant entity. ICA (21 July 2010).

Not-for-profit organizations—exception. ICANN should offer an exception to the limitations on vertical integration/cross ownership that provide a single registrant TLD or single registrant/single user TLD to meet the needs of not-for-profit organizations that might register a new gTLD strictly to execute a public service mission and not for commercial purposes. Not-for-profits also should not be prohibited from acquiring the services of an ICANN registrar to fulfill registry services, as this will unduly limit the pool of qualified registry service providers for consideration. Red Cross (21 July 2010).

Community-based organizations—exception.

Vertical integration exceptions should be granted to community-based organizations with a structure that ensures that registry data cannot be abused and used to raise prices and make valuable, premium domains unavailable to the public (e.g. organizations that do not require the assistance or the marketing distribution channels of current registrars). Newcomer/new entrants with no prior business in the registrar/registry business and with innovative business models and technology should be allowed to vertically integrate in order to help level the playing field and compete with the likes of VeriSign, Afilias or GoDaddy, who are primed to most benefit from new gTLDs with or without vertical integration. We

strongly oppose any proposal which ensures advancement of the existing large registries and registrars with market power. *.MUSIC (20 July 2010)*.

The DAGv4 “default” position should be amended and exceptions should be put in place to allow for specific categories (e.g. a TLD based on a brand or a specific language community may want to have stronger ties with a specific registrar to ensure its acceptance and growth). *EuroDNS (22 July 2010)*.

A hybrid approach under which a registry can act in a limited fashion as a registrar could be beneficial to community-based gTLDs both in terms of costs and in terms of ability to manage registrants. *BITS (22 July 2010)*.

Some form of vertical integration would be beneficial or even necessary for some of the new gTLD initiatives. Giving new registry operators the opportunity to run an affiliated ICANN accredited registrar, even if restricted to no more than 100,000 names under the TLD, would greatly help them to have exposure to their target audience. Even more relevant strategically is to provide nondiscriminatory access to registry services to all ICANN accredited registrars because they are the key to a successful TLD. The registry operator would use a uniform agreement with all registrars. The registry operator could be evaluated in 1 or two years to assess its performance regarding the provision of equal and nondiscriminatory access to all ICANN accredited registrars so the limits on the number of allowed domains could be increased or completely removed. With this model, the registry operator can design a business model that can help all registrars be successful, while achieving sustainability and economic stability for the TLD. *NIC Mexico (21 July 2010)*.

Vertical integration requirements should be removed. The addition of vertical integration rules to the DAGv4 may have negative consequences on applicants who seek to hire third parties to provide backend registry services. The effective choice becomes extremely limited. To avoid this problem, the requirements on vertical integration should be removed. *A. Al-Zoman (21 July 2010). Arab Team (21 July 2010)*.

Full registry/registrar cross ownership should be allowed and would be beneficial to stimulating growth and innovation, especially in small and specialized TLDs. Cross ownership should not prohibit a registrar from selling domains from a registry in which it holds shares, provided equal access to registration is guaranteed and does not discriminate against other registrars. Some ccTLD registry operators have been acting as registrars for years. New gTLDs will likely reach a market penetration comparable to ccTLDs, especially new geoTLDs. It therefore makes sense to allow similar business models and models of integration in the sales channel. Any potential harms can be more effectively handled through enforcement. Compliance will be monitored through ICANN mechanisms as well as through competitors in the market. By contrast, a quota on ownership limitation is arbitrary and will not in itself prevent any harm. No cap should be implemented on cross ownership between a registry service provider (registry tech provider) and a registrar but similar levels of limitations of control should be required. With strong and flexible rules and a strong and empowered enforcement scheme, the provision of registry services by registrars as well as cross ownership of registries and registrars would pose no greater risk of harmful action or abuse than any other setup. ICANN and its staff need to make a decision to allow greater innovation and freedom of choice and to building a strong compliance framework. The restrictive policies of DAGv4 have served the interests of hardliners and incumbents to refuse any compromise. *Key-Systems (21 July 2010). Blacknight Solutions (21 July 2010). EuroDNS (22 July 2010)*.

The vertical integration language in DAGv4 is unfair, biased, and anticompetitive and potentially violates antitrust and consumer protection laws. ICANN has given no justification for the wholesale exclusion of ICANN accredited registrars from participating in the new gTLD marketplace. *Demand Media (22 July 2010)*.

#### JN2 proposal support.

In the spirit of reaching consensus on this issue, Neustar urges the Board to adopt the so-called JN2 proposal. It allows registrars and their affiliates to be registry operators provided they agree not to distribute names within a TLD for which they or their affiliates serve as the registry operator. It allows exceptions for single registrant TLDs, community TLDs and orphan TLDs. For the first 18 months, certain restrictions apply toward back-end registry service providers, after which they may petition ICANN for a relaxation of those restrictions. *Neustar (21 July 2010)*.

If the Vertical Integration Working Group does not reach consensus, then regarding Section 2.9 of the registry agreement, Neustar recommends: (1) de minimis exception should be at least 5%, which is consistent with federal securities reporting and provides a clear public method of verifying ownership; and (ii) the beneficial ownership definition lacks critical elements needed to define it to include other indicia of indirect control (these critical elements are currently found in Rule 13-d of the rules under the Securities and Exchange Act of 1934), without which there will be loopholes leading to gaming. *Neustar (21 July 2010)*.

Free Trade Model support. We support the Free Trade model. Cross ownership and vertical integration restrictions are artifacts of 1999 conditions and should be abolished in their entirety short of an actual showing of market dominance by specific players. We are also concerned about the current working group process—i.e., registries and registrars deciding together to shape the competitive landscape is harmful to the Internet, to ICANN and the participants in the group. Competition authorities in the U.S. and Europe are the right entities to examine and control issues of anticompetitive behavior on the Internet. We strongly oppose the Afilias/PIR proposal (aka RACK)—it mainly advances the interests of the proposers. The CAM model, among other problems, is liable to serious unintended consequences, up to and including wholesale governmental intervention in ICANN accreditation processes. We also will not support any proposal that includes an arbitrary percentage threshold of either ownership or control (e.g., JN2), just because it is less bad in other ways, or because the proposers seem less motivated by self-interest. If we are asked to choose between the various proposals other than the Free Trade model, we prefer that outlined in the DAGv4. *Minds + Machines (21 July 2010)*. *.MUSIC (22 July 2010)*.

Clarify the terms “registry services” and “Registry Services” as used in the guidebook. The use of both lower case and upper case for these words is confusing and requires clarification. We believe the upper case “Registry Services” is intended to create a specific definition to the list of “Registry Services” outlined at Question 23 of the Evaluation Criteria and within <http://www.icann.org/en/registries/rsep>. It is not clear if the lower case usage assumes the same meaning. In some sections the usage may be interpreted in a manner which is not ICANN’s actual intent—e.g., Module 1, Restrictions on Registrar Cross-Ownership, point 3 (page 1-18). *AusRegistry (20 July 2010)*.

## **Analysis of Comments**

Vertical integration has been the subject of substantial study and review. The Vertical Integration PDP Working Group has submitted a Revised Initial Report on Vertical Integration Between Registrars and Registries (available at <http://gnso.icann.org/issues/vertical-integration/revised-vi-initial-report-18aug10-en.pdf>), which sets out several potential approaches to this issue. The GNSO has indicated that no consensus has been reached on this issue. As a result, the ICANN board of directors, following extensive and careful review of input from legal advisors, economic experts and the community has directed the ICANN staff to remove many restrictions on registry-registrar cross ownership in the draft registry agreement being posted as part of AGBv.5.

Although restrictions on cross ownership have been removed, the Board determined that the registry agreement should contain restrictions on any inappropriate or abusive conduct arising out of registry-registrar cross ownership, including without limitations provisions protecting against:

- a. misuse of data; or
- b. violations of a registry code of conduct;

The Board also directed that these provisions may be enhanced by additional enforcement mechanisms such as the use of self-auditing requirements, and the use of graduated sanctions up to and including contractual termination and punitive damages.

As a result of this directive, the registry agreement will now require that future Registry Operators comply with a Code of Conduct (a suggested form is set forth in new Specification 9), designed to prevent abuses that could result from registry-registrar cross ownership. Violation of this requirement is a breach of the new Registry Agreement.

In addition, ICANN will have the ability to refer issues raised by cross ownership to the relevant competition authorities.

Finally, Specification 1 to the draft registry agreement being posted as part of AGBv.5 has been amended to provide that ICANN will have the ability to cross-ownership issues through the consensus and temporary policy process.

## Whois

### Key Points

- Searchable Whois is supported by certain members of the community interested in the protection of third party intellectual property rights;
- While such a service may offer some benefits, the potential costs to other community members should be further studied.

### Summary of Comments

Support for Searchable Whois. The special arrangement approved by the Board on an explicitly non-precedential basis for the tiny .name registry is basically irrelevant. The registry agreements ICANN recently signed for .asia, .mobi and .post go well beyond what is proposed in DAGv4 and represent

current best practice for gTLD registry agreement. They require fully searchable Whois services at the registry level and for all registrars sponsoring registrations in those domains, and also call for registrars to adhere to a compliance review policy. These reasonable and practical requirements should be carried forward in the base registry agreement for new gTLDs. Given that more accurate Whois data is an essential tool in combating malicious and illegal behavior online, ICANN has provided no cogent reason why it should not take a more proactive role in setting the ground rules for the new gTLD space. *COA (21 July 2010)*. Microsoft strongly supports the proposed requirement for a fully searchable Whois service (Spec. 4, Section 1.8). The benefit would be even greater if registries were required to require their registrars to also provide fully searchable Whois. ICANN must improve Whois compliance efforts; otherwise the searchable Whois requirement is likely to be of less value. *Microsoft (21 July 2010)*.

Opposition to Searchable Whois. Specification 4 contains a new Section 1.8 that is highly problematic. It presents technical, policy, privacy, security, and legal issues for the wider ICANN community. The DAG process is insufficient for understanding those issues and making informed, fact-based decisions about them. The RySG requests that 1.8 be deleted for the following reasons:

1. Policy: By making the service mandatory, ICANN would make gTLD policy unilaterally via the contract process. And it would circumvent a current GNSO policy-making effort. This WHOIS service is currently under review at the GNSO via its “Inventory of WHOIS Service Requirements” effort (<http://gnso.icann.org/issues/whois/whois-service-requirements-draft-final-report-31may10-en.pdf>) The technical experts who reviewed the service via the GNSO process noted that it presented a variety of technical, privacy, and social issues that needed further examination.

2. Technical: it is unknown if such services can be provided within the contract’s WHOIS SLAs. Such a service is not technically easy to provide. To our knowledge, a service of this nature has never been attempted on a large scale. The requirement “without arbitrary limit” means the service must allow extremely large, broad searches, which could swamp or stall the service. They might also require cookie tracking, which is not even possible for port 43 queries.

3. Cost: the service will impose new, significant, and unknown costs on registry operators.

4. Legal: The service is not required to establish bad faith under the UDRP. Many adequate resources and tools exist to do that, and have been used successfully for the past ten years.

5. Technical: Specification 4 deals specifically with Port 43 and Web-based WHOIS. Those may be inappropriate mechanisms to perform such searches.

6. Privacy: the service presents some obvious issues that members of the wider ICANN and Internet community may be concerned about. The privacy issues should be examined carefully, and more attention should be brought to them than the DAG4 affords. The phrase “subject to applicable privacy policies” is confusing, and the RySG does not know what it might mean.

7. Security: The DAG process is insufficient to quantify the possible malicious uses of such a service. The issue deserves greater study.

8. Technical / Security: it is unknown what “control structure” may be sufficient “to reduce the malicious use of the searching capability itself.” It is impossible for Registry Operators to build compliant control solutions since no one seems to have defined the problem.

9. Security: there are other, existing tools that provide cross-identification of domain names during professional investigations of malicious conduct. The proposed WHOIS service is not yet justified on the basis of security because no one knows if the service’s drawbacks outweigh the supposed security benefit.

10. Security: the SSAC has demonstrated that WHOIS is mined by spammers (See SAC023: <http://www.icann.org/en/committees/security/sac023.pdf>) The service above could make this even easier for spammers and other bad actors.

11. Legal and cost: The parenthetical comments in 1.8 DAG4 misunderstand existing contracts. Existing contracts say that such WHOIS access may optionally be provided by “a participating registrar, at the registrar’s expense”— not provided by the registry, or at the registry’s expense, as DAG4 requires. *RySG (21 July 2010)*.

This paragraph poses both substantive and procedural problems. The bracketed language proposes additional requirements for exposure of WHOIS data. The requirement would place unwarranted additional burdens on registries and registrants without corresponding benefits to the community at-large. Bracketed text buried deep in DAGv4 is not the appropriate place to make WHOIS policy. *W. Seltzer (21 July 2010)*. *R. Dammak (July 2010)*.

Thick Whois should be required by the Registry Agreement, as recommended by the IRT.

The DAGv4 requires registry operators to provide a publicly available WHOIS service but fails to emphasize the importance of providing accurate and accessible registry information. ICANN should educate registries regarding the importance of providing reliable registrant contact information that is available to users in a fair manner. This is particularly important for not-for-profits with limited budgets and resources. *AAMC (21 July 2010)*. *IPOA (21 July 2010)*. *Red Cross (21 July 2010)*. *NPOC-FC (21 July 2010)*.

Thick Whois lookup—inapplicable to government and military. The specification 4, the data disclosure pursuant to a thick Whois model obviously is not applicable to TLDs for government and military use as the security of that data is of great importance and should not be fully disclosed. The best solution is to make some exceptions and make the Whois lookup service available to the public within proper range. *CONAC (22 July 2010)*.

Whois data quality policy disclosure. ICANN should require applicants to disclose their policies for Whois data quality—i.e. spell out how they will require registrars who sponsor registrations in the new gTLD to ensure the accuracy and currency of Whois data that they collect. The best approach is to include Whois data quality requirements in registry agreements with new gTLD operators, but disclosure in the application is a worthwhile fallback. ICANN should be able to use contract compliance tools to pursue registries that misrepresent their plans on critical issues such as improving Whois data quality. *COA (21 July 2010)*.

## Analysis of Comments

A requirement to provide searchable Whois data is strongly supported by certain members of the community. However, the RySG has raised a number of technical and legal impediments to the implementation of such a service. The ICANN board of directors has referred this matter to its working group on data/consumer protection, which has not completed its review. For the purposes of the draft registry agreement being posted as part of AGBv.5 contemporaneously with this summary and analysis, the draft requirement has been removed pending further ICANN board direction. Among other options, the working group will consider a proposal that the searchable Whois be retained in the Guidebook as optional – that an added point would be awarded for the commitment to implement this tool; community comment is also invited on this – please refer to the evaluation scoring criteria being posted for public comment as part of AGBv5.

The Whois model in the draft registry agreement is intended to be universally required but exceptions for government and military TLDs might be considered.

Whois requirements are spelled out in the draft registry agreement, and failure to maintain the prescribed records is a breach of the registry agreement entitling ICANN to take action to ensure accuracy. The question of whether to impose additional Whois verification or accuracy obligations on registries would be best addressed through GNSO policy processes, which can be made applicable to all gTLD registrars and registries and not just new gTLD registries.

## Rights Protection Mechanisms

### Key Points

- Registry-registrar agreements should act to bind registrars to the RPMs contained in the draft registry agreement;
- The draft PDDRP contains procedures for delaying the imposition of ICANN imposed remedies.

## Summary of Comments

### Section 2.8 Protection of Legal Rights of Third Parties.

1. The RySG notes that while the Registry Operator is required to include the RPMs identified in Specification 7 (including presumably the URS) in their registry-registrar agreements, ICANN should also endeavor to require registrars in their ICANN accreditation agreement to also abide by such RPMs. In addition, Registry Operator shall be entitled to require that registrars in their agreements with registrants require registrants to: (i) also abide by such RPMs (including the URS); (ii) specifically acknowledge that the Registry (and Registrar) has the right to take action with respect to a domain name as provided for under such RPMs and (iii) the Registry shall have no liability to either Registrar, Registrant or any other person for any action taken in accordance with the terms of any RPMs (including in particular the URS).

2. The language requires Registry Operators to “comply with all determinations made by ICANN pursuant to Section 2 of Specification 7.” The RySG notes that a strict reading of this language may imply

that a Registry Operator may be in breach even if it is exercising its right to appeal or review decisions of the PDDRP or RRDRP panels. Therefore it should state: “Subject to any right to appeal or review under the applicable policies, Registry Operator must comply with all determinations and decisions made by ICANN pursuant to Section 2 of Specification 7.”

3. Finally, Specification 7 allows ICANN to amend the RPMs at its discretion. It should be made clear that Specification 7 (and each of the RPMs contained therein) may only be modified through the consensus policy process as it falls within the “picket fence” under Section 1.2.5 of Specification 1. *RySG (21 July 2010)*.

RPMs (5-11). CORE favors pre-launch and post-launch RPMs. These should not prevent the applicant from forming community-based registration eligibility criteria which obviate the necessity of the RPMs ICANN proposes. *E. Brunner-Williams (Module 5, 21 July 2010)*.

## Analysis of Comments

The registrar accreditation agreement with ICANN was recently amended following significant input from Internet stakeholders. Further revisions of that agreement can be made through that process and enforcement of new RPMs introduced by the new gTLD implementation will be added to that agenda. In any case, a requirement to comply with RPMs in the registry-registrar agreement is sufficient to bind registrars.

The draft PDDRP contains procedures for delaying the imposition of ICANN-imposed remedies. Agreeing with the RySG comment, the form registry agreement posted with the new version of the Guidebook will be amended to clarify that ICANN imposed remedies are subject to Registry Operator’s rights under the relevant dispute resolution procedure.

Applicants are free to form community-based registration eligibility criteria in accordance with the applicant’s application for the TLD. However, all registry operators will be required to comply at least with ICANN mandated RPMs. For certain community TLDs, this implementation should be straightforward and not onerous due to the registration restrictions in place.

## Pricing

### Key Points

- The RySG wants flexibility to be able to offer short-term marketing plans;
- Uniform renewal pricing is necessary to prevent predatory pricing, but different pricing models are available with proper disclosure and consent of registrants;
- Hard price caps are not necessary or appropriate for the new gTLD program.

## Summary of Comments

### Section 2.10 Pricing for Registry Services.

The language contained in the parenthetical that would require 30 days notice in the case of new registrations and 180 days with respect to renewals for the “elimination of any refunds, rebates,

discounts, product tying or other programs which had the effect of reducing the price charged to registrars” would unduly and unnecessarily restrict the ability of registries to engage in seasonal or short-term and targeted marketing programs and/or respond to changes in market conditions with the potential effect of actually reducing the ability of registries to compete on price. The proposed language would not provide new registries with the flexibility in pricing and marketing needed to compete in what is likely to become a crowded marketplace. The 180 day notice requirement when applied to the elimination of refunds, rebates, discounts, product tying or other programs is likely to discourage the introduction of innovative products and services.

Similarly, the requirement that a Registry Operator offer all domain name registration renewals at the same price, unless, the registrant agrees in its registration agreement with a registrar to a higher price at the time of the initial registration also fails to take into account the realities of the marketplace and the true nature of the relationship between Registries, Registrars and Registrants. Registrants enter agreements with Registrars, and the price they pay for a domain name is dependent upon a multitude of factors including term length, number of domains registered, and services purchased that are outside the control of the Registry. Registrars, not Registries, set the price charged and renewal terms to Registrants. Furthermore because of the many different registrar business models, the type of “conspicuous disclosure” of the renewal price contemplated by Section 2.10 is often not practical or realistic, particularly if the price is bundled with other services.

The proposed language would also effectively prohibit Registries from offering marketing programs, refunds, rebates, discounts, product tying or other programs directed at renewing registrants or in any way takes renewal registrations into account. The proposed language could also be deemed to limit the ability to up sell registrants or engage in marketing directed at particular markets.

The RySG recommends that (i) the notice period for the elimination of any refunds, rebates, discounts, product tying or other programs be the same 30 days for both new and renewals of domain registrations; (ii) that language be added to make it clear that nothing in this section prevents a registry from offering rebates, discounts, product tying or other programs of limited duration provided that the duration of such offering rebates, discounts, product tying or other programs is disclosed up front; and (iii) delete the second to last sentence of the section.

In addition, the RYSG repeats its comments from DAG3 which asked in the final sentence, what does “public query-based DNS lookup service” mean? Does that sentence mean that alternative models are not allowed, such as free registration with fees for resolution?

In light of the above, the RySG recommends that the text of Section 2.10 be amended as specifically recommended in RySG’s comments.

*RySG (21 July 2010).*

ICA appreciates Section 2.10 renewal pricing clarification. ICA appreciates the clarifying language that “registry operator shall offer all domain registration renewals at the same price, unless the registrant agrees in is registration agreement with a registrar to a higher price at the time of initial registration of the domain name following clear and conspicuous disclosure of such renewal price to such registrant.” This will assure that registries cannot tax domain registrants on the economic success of their domains by arbitrarily imposing higher renewal charges. *ICA (21 July 2010).*

Section 2.10—clarification. The phrase “at the same price” is unclear as it has no qualifier (i.e., the same price as what?). The following underlined language should be added to clarify this: “Registry Operator shall offer all domain registration renewals at the same price as the price charged for the initial registration of that name, unless...” *R. Tindal (21 July 2010).*

Price caps should be imposed. To show that ICANN is acting to protect consumers, it is imperative that there be hard price caps embedded in the agreements. Section 2.10 of the base agreement and specifications contains no hard price caps. Registries will be free to charge \$1,000/year per domain or \$1 million/year per domain, for example, to maximize their profits. Because of the “equitable treatment” clause, by not putting in price caps ICANN opens the door for VeriSign and other registry operators to have unlimited price increases. ICANN is not promoting competition but is perpetuating an abusive monopoly –i.e., why is every other technology going down in price, but .com costs are going higher? If ICANN is suggesting that competition will lead to lower prices, there is no good reason that the hard price cap should be any higher than that for .com. *G. Kirikos (1 June 2010).*

Price caps should not be imposed. Imposing price caps will have a detrimental effect on competition and increased diversity of services. Companies that focus on smaller, niche markets like .museum and .pro and which cannot benefit from economies of scale will be unable to exist since they would not be able to cover their costs if they could not charge more than .com. *M. Iqbal (9 June 2010).*

## Analysis of Comments

ICANN understands that the current language with respect to special programs that have the effect of reducing the price charged to registrars may be unduly restrictive on registry operators’ ability to conduct short term marketing programs for initial registrations and to respond to fast changing market conditions. ICANN has amended this language in the current draft of the form registry agreement posted with AGBv.5 to address this concern.

The requirement that each renewal registration be offered at the same price as all other renewal registrations is intended to require that all renewal registrations be priced identically. The provision is not meant to require a specific renewal registration be priced at the same price as its initial registration. The intent of this provision is to prohibit discriminatory pricing in the case of successful registrations that cannot easily change names upon renewal. The exception to this provision allows registry operators to operate “premium name” programs that can be renewed at higher prices so long as the registrant agrees to the higher renewal pricing at the time of initial registration and provides documents that evidence that agreement to Registry Operator. It is recognized that the registry operator does not have direct contractual privity with the registrant, but it is intended that this requirement could be satisfied by the registry operator through the registry-registrar agreement. In accordance with the RySG comment, the provision has been clarified to require that if a registry operator wishes to implement a premium pricing program for any of its domains, then it must receive documentation from the registrar (which may be required through the RRA) demonstrating that notice of the premium pricing has been provided to registrants and such registrants have given informed consent to the pricing scheme.

The final sentence of the pricing provision in the form registry agreement posted new Guidebook was modified to make clear that Registry Operator may not charge additional fees for a public query-based DNS lookup service.

After significant discussion and study, it has been determined that price controls would be inappropriate for the new gTLD program. The proposed registry agreement includes price notice provisions, but a general system of price controls would not be workable due to the expected diversity of registry business models and the need for registries to be able adapt their business models to changing environments and competition. Registries should not be restricted from offering a higher level of service or security if that might entail charging a higher price for their services. It is expected that new registries will compete vigorously with each other and with existing registries, both on price and services, to attract new customers and new initial registrations. (The renewal price provisions in the base registry agreement are intended to protect against discriminatory pricing on renewal.) There is no need for a centralized and uniform price control mechanism across all gTLDs, particularly where market power is not an issue. Nor could such a program be effective considering the number of innovative and different business models anticipated. Controls would shackle that innovation. However, if market power were to develop and be abused, then governmental consumer protection and competition authorities will have all powers available to them under law to ensure that consumers and competition are protected. Also, protections have been put in place in response to community comments in order to prevent certain abuses that might occur relating to renewal pricing. For additional discussion please refer to the reports posted at <<http://www.icann.org/en/announcements/announcement-06jun09-en.htm>>.

## Other Registry Operator Covenants

### Key Points

- ICANN will implement reasonable parameters on its abilities to conduct operational audits;
- Although disfavored by certain members of the registry community, the continuing operations (financial) instrument is a vital tool in ensuring the security and stability of the DNS and the Internet;
- ICANN technical staff has refined the emergency thresholds that could potentially trigger an emergency transition of a registry;
- Registry operator will be expected to cover the costs associated with an emergency transition as it ultimately would be at fault for the registry failure.

### Summary of Comments

Section 2.1—the process for adoption of consensus policies is not specified. The second sentence should be changed as follows: “as such policy may in the future be modified in accordance [with] ICANN’s Bylaws applicable to Consensus Policies.” *RySG (21 July 2010).*

Section 2.11—Contractual and Operational Compliance Audits. The RySG accepts that ICANN has the right to conduct contractual and operation audits up to 2 times per year. However, ICANN should understand that these audits are disruptive to normal business operations and they should commit to conducting these audits in a manner that does not disrupt the normal operations of the registry. *RySG (21 July 2010).*

The RySG also notes that 3 business days is way too short of a notice period in that key personnel for registries that must be present during these audits plan their schedules much further in advance than 3

business days. Perhaps at least 5 business days may suffice to ensure that any key personnel are able to make themselves available to ICANN. *RySG (21 July 2010)*.

Continued Operations Instrument – opposition. The requirement for a financial instrument that will guarantee at least 3 years of operation of essential registry services in the event of business failure is an unnecessary drain on the resources of prospective registries already damaged by the long delay of the new gTLD program. The requirement is especially punitive for small registries and will tie up important resources. It will discourage deserving applications and contribute to the failure of others. The goal of protecting registrants can be met by different means. Instead, continuity can be assured through cooperative agreements between registries and/or registry service providers who agree to provide these services in the failed registry. This sort of arrangement, already contemplated by ICANN in its Registry Transition Process document, should be extended to the application evaluation portion of the DAG. ICANN should provide for alternative, non-financial means of guaranteeing registry service continuity, either wholly or in part. *Minds + Machines 21 July 2010*. *NIC Mexico (21 July 2010)*.

Continued Operations Instrument – support. Neustar supports the financial instrument requirement. ICANN has done a comprehensive job to deal with situations where a registry operator is also the back-end registry services provider. A financial instrument is appropriate in such a case since there is no third party to continue the registry operations and therefore ICANN could incur significant costs for transition. The current language does not adequately address the situation where the registry operator does not operate the registry services itself but outsources it to a back end registry services provider. In such cases failure of the registry may not result in loss of critical services if the back-end provider continues operations in the event of an applicant failure. This approach would not require a financial instrument. Neustar notes that ICANN has already addressed the issue of the back-end registry service provider failure by requiring contingency planning and submission of a transition plan. *Neustar (21 July 2010)*.

Section 2.13—Emergency Transition. Taken together, 2.13 and 6.5 say that if a registry operator misses a single escrow deposit, or takes allowed maintenance periods for certain services, ICANN may remove the TLD from the registry Operator’s control. We do not believe this was the intent, but these issues must be fixed so the contract is reasonable and not in conflict with itself. These provisions should be modified for the following reasons:

- DNSSEC: it is unknown what “DNSSEC” means here; the term must be defined. Note that registries are allowed SRS downtime, which means the ability for registrars (registrants) to update keys will occasionally and allowably be offline.
- Data escrow: currently the contract says that missing even one escrow deposit is an emergency and is cause to transition the registry. Such is not an emergency, especially since issues beyond the control of a registry operator (such as Internet transit issues and problems at the escrow provider) may occasionally prohibit the completion of a deposit. The contract should specify that a number of missed deposits in a row should constitute a breach, perhaps at least a week.
- DNS: As per 6.4, registries are allowed to have a DNS name server down for as many as 432 minutes (7.2 hours) per month. Four-hour downtimes would therefore be perfectly allowable. If ICANN is saying that “DNS service” for the TLD should always be 100% available through at least one nameserver, that should be made clear.

In addition, the RySG notes that the requirement that a Registry Operator pay ALL costs incurred is the equivalent of requiring the Registry Operator to write a blank check to ICANN and the designated Emergency Operator. There must be an element of reasonableness, a monetary cap, and an ability for

the Registry Operator to review (and even audit) those expenses as well as an opportunity to dispute the fees. *RySG (21 July 2010)*.

Cost of continuity of operations. Determining the cost for registry continuity requires a discussion of what “functions” are “critical.” Continuity activity is a sufficiently minimal capital reserve element and care should be taken that unnecessary cost is not created. ICANN should make commercially reasonable estimates of the reasonable minimal function cost and publish that for further comment. *E. Brunner-Williams (Module 5, 21 July 2010)*.

Registry operator obligations to a TLD community (Module 5, sec. 2.14—transition to delegation). The requirement that the registry operator operates the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD provides a critical, long-term safeguard for any Community that chooses to delegate authority to a particular TLD operator. *Big Room (21 July 2010)*.

“Relevant community that must be consulted” (p.4, gTLD Registry Transition Process Model). This reference provides assurance that a TLD operator will not change without input from the community under which the current and/or prospective TLD operator would derive authority. *Big Room (21 July 2010)*.

## Analysis of Comments

Section 2.1 has been clarified to require that changes to the RSEP process only be made pursuant to ICANN’s Bylaws and the process for adoption of Consensus Policies.

ICANN has implemented reasonable parameters on its abilities to conduct operational audits in the draft registry agreement included in the Guidebook. The parameters seek to balance the desire for effective contractual compliance with the need to provide a predictable operating environment for registry operators.

The continued operations (financial) instrument that is required before a new registry launched operations is a vital tool in ensuring the security and stability of the DNS and the Internet. It will ensure that the financial resources are in place to operate and transition a failed registry. Additional costs imposed on registry operators are outweighed by the benefits to the Internet community and registrants as a whole. The presence of an independent back end registry services provider may not provide adequate safeguards against a failed registry if the services provider lacks the ability to recoup the costs of operating the registry. The continued operations instrument will provide for these costs.

In response to comment, the emergency thresholds that could potentially trigger an emergency transition of a registry have been modified. Revised thresholds are included in the specifications to the draft registry agreement included with this 5<sup>th</sup> edition of the Guidebook.

Registry operator will be expected to cover the costs associated with an emergency transition, as it is essentially the cause for the registry failure. ICANN recognizes that these costs must be reasonable under the circumstances and that documentation of the costs should be provided to registry operator (both of these issues have been addressed in the draft registry agreement included with the new Guidebook. Because of the wide variety of business models that may be introduced in connection with

new gTLDs and because the size and sophistication of each registry will differ greatly, ICANN is not in a position to make reasonably accurate predictions as to what the costs of transitioning a failed registry may be.

## Covenants of ICANN

### Key Points

- ICANN will consider any specific proposals to enhance its operational covenants.

### Summary of Comments

Article 3—Covenants. The RySG still notes that the covenants in Article 3 are still worded differently and in many cases less favorably to gTLD Registries than the language contained in the proposed ccTLD Fast Track Agreements. Can ICANN please explain why such different wording is warranted? *RySG (21 July 2010)*.

### Analysis of Comments

Different agreements require different contractual terms that ICANN believes to be appropriate given the context.

ICANN included the specific language that the RySG requested for the ICANN covenant with respect to the root. If there are additional specific recommendations, ICANN will consider those as well.

## Termination

### Key Points

- ICANN has implemented the edits to subparagraph (d) regarding termination recommended by the RySG as they provide additional safeguards and therefore promote stability.
- Registry operator would no longer have the rights to operate the registry in the event of any termination of the agreement.
- ICANN has requested that the RySG provide more detail on what a Service Level Agreement with ICANN would cover and how it would be enforced.

### Summary of Comments

ICANN discretion. ICANN should be able to terminate the agreement in appropriate circumstances. *MARQUES/ECTA (21 July 2010)*.

Sec. 4.3 Termination by ICANN.

The RySG appreciates the changes added in Section d, however recommends that the following language be added: “With respect to proceedings described in this subparagraph (d) (i-v) that are involuntary proceedings commenced or instituted against Registry Operator, Registry Operator shall have the opportunity to contest such proceedings, and ICANN’s right to terminate shall not take effect if such proceedings are dismissed within thirty (30) days following Registry Operator’s receipt of notice of their institution.”

The RySG understands why Section e was added, but remains concerned that the language above would supersede the rights to review and/or appeal decisions under the PDDRP. Therefore the RySG requests that ICANN make it clear in the language that this termination would only apply after all reviews and appeals under the PDDRP and this agreement are exhausted. *RySG (21 July 2010)*.

Section 4.4. Termination by Registry Operator. The RySG repeats its comments from v3, as they are still relevant. More specifically, we would like a better understanding of what it would mean to terminate a contract with ICANN for ICANN’s breach, considering that ICANN presently has the sole authority to grant gTLDs. Would the relevant registry get to keep the ability to continue operating the registry for that particular TLD? In any event, termination is not a sufficient remedy in the event of a breach by ICANN, as it provides a Registry Operator with no ability to recover any losses. *RySG (21 July 2010)*.

In addition, RySG believes that ICANN should have Service Level Agreements with the registries to provide for an additional meaningful remedy to a breach by ICANN. Monetary penalties and sanctions (which are not subject to the limitations of liability) along with a right to be awarded Specific Performance may be the only potential meaningful penalties as opposed to termination by the Registry Operator. *RySG (21 July 2010)*.

## Analysis of Comments

ICANN has implemented the edits to subparagraph (d) recommended by the RySG in the draft registry agreement included with the Guidebook.

Registry operator is free to challenge ICANN’s determination to terminate the agreement pursuant to Section 2 of Specification 7 during the 30-day notice period provided by the agreement. The PDDRP also provides that any remedy imposed by ICANN will be stayed in the event that registry operator initiates an arbitration proceeding pursuant to Section 5.2 challenging the PDDRP determination. The draft registry agreement included with the Guidebook will clarify the ICANN’s right to terminate is subject to Registry Operator’s rights under the applicable dispute procedure.

In addition to the right to terminate the agreement in the event of a fundamental and material breach by ICANN that is uncured, registry operator may bring a claim in arbitration for damages. In the event of a termination by registry operator, ICANN would have the right to re-delegate the TLD pursuant to Section 4.5 of the agreement. Registry operator would no longer have the rights to operate the registry in the event of any termination of the agreement. The draft registry agreement included with the Guidebook clarifies that the Registry Operator would lose the right to operate the registry for the TLD in the event of a termination of the agreement or expiration of the term of the agreement.

The ability to challenge, as suggested by the comments, we believe will provide for less disruption and softer landings in cases of termination.

ICANN has requested that the RySG provide more detail on what a Service Level Agreement with ICANN would cover and how it would be enforced.

## Re-delegation of TLD

### Key Points

- Alternative provisions for a “.brand” TLD have been addressed in the registry agreement to the extent feasible in a manner to provide appropriate protections.

### Summary of Comments

#### Draft Base Registry Agreement—section 4.5 redelegation alternatives.

COA is pleased that ICANN provided an alternative version of section 4.5 under which a TLD cannot be redelegated over the reasonable objection of the original delegate. This provision could be an important safeguard for brand owners who may be interested in experimenting with a .brand registry, since such new TLDs will not be applied for if there is a risk that the TLD might be redelegated to a third party. *COA (21 July 2010).*

The alternative Section 4.5 and the gTLD Registry Transition Processes model are helpful, but further clarity is needed. As written Section 4.5 is not clear whether the registry operator’s ability to reasonably withhold consent applies to ICANN’s transition of the TLD to a successor registry operator or to providing ICANN with the registry data for the TLD. If it is the former, the problem appears to be solved. If it is the latter, it would still be possible for a .brand TLD registry operator to decide to terminate the TLD and, subject to the terms of the registration agreement for its TLD, cancel the second-level registrations. In that event, there would be little useful registry data to transition, but ICANN could still transition the TLD to another registry operator not affiliated, connected or associated with or sponsored or approved by the brand owner registry operator. On its face, and subject to the alternative Section 4.5 ambiguity, the gTLD Registry Transition Processes Model would allow ICANN to launch an RFP to transition a .brand TLD to another registry operator where the .brand registry operator decided to terminate operation of the TLD and did not identify a prospective successor. It would be highly undesirable for an RFP process to result in transition of a .brand TLD to another registry operator not affiliated, connected or associated with or sponsored or approved by the brand owner registry operator. If that is not ICANN’s intent, the appropriate clarifications and revisions should be made. *Microsoft (21 July 2010).*

Registry Transition Process Model. Hogan Lovells welcomes introduction of a new Registry Transition Process model which includes provisions for emergency transition in the case of prolonged Registry technical outages. *Hogan Lovells (21 July 2010).*

### Analysis of Comments

The alternative Section 4.5 is derived from the .POST registry agreement and was originally contemplated to apply to those TLDs operated by intergovernmental organizations or government entities because it is likely there is no suitable successor operator. This scenario may also be applicable to certain (but not all) community TLDs, TLDs used for infrastructure purposes only, or other types. That

is why the agreement states that the decision to redelegate will be undertaken with discretion. Significant work to identify TLD types or criteria for deciding when delegation is always appropriate or inappropriate did not result in the development of criteria. There is too much uncertainty in anticipated TLD types. ICANN recognizes that delegation of a .brand TLD might not be necessary or appropriate in the event that the registry operator of such a TLD elected to voluntarily wind down the registry. The agreement affords discretion as to whether or not a TLD is re-delegated in order to protect registrants in the TLD and parties that might be negatively affected if a gTLD were to be inappropriately re-delegated or not re-delegated.

## Dispute Resolution

### Key Points

- ICANN has proposed a compromise with respect to the number of arbitrators in the draft registry agreement included with AGBv.5.

### Summary of Comments

Section 5.2 Dispute Resolution—Arbitration. The RySG continues to object to the language on the number of arbitrators insisted on by ICANN. Although ICANN added language to allow 3 arbitrators, it is ONLY if both parties agree. This is not acceptable because it gives ICANN the unilateral right to always insist on 1 arbitrator. This is especially disturbing in light of the fact that ICANN continues to insist on punitive and exemplary damages. Given the seriousness of the remedies, the registry should have the right to sufficient safeguards, including the right to 3 arbitrators if it so elects. *RySG (21 July 2010)*.

### Analysis of Comments

As stated during the consultation held with the Temporary Drafting Group on 8 September 2010, ICANN has proposed a modified provision in the draft registry agreement included with AGBv.5 that provides for the three arbitrators in the event that ICANN is seeking certain remedies in the arbitration.

## Registry Fees

### Key Points

- The uniform registry fees proposed by ICANN in the registry agreement represent a good faith effort by ICANN to estimate the costs to ICANN of providing services to new gTLDs.
- The costs of the RSEP process will be borne by registry operator in an effort to match benefits to costs, (ICANN may elect to pay a portion of the fee);
- In line with past practice, collection of the registrar fee from registries is necessary in the event that registrars fail to approve the variable accreditation fee; registry operator will be able to recoup the cost of the fee from registrars.

### Summary of Comments

Section 6.1 Registry-Level Fees. RySG repeats the comments it made to the v1, v2 and v3 Registry Agreements: “The GNSO policy on new gTLDs recommends that ICANN take a consistent approach to registry fees, but in no way mandates that ICANN impose a one-size-fits-all model. Registry operators strongly reject this model. The proposed mechanism seems to abandon any cost-recovery obligations and, in the end, amounts to a revenue share.” *RySG (21 July 2010).*

Section 6.2 Cost recovery for RSEP. RySG urges ICANN to reconsider this provision in light of the strongly negative affect it could have on innovation in the TLD space as detailed in RySG’s earlier comments on versions 1, 2 and 3 of the registry agreement. In addition, the RySG notes that no changes have been made to the amount of the fees recommended for the RSEP panels. We believe the level of fees seems extremely high. What are the individual cost factors that make up this estimate? The RSEP process was implemented several years ago when there was no historical basis that could be used to develop a cost model. There are now a few actual RSEP cases that have been processed. The cost model should be re-evaluated and made more cost effective. *RySG (21 July 2010).*

Section 6.3 Variable Level Registry Fee. RySG repeats is comments regarding v2 and v3 also objects to the notion of registry operators being forced to act as guarantors for registrars, especially in light of ICANN’s role in accrediting these registrars, including vetting and due-diligence regarding financial qualifications of such registrars. At this point in time, registries have no ability to select the registrars they do business with. If ICANN were to revisit the obligation of registries to use all registrars accredited by ICANN that elect to do business in a TLD, then we can revisit this obligation as it would allow the registries to perform due diligence. If ICANN accredits registrars who can’t or won’t pay, this should not become an obligation of registries. RySG repeats the comments it made regarding the v3 Registry Agreement, which suggests additional language: “Registry Operator shall only be required to remit to ICANN the fees described in this Section ...that it actually receives from registrars after submitting invoices for such fees. Registry Operator shall not be deemed in any way to be a “guarantor” for registrars, and has no obligation to make affirmative collection efforts beyond those made in its sole discretion in the ordinary course of business. Registry Operator’s failure to collect any such funds from registrars shall not be deemed a material breach of this Agreement.” Finally, as more of the burden of payments to ICANN come from the registries, the registries believe that it should have a similar approval right to the ICANN budget as currently enjoyed by the registrars. *RySG (21 July 2010).*

Different fee models for different types of TLDs. Given the high fees and costs associated with applying for and operating a new gTLD, ICANN should consider setting up different fee models for different types of TLD applications to alleviate the costs on applicants. A sensible fee model will greatly enhance the chance of success for the new gTLD process. *CNNIC (21 July 2010).*

Reduced Not-for-profit organizations. ICANN should reveal and detail its actual costs for reviewing each new gTLD application and consider setting a lower cost pricing structure for not-for-profit organizations that will allow ICANN to recover its costs without imposing additional overhead on the not-for-profit applicants. This transparency and pricing consideration should also apply to extended evaluation fees, objection filing and proceeding fees (in objection proceedings fees should be capped, or at least the initial fees that must be paid as a “deposit” on the proceeding). ICANN should consider a two-tiered cost structure to separate commercial uses of the new gTLDs from the informational, educational and lifesaving functions served by not-for-profit organizations. *AAMC (21 July 2010). Red Cross (21 July 2010). NPOC-FC (21 July 2010).*

#### Reduced fees for small cities, small cultural and linguistic community TLDs.

Special consideration, including reduction of the \$185K application fee and \$25K annual fee, should be given for small cities and small cultural and linguistic communities which do not intend to compete with general commercial TLDs such as .com or new brand TLDs and for whom the current level of fees is not affordable. It is understood that a lower but appropriate application fee is still needed in order to prevent excessive applications. *JIDNC (21 July 2010)*.

Reduced fees for developing country applicants. Special consideration regarding technical requirements and fees for developing country applicants representing cultural, linguistic and geographical communities is appropriate and consistent with the advice of the GAC in its Brussels communication. A. Al-Zoman (21 July 2010). Arab Team (21 July 2010).

## Analysis of Comments

The uniform registry fees proposed by ICANN in the registry agreement represent a good faith effort by ICANN to estimate the costs to ICANN of administering the new gTLD program. As such, fee reductions for different types of TLDs are not possible and would result in potential shortfalls in funding for the gTLD program.

The cost for RSEP will be the responsibility of the registry operator seeking to benefit from the proposed new service. Given the potential volume of new gTLDs and the multitude of potential services that could impact the security and stability of the DNS and the Internet, ICANN cannot agree to absorb this cost as there are not the resources available to do so. Alternatively, ICANN could raise fees in other areas but because there would not be a one-to-one match between effort and cost, the increase in fees would probably be set higher than necessary in order to mitigate risk. The current agreement provides the flexibility for ICANN to cover some of the RSEP costs in appropriate situations at its discretion. ICANN will seek to make the RSEP process as cost effective as possible.

The mechanism for the collection of the Variable Level Registry Fee (i.e., registrar fees) is based on all current registry agreements and is necessary in order to ensure that ICANN collects sufficient funds to perform its obligations. In the event that registrars fail to approve this fee, registry operator will be invoiced to cover the fee and may include it as part of the invoiced fees to registrars. Registry operator's registry-registrar agreement should contemplate this possibility and require registrar to agree to the increased fee in the event registrars fail to approve the fee.

## Indemnification

### Key Points

- With regard to risk sharing among ICANN and its contracted parties, the risks of TLD operation should be borne by registry operator;
- ICANN has agreed to consider certain limitations on registry operator's indemnification obligations.

## Summary of Comments

Section 7.1 Indemnification of ICANN. The RySG repeats the concerns expressed in v3, namely, that this indemnification obligation remains uncapped and overbroad. Not only has ICANN ignored the comments made by the RySG, it decided to go the opposite way and add additional overbroad categories of indemnities in favor of ICANN. Not only does ICANN now require the registries to indemnify for everything that arises out of the operation of the registry or the provision of services, it now requires registries to indemnify for everything “arising out of or relating to intellectual property ownership rights with respect to the TLD” and “the delegation of the TLD to Registry Operator.” This violates fundamental fairness, and the notion that indemnification is a risk-transfer mechanism to be used in allocating responsibility for a specific and identified risk of loss. In addition, most of the potential claims relating to or arising out of the delegation of the TLD relate to actions or omission by ICANN and not the Registry Operator. There is no reason for the Registry Operator to be indemnifying ICANN for actions or omissions beyond the control of ICANN. ICANN needs to stand behind its process for the delegation, including everything that is in Applicant Guidebook, dispute processes, etc. None of these were created by, or performed by, the Registry Operator. It is unconscionable to make the Registry Operator indemnify for these types of claims.

Therefore, the RYSG makes the following recommendations:

1. Eliminate the added language in DAG 4 regarding indemnifying for IP claims and claims arising from the delegation of the TLD;
2. Make the indemnity section mutual, limiting the indemnity section to material breaches of representations and warranties, and to gross negligence and willful misconduct of either party.
3. As stated in the RySG comments to v3, delete, “Registry Operator’s operation of the registry for the TLD or Registry Operator’s provision of Registry Services” and replacing it with “Registry Operator’s material breach of any representation or warranty specifically identified as such in the Agreement, or the gross negligence or willful misconduct of Registry Operator, its employees, agents, or contractors in the performance of this Agreement.”
4. As stated in the RySG comments to v3, the RySG requests to insert “reasonable” before “legal fees”.  
*RySG (21 July 2010).*

Regarding Section 7.1(b)-- The RySG repeats its v3 comments, namely, that the RySG advocates that the following sentence be deleted, “For the purposes of reducing Registry Operator’s liability under Section 8.1(a) pursuant to this Section 8.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions.” There is no way the Registry Operator would know that information or have access to the information to make such a demonstration. *RySG (21 July 2010).*

## Analysis of Comments

The risks of operating the TLD are appropriately borne by registry operator. Pursuant to the consultation held with the Temporary Drafting Group on 8 September 2010, ICANN has agreed to consider certain

limitations on registry operator's indemnification obligations in the event of claims related to matters that are completely outside the control of registry operator. ICANN staff has invited the RySG to propose language more precisely defining the exceptions to registry operator's indemnification obligations.

The indemnity limitation provisions introduced in Section 7.1(b) were included in response to comments of the RySG. If a registry operator wishes to avail themselves of this protection, it is appropriate that the registry operator bare the burden of demonstrating the relative culpability. If it is unable to do so, it is appropriate for registry operator to take on the full liability.

## Definition of Security and Stability

### Key Points

- ICANN staff has reviewed the use of the defined terms in the agreement and found that they are not inappropriate in the context in which they are used.

### Summary of Comments

#### Section 7.3 Defined Terms.

In addition, the v3 (now v4) Registry Agreement language seems to come from the Registry Services Evaluation Policy (RSEP) definition of an "effect on security" that is found in all Registry Agreements. The RSEP discusses how new registry services should not negatively impact security, and that new registry services should be compliant with applicable relevant standards. That context is missing in the Guidebook. Without that context, the language has become more expansive and open to interpretation. Both ICANN and the RySG desire that registries function within applicable standards, and that current or future registry services not be the genesis of security problems. *RySG (21 July 2010)*.

Regarding Section 7.3(b) -- The RySG believes this section is over-broad, and conflicts with Specification 6 section 1 ("Standards Compliance"), which refers only to IETF standards.

We also repeat our DAG3 comments: This language is unacceptable: "authoritative and published by a well-established, recognized, and authoritative standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments ("RFCs") sponsored by the Internet Engineering Task Force". ICANN should not leave the language open-ended and make contracted parties subject to any and all standards bodies. ICANN needs to more explicitly enumerate the standards and name the authoritative body, which we believe is the IETF. Application of additional standards should be considered via the Consensus Policy process instead. *RySG (21 July 2010)*.

Moreover, the v3 Registry Agreement definitions misunderstand IETF practices and definitions. The contract language must be revised to adhere to proper terminology. The inclusion of "Standards-Track" [sic] is inappropriate, since only some documents on the "standards track" are authoritative. IETF Internet specifications go through stages of development, testing, and acceptance. Within the Internet Standards process, these stages are called "maturity levels." These maturity levels include "Proposed Standard", "Draft Standard", and "Standard" Specifications.<sup>1</sup> Documents at lower maturity levels are not Internet Standards, do not enjoy enough development or vetting, and registries should not be required to follow them.

Contracted parties should not be required to adhere to IETF Best Practices or “best current practice RFCs”. By definition, best practices are *not mandatory*, and the IETF chose to make them Best Practices for a reason. Nor are IETF BCPs considered technical standards. They tend to deal with processes and procedures rather than protocols -- they represent a consensus of a way to do something because it is recognized that a user experience can be enhanced when there is an agreed-upon way to complete a task. However, interoperability is not usually applicable. As long as the user experiences standards-compliant behavior, ICANN does not need to say more about how that behavior is achieved. *RySG (21 July 2010)*.

## Analysis of Comments

ICANN staff has reviewed the use of the defined terms in the agreement and found that they are not inappropriate in the context in which they are used. ICANN must retain the right to act in response to certain threats to security and stability even if those threats are not caused by registry operator or affect systems other than registry operators' systems. ICANN is open to further discussion regarding specific proposed changes to "security and stability" definitions and related provisions, but a wholesale redefinition of stability to focus only on the stability of registry systems would not be appropriate or consistent with other ICANN agreements and policy.

### Change in Control of Registry Operator

#### Key Points

- The new version of the agreement has implemented reasonable parameters for providing consent to proposed change in control transactions.

## Summary of Comments

Section 7.5 Change in Control. The RySG repeats its v3 comments, namely, that:

a) In the second sentence, after “organized” insert the text, “in the same legal jurisdiction in which ICANN is currently organized and”. This is in keeping with ICANN’s recommendation 1.11.1, in its February 26, 2009 Implementation Plan for Improving Institutional Confidence, that ICANN retain its headquarters in the United States “to ensure certainty about ICANN’s registry...agreements.” This is also consistent with ICANN’s promise in Section 8(b) of the Affirmation of Commitments that ICANN “remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community.” RySG is concerned that ICANN’s unwillingness to make the change it requested in its v2 Registry Agreement comments suggests a desire to evade these cited commitments by a re-organization. *RySG (21 July 2010)*.

b) The RySG remains concerned about the impact of this section on securities laws as possibly requiring notification prior to public disclosure. Accordingly, the RySG recommends saving language, potentially as follows: “Under no circumstances shall Registry Operator be required to disclose any event to ICANN earlier than Registry Operator is required to publicly disclose such event under applicable securities laws.”

In addition, the RySG believes with the additional language inserted, this section has become impractical and not feasible for public companies. There are absolutely no timelines imposed on ICANN, nor are there any real objective standards, which leads to unpredictability and instability. We believe a discussion needs to be had with the legal working group on the Operational and legal aspects of the entire process. We do not disagree that it is appropriate for ICANN to have a consent right, but commercially it needs to be a more stream-lined predictable approach to enable businesses to get loans, approval from shareholders, etc. Most regulators do this within 30 or 60 days. ICANN should adhere to a strict timeline as well. *RySG (21 July 2010)*.

## Analysis of Comments

ICANN has revised this provision in the draft of the form registry agreement posted with AGBv.5 to provide that no consent will be required for a reorganization assignment by ICANN only if such reorganization results in a similar entity within ICANN's current jurisdiction.

Potential securities law problems have not been adequately explained by the RySG and the suggested additional sentence is unworkable as many transactions are never required to be disclosed under applicable securities laws.

To provide business model predictability for gTLD registries, ICANN has implemented reasonable parameters for providing consent to proposed change in control transactions, including a 60-day total review period.

## Amendment Process

### Key Points

- As requested, ICANN will include a wide cross section of the community in future amendment working groups;
- For clarification, the revision of registry level fees is meant to be included within this process.

## Summary of Comments

Amendment Working Group composition (registry agreement 7.6(e)(iv)). As all members of the wider GNSO community, particularly registrants, may be affected by amendments to registry agreements, each GNSO stakeholder group should be guaranteed representation in the working group convened to consider amendments. The addition of members beyond registries should not be left to ICANN's discretion. *W. Seltzer (21 July 2010)*. *R. Dammak (July 2010)*.

### Section 7.6 Amendments and Waivers.

The RySG is very happy with the changes made in this section and we appreciate all of the work done by ICANN staff in conjunction with the legal working group. The only comments we have would be to add the notion of the determination of fees to pay to ICANN under the agreement as a "Restricted Amendment". We do not believe this is the appropriate process for the determination of how much a Registry Operator pays ICANN. If, however, this is left to the amendment process, then if a request were

made by ICANN to change the fees, then the Registries should have an approval right on ICANN's overall budget. We cannot be subject to a possible amendment of fees, without having any right to get an accounting and approval right over where those fees are spent. *RySG (21 July 2010)*.

## Analysis of Comments

ICANN will engage a wide cross-section of the community as part of the working group that will consider uniform amendments to registry agreements. However, it would not be appropriate or necessary for every GNSO stakeholder group to be represented in the group.

The negotiated uniform amendment provision provides ICANN with the ability to make important changes to the agreement without having to negotiate what could be hundreds of contracts separately. Raising fees is a key provision that ICANN intends to be within this process. The provision itself provides multiple safeguards against arbitrary and capricious increases in fees. In order to obtain the approval of registry operators to raise fees, ICANN will inevitably have to demonstrate the need for the those fees and the manner in which they will be spent.

## Escrow Specification (Specification 2)

### Key Points

- Technical comments have been considered by ICANN technical staff and implemented as appropriate;
- ICANN will not be a party to escrow agreements for new gTLDs;
- Amendments to specification 2 (Data Escrow) must be agreed upon by the escrow agent or an alternative escrow agent must be engaged.

## Summary of Comments

### Part A --Technical Specifications.

Care must be taken to properly define all terms. For example, "Registry Data", "Registry Database" and "Escrow Records" are never defined. "Deposits" is also not really defined, but is used throughout this Specification 2. In 1.2 reference is made to "full or incremental deposit", but these should follow the capitalized, defined terms.

Part A, 4.8 Detailed File Formats: This is missing the transaction file format for incremental feeds.

Part A, 4.8.1 Domains. #5 says "Registrar Handle for the initial sponsoring registrar". Infinitely reporting a domain's initial sponsoring registrar seems to serve no purpose, and is unduly burdensome.

Part B now says: "Registry Operator will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 no more than once per calendar year." ICANN should not prohibit Registry Operators from auditing their escrow providers more frequently. Registry

Operators are basically held liable for the performance of escrow, and should have the right to look into problems responsibly. The base agreement allows ICANN to audit Registry Operators multiple times per year--ICANN should not prohibit similar diligence by Registry Operators.

Part B, #3 Ownership. A limitation on the "ownership" right must be placed as follows: "for the limited purpose of maintaining operation of the registry." This limitation should apply both during and after the term of the Registry Agreement.

Part B, #5: Copies. Should be amended to read: "... Registry Operator shall bear the expense of such duplication "if the escrow agreement so specifies".

Part B, #6: Release of Deposits. Amend to read: "... or receives one of the following written notices by ICANN, along with evidence that ICANN has so notified Registry Operator in writing," stating that...'

*RySG (21 July 2010).*

Data Escrow Technical Comments. For the specific reasons outlined in Demand Media's comments, Demand Media believes that use of an Incremental data extract process in the Registry Escrow process will increase complexity, development cost and lead-time to loading data. *Demand Media (22 July 2010).*

Escrow Agent (sec. 1.1). To avoid a significant technical bandwidth burden on the Escrow Agent, this section should state that the Full Deposit will reflect the state of the registry as of time (UTC) on each day as mutually agreed on by Registry Operator, ICANN and Escrow Agent. *Iron Mountain (22 July 2010).*

Deposit transmission mechanism (sec. 2). This section disagrees with Section 4.13(5) of Part A. Iron Mountain recommends that the Specification requires electronic escrow unless approved by ICANN. It is difficult to manage the timing and receipt of deposits which are submitted physically. It is a best practice to reduce the number of touch-points in order to increase speed and security. *Iron Mountain (22 July 2010).*

Escrow deposit format (sec. 4.4.). It appears that ICANN is giving the option to registry operators to submit their escrow deposits in either XML or CSV format. This section is ambiguously worded and needs to more clearly state the option. It is important to state that having multiple file formats can slow down ICANN's or another registry's ability to utilize the escrowed data. *Iron Mountain (22 July 2010).*

Field order in the record (sec. 4.8). Section 4.8 needs to be edited to say that the order in "which fields are presented is the order in which they must be in the respective record." If registry deposits have different data in different order, it is almost impossible to perform automated or partially-automated verification. The more manual any part of the escrow process is, the more expensive it will be to the registry operator. Inconsistent ordering of fields could also cause integration problems if a registry fails and escrow files are given to a new registry to be integrated. *Iron Mountain (22 July 2010).*

Depending on what is truly required to meet the verification requirement discussed in Sec. 7 of both Parts A and B, there needs to be a way to identify which syntax is being used (IPv4 or IPv6). Iron Mountain suggests changing the file type from "NSIP" to "NSIP4" or "NSIP6", depending on the syntax. *Iron Mountain (22 July 2010).*

Algorithm; verification (sec. 4.13). Section 4.13(4) states a “suggested” algorithm for Hashes is SHA256. To promote consistency across registry escrow deposits with quicker utilization, reduced cost and higher quality of verification, Iron Mountain recommends requiring a singular Hash algorithm with SHA256 being preferred. There should also be more detail regarding HASH implementation. Also, in Section 4.13(4) it is not clear exactly what needs to be validated. By not specifying what verification means, how can ICANN ensure consistency across all Escrow Agents? A suggestion for what Verification could be is: the Deposit file will be split into its constituent reports (including the format report prepared by Registry Operator and appended to the Deposit), check its format, count the number of objects of each type, and verify that the data set is internally consistent. This program will compare its results with the results of the Registry-generated format report, and will generate a Deposit format and completeness report. *Iron Mountain (22 July 2010)*.

Data Escrow Agreements—ICANN should be a party to every agreement. The current DAG departs from best practice and merely requires ICANN to be named a beneficiary of a registry data escrow agreement. This will prevent ICANN from amending, modifying or terminating the agreement and will lead to tremendous variances among registry data escrow agreements that will ultimately make it difficult for ICANN to ensure that a minimum level of expectations are met and to ensure compliance. If there is one Registry Agreement with ICANN and the registry operator, then it also makes sense and is in the best interest of stability and registrants to have one Escrow Agreement with ICANN, the registry operator and the escrow agent as parties. ICANN should be included as a party to every registry data escrow agreement. *Iron Mountain (22 July 2010)*.

In addition:

- It seems imprudent that the escrow agent for the registry operator does not require ICANN approval. Per Specification 2 anyone can be named as the escrow agent.
- Requiring the escrow agent to deliver all the contents in its possession within 24 hours may not be technically feasible depending on volume, location and method of delivery.
- There is no description of how ICANN would like released data delivered –e.g., electronic? On physical media?
- Regarding 7.2 addressing verification procedure failure by the registry operator, there needs to be a more specific timeline for the registry operator to fix issues with its deposits.
- The intent of Section 8 is unclear, but the result is that it holds the escrow agent hostage. It is inappropriate to require the escrow agent to amend its escrow agreement with the registry operator based on any amendment to Specification 2 when the escrow agent is not a party to Specification 2. Ten days is not enough time for the escrow agent to consider whether it is willing to make these changes. If the escrow agent decides not to accept the changes, then ten days is definitely not enough time for the registry operator to find a new escrow agent, contract with them and begin depositing data. *Iron Mountain (22 July 2010)*.

## Analysis of Comments

All technical comments from the RySG and Iron Mountain were taken into account by ICANN technical staff and are reflected, as appropriate, in the specifications to the draft of the form registry agreement posted with AGBv.5. Specifically, a number of technical requirements have been removed from Specification 2 in favor of a reference to the Domain Name Data Escrow Specification (development still in progress) available at <http://wwwtools.rfc-editorietf.org/rfhtml/rfc5731.txtdraft-arias-noguchi-registry-data-escrow>.

For ease of administration, ICANN will not be a direct party to escrow agreements for new gTLDs. ICANN is required to be a named third party beneficiary and as such will have certain rights to enforce the agreements in appropriate circumstances. If the minimum level of protections mandated by the specifications to the registry agreement are not met in the escrow agreements, ICANN can take action against registry operator directly to remedy such deficiencies.

The draft form registry agreement posted with AGBv.5 will include a requirement that ICANN approve the proposed escrow agent and any amendments to the escrow agreement.

Amendments to Specification 2 that registry operator agrees to must be implemented into the escrow agreement. If escrow agent is unwilling to make conforming changes, registry operator will be required to seek an alternative escrow agent or risk being found to be in breach of the registry agreement.

## Functional Specifications (Specification 6)

### Key Points

- All required specifications will be either in the body of the registry agreement or in the specifications, both of which can only be amended as specified in the Registry Agreement or upon mutual agreement;
- The appointment of an emergency back up registry operator is an important requirement for the continuity and stability of the registry;
- ICANN technical staff has considered all technical comments and implemented appropriate changes.

### Summary of Comments

Functional and Performance specifications. All functional performance specifications should be included in the body of the agreement (or specifications) and should not reference a link on the web that may be modified by ICANN. If ICANN insists on a hyperlink it should have a date certain and it should be made clear that any changes must be mutually agreed to by the parties. *RySG (21 July 2010).*

#### 6.2: Registry Services and Continuity

As per the RySG's objection to DAG3, Section 6.2 requires that a registry operator designate a back-up or successor registry operator-- before even beginning operations. This may be an impossible obligation for some registries to meet. It is unclear whether another registry would even promise to serve as a continuity provider, nor is it clear that the successor registry continuity provider would be compensated. Finally, if a registry fails, a reason for such failure could be due to a failed business model of the original registry. In such an event, no one should be forced to continue to operate a failed registry. Finally, requiring registries to back each other up in advance presents some business issues. *RySG (21 July 2010).*

RySG notes that registrars are not obligated to designate back-up or contingency successors. ICANN has a process for providing continuity when registrars fail, involving an EOI and bidding process. *RySG (21 July 2010).*

The RySG believes that Section 6.2's sentence should be replaced with: "Registry Operator shall have a business continuity plan." *RySG (21 July 2010)*.

#### 6.4 Performance Specifications

In general, Section 6.4 continues to contain a variety of critical problems, and RySG did not see that its DAG3 comments were worked into DAG4. Section 6.4's current contents:

- 1) are sometimes confusing,
  - 2) discourage registry stability and security, and
  - 3) depart from proven measurement and reporting practices that have served everyone well in the past.
- These departures from industry practice have been made without explanation. RySG therefore requests that ICANN work on a thorough review of section 6.4. A (non-exhaustive) list of examples is provided below (see our DAG3 public comments for additional). *RySG (21 July 2010)*.

A general problem is that ICANN has created new SLA, measurement, and reporting regimes that do not always work well with the realities of registry operations. In the existing gTLD registry contracts, registries are allowed scheduled and unscheduled downtimes for their various services. Scheduled downtime allowances encourage regular maintenance, which strengthens registry security and stability. The requirement to report unscheduled maintenance is an indicator of unexpected problems and therefore contributes to registry security and stability. *RySG (21 July 2010)*.

As we mentioned in DAG3, the new base agreement does not distinguish between scheduled and unscheduled downtimes, instead lumping them together. And the new agreement allows less total downtime than the existing contracts, which seems overly aggressive. Further, there are no longer any allowances for extended annual downtimes. Those are sometimes needed to comply with new requirements (such as new RFCs), moves to new data centers, etc. Together, these changes may discourage registry security and stability, rather than encouraging them. *RySG (21 July 2010)*.

#### RySG's Non-exhaustive list of examples of where Specification 6 is confusing, or technically problematic.

##### DNS name server availability (page 54):

With regard to "DNS name server availability" of "432 min of downtime (99%)": Does this imply that one server with more than 432 minutes of downtime violates the SLA? Or is a server considered unavailable for the month if it had greater than 432 minutes of downtime? Say that a TLD has 10 servers globally dispersed and each had non-overlapping 45 minutes of downtime over a calendar month. Therefore 9 were operational at any point in time. What is the final DNS service availability for the month?

This may have an unintended consequence of favoring a 100 percent anycast solution, so that no single site is unavailable. Best practice currently is to have a combination of anycast and unicast for security and stability purposes, but this SLA may drive to all to anycast.

##### DNS, WHOIS, and SRS RTT (pages 54-57):

For these, is the registry expected to monitor RTT from the client? This would be confusing, costly, and an unnecessary departure from past proactive. Recommend that this be revised to measure from receipt and response of a query/transaction at the registry's gateway. If truly measured from the client, especially for EPP, the registry SLR is at risk from poorly connected registrars located in geographically regions distant from the registry. The registry has no ability to select registrars and therefore has no control over meeting this SLR. Why not just use the CNNP test for resolution services?

The SLAs conflate port 43 and Web-based WHOIS SLAs. Port 43 and Web are two completely different services. RTT for Web WHOIS is not really applicable and should be deleted.

#### Measuring EPP parameters (page 57)

Probes should query domain names, *not* IP addresses. The requirement will not allow registry operator to move or upgrade data centers or migration to new IP ranges. Registries require registrars to connect using the EPP domain name. Some IP addresses will be inactive at any point in time, such as those for alternate data centers or disaster recovery sites. This comment may also apply to DNS and WHOIS.

#### “DNS Update Time” (page 56):

With respect to “all the name servers”, this is likely to result in the unintended consequence: discouraging deployment of DNS servers in developing regions where bandwidth limitations may create update delays. The logical response would be for registry operators to avoid deploying services in certain regions of the world. in order to make sure all servers can be updated within the required time. Is DNSSEC data included in “DNS information”? Seems likely from the context. A delay in updating DNSSEC data may be more probable than other updates. *RySG (21 July 2010)*.

## Analysis of Comments

All required specifications will be either in the body of the registry agreement or in the specifications, both of which can only be amended as specified in the Registry Agreement or upon mutual agreement. The referenced link would be to the page on the ICANN website that contains the specification attached to the agreement.

The requirement to appoint a back-up operator has been replaced with the requirement to maintain a business continuity plan.

ICANN technical staff will work with the technical community to ensure that the technical requirements in Section 6.4 comport to current best practice, are technically feasible and will promote security and stability across the DNS and the Internet. Several suggested changes are reflected in Specification 6 to the draft form registry agreement posted with AGBv.5

### Miscellaneous/Other

## Key Points

- Approval of the ICANN board will not be required for each new gTLD but the Board retains ultimate responsibility and oversight for the program and will consider individual applications in certain, limited circumstances;
- The current form of the agreement contains the requisite flexibility for multiple types of registry operators;

## Summary of Comments

Board approval of each registry agreement. The explicit requirement for Board approval of each new registry agreement will add delay and uncertainty to what should be made a routine process. The Board is able to request informational updates and to intervene against a harmful decision without this procedural step. *W. Seltzer (21 July 2010). R. Dammak (July 2010).*

Role of not-for-profits. Language preceding the draft Registry Agreement refers to commercial purposes envisioned for new gTLDs and does not take into account the way in which some new registries may be used, such as to further a not-for-profit mission. *Red Cross (21 July 2010).*

Different forms needed. ICANN should develop agreements that address specific variations of application types rather than pursuing a one-size-fits-all approach. *E. Brunner-Williams (Module 5, 21 July 2010).*

Representation and warranties (sec. 1.3). Subsection (iii) should read: “Registry Operator has duly executed and delivered to ICANN...” The phrase “and the other parties thereto” appears to be a typographical error. *RySG (21 July 2010).*

## Analysis of Comments

The ICANN Board has recently resolved that it will approve a standard process for staff to proceed to contract execution and delegation on applications for new gTLDs where certain parameters are met, but that the Board reserves the right under exceptional circumstances to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community.

ICANN recognizes that new gTLDs will be used for a variety of purposes including non-commercial purposes.

The current draft of the registry agreement includes certain alternative provisions for different applicants and contains the requisite flexibility to apply to a variety of different types of gTLDs that are operated under differing business plans.

The reference to the “other parties thereto” is intentional and is meant to apply to the third party financial institution or other provider of the continuing operations instrument that will be responsible for funding the registry operations in the event of a registry failure. The draft form registry agreement posted with AGBv.5 will clarify that Registry Operator will be required to deliver a duly executed instrument.

## RESPONDENTS

Amadeu Abril i Abril (A. Abril i Abril)  
Adobe Systems Incorporated (Adobe Systems)  
AFNIC  
African ICANN Community  
Erick Iriarte Ahon (E.I. Ahon)  
Anne Aikman-Scalese (A. Aikman-Scalese)  
AIM—the European Brands Association (AIM)

Abdulaziz Al-Zoman (A. Al-Zoman)  
American Apparel & Footwear Association (AAFA)  
American Bankers Association (ABA)  
American Intellectual Property Law Association (AIPLA)  
American Red Cross (Red Cross)  
Ron Andruff (R. Andruff)  
Arab Team  
Arla Foods amba (Arla Foods)  
Association of American Medical Colleges (AAMC)  
At-Large Advisory Committee (ALAC)  
AT&T  
AusRegistry International Pty Ltd. (AusRegistry)  
Bayern Connect  
Big Room Inc. (Big Room)  
BITS  
Blacknight Solutions (Blacknight)  
Eberhard Blocher (E. Blocher)  
British Broadcasting Corporation (BBC)  
Business & Commercial Users Constituency (BC)  
Carlson  
China Organizational Name Administration (CONAC)  
CNNIC  
Coalition Against Domain Name Abuse (CADNA)  
Coalition for Online Accountability (COA)  
Coloplast A/S (Coloplast)  
Com Laude  
Comerica Incorporated, Comerica Bank, and Comerica Bank & Trust, N.A. (Comerica)  
Rafik Dammak (R. Dammak)  
Demand Media  
Domain Dimensions LLC (Domain Dimensions)  
Avri Doria (A. Doria)  
dotBayern Top Level Domain (dotBayern)  
dotBERLIN Gmbh & Co. (dotBERLIN)  
dotHamburg  
dotMUSIC (.MUSIC)  
dotKoeln Top Level Domain GmbH (dotKoeln)  
dotZON GmbH (dotZON)  
E.I du Pont de Nemours and Company (DuPont)  
eco  
Educational Testing Service (ETS)  
EnCirca  
EuroDNS  
Jothan Frakes (J. Frakes)  
W.W. Grainger (Grainger)  
Robin Gross (R. Gross)  
Hogan Lovells  
HOTEL Top Level Domain GmbH (HOTEL)  
HSBC Holdings plc (HSBC)

INDOM.com (INDOM)  
Intellectual Property Constituency (IPC)  
Intellectual Property Owners Association (IPOA)  
Intercontinental Hotels Group (IHG)  
International Anti-Counterfeiting Coalition (IACC)  
International Business Machines (IBM)  
International Olympic Committee (IOC)  
International Trademark Association Internet Committee (INTA Internet Committee)  
Internet Commerce Association (ICA)  
Internet Society of China (ISC)  
Mary Iqbal (M. Iqbal)  
Iron Mountain  
Marcus Jaeger (M. Jaeger)  
Japan Internet Domain Name Council (JIDNC)  
Japan Network Information Center (JPNIC)  
JONAS  
Key-Systems GmbH (Key-Systems)  
George Kirikos (G. Kirikos)  
Konstantinos Komaitis (K. Komaitis)  
LEGO Juris A/S (LEGO)  
LEO Pharma A/S (LEO Pharma)  
Liberty Mutual Insurance Company (Liberty Mutual)  
LifeScan  
H. Lundbeck A/S (H. Lundbeck)  
MarkMonitor  
MARQUES/ECTA  
Microsoft Corporation (Microsoft)  
Minds + Machines  
Damian Mitsch (D. Mitsch)  
Motion Picture Association of America, Inc. (MPAA)  
Multilingual Internet Group  
National Cable & Telecommunications Association (NCTA)  
Nestle Group  
Neustar, Inc. (Neustar)  
News Corporation  
NIC Mexico  
Nilfisk-Advance A/S (Nilfisk)  
Not-for-Profit Organization Constituency Formation Committee (NPOC-FC)  
Olezi  
Panagiotis Papaspiliopoulos (P. Papaspiliopoulos)  
Vassil Petev (V. Petev)  
Philip Morris International Management S.A. (PMI)  
Piper Aircraft, Inc. (Piper Aircraft)  
Red Bull GmbH (Red Bull)  
Registries Stakeholder Group (RySG)  
Rosetta Stone Ltd. (Rosetta Stone)  
Daniel Schindler (D. Schindler)  
Scott Seitz (S. Seitz)

Wendy Seltzer (W. Seltzer)  
June Seo (J. Seo)  
Software and Information Industry Association (SIAA)  
Solvay Chemicals Sector (Solvay)  
Clare Speed (C. Speed)  
Werner Staub  
Sunkist Growers, Inc. (Sunkist)  
The Coca-Cola Company (Coca-Cola)  
United States Council for International Business (USCIB)  
VeriSign, Inc. (VeriSign)  
Verizon  
Vestas Wind Systems A/S (Vestas)  
VKR Holding A/S (VKR Holding)  
Time Warner Inc. (Time Warner)  
Richard Tindal  
TLDDOT GmbH (TLDDOT)  
Liz Williams (L. Williams)  
WIPO Arbitration and Mediation Center (WIPO Center)  
Mary Wong (M. Wong)

**EXHIBIT JJN-46**

# gTLD Applicant Guidebook

(30 May 2011)

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.



30 May 2011



The Internet Corporation for Assigned Names and Numbers

30 May 2011

Dear Prospective Applicant,

Thank you for your interest in the New Generic Top-Level Domain Program. This landmark program has the potential to create more choice for Internet users, empower innovation, stimulate economic activity and generate new business opportunities around the world. The program seeks to introduce new gTLDs while providing new protections for rights holders and Internet users, creating a safer online environment.

Since ICANN's creation in 1998, the domain name space has only expanded to 22 generic top-level domains. Today we are preparing to launch a program that will mark a new phase of diversity in languages, participants, and business models on the Internet.

Throughout this process, I have been struck by the amount of time and effort our stakeholders have devoted to improving the New gTLD Program. Your insightful, thoughtful and provocative comments have shaped every aspect of this program, which in turn will shape the future of the Internet.

In keeping with our established timeline, the *Applicant Guidebook* has been updated in advance of the special Board of Directors meeting to be held on Monday, 20 June 2011. This draft is based on public comments received in the last four weeks from a wide range of stakeholders. It also reflects the productive and ongoing dialogue between the Governmental Advisory Committee (GAC) and the Board, which has resulted in refinements to trademark and consumer protections. In parallel, the GAC and Board have engaged in important discussions on a process for providing assistance to potential applicants from developing countries.

ICANN works toward the common good of providing a stable, secure and unified global Internet. In performing its core function of overseeing the Internet's unique identifier systems, it also promotes competition and consumer choice. New gTLDs are in line with those goals, and I thank you for your support.

Respectfully,

Rod Beckstrom  
President and CEO

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# *Preamble*

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## *New gTLD Program Background*

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

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

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

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

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



# Applicant Guidebook

(30 May 2011)

Module 1

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 1

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## *Introduction to the gTLD Application Process*

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

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

A glossary of relevant terms is included at the end of this Applicant Guidebook.

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

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

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

### *1.1 Application Life Cycle and Timelines*

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

### 1.1.1 Application Submission Dates

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The user registration and application submission periods open at [time] UTC [date].<sup>1</sup>

The user registration period closes at ([time] UTC [date]).

The application submission period closes at [time] UTC [date].

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

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

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

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

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

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<sup>1</sup> Information for all time and date references will be inserted following approval of this Applicant Guidebook by the ICANN Board of Directors.

### 1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be applicable in any given case are also shown. A brief description of each stage follows.

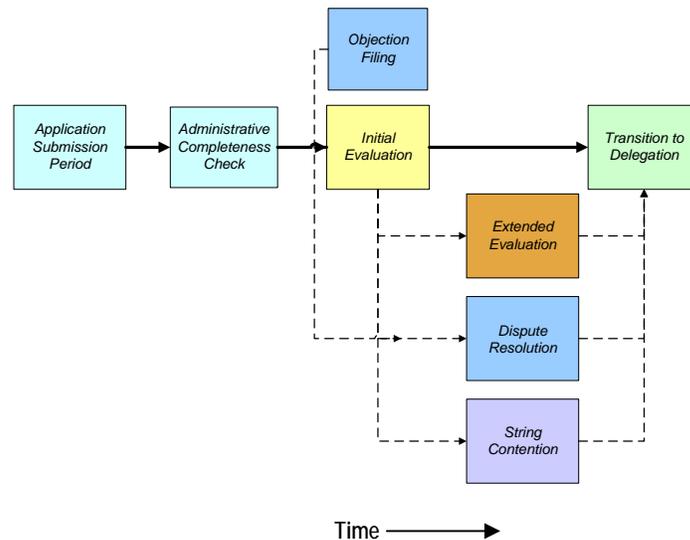


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

#### 1.1.2.1 Application Submission Period

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

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

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

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

The application submission period is expected to last for 60 days. Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

#### *1.1.2.2 Administrative Completeness Check*

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

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

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

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

#### *1.1.2.3 Comment Period*

Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad

representation of global Internet communities, and developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

ICANN will open a comment period at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2). This period will allow time for the community to review and submit comments on posted application materials (referred to as "application comments.") The comment forum will require commenters to associate comments with specific applications and the relevant panel. Comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated comment forum within the stated time period.**

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

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

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

**Comments and the Formal Objection Process:** A distinction should be made between application comments, which may be relevant to ICANN's task of determining whether applications meet the established criteria, and formal

objections that concern matters outside those evaluation criteria. The formal objection process was created to allow a full and fair consideration of objections based on certain limited grounds outside ICANN's evaluation of applications on their merits (see subsection 3.2).

Public comments will not be considered as formal objections. Comments on matters associated with formal objections will not be considered by panels during Initial Evaluation. These comments will be available to and may be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.9). However, in general, application comments have a very limited role in the dispute resolution process.

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

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

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

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

#### ***1.1.2.4 GAC Early Warning***

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

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

A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.<sup>2</sup> The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC

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

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

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

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<sup>2</sup> While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."

### 1.1.2.5 Initial Evaluation

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

There are two main elements of the Initial Evaluation:

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

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

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

A process external to the application submission process will be employed to establish evaluation priority. This process will be based on an online ticketing system or other objective criteria.

If batching is required, the String Similarity review will be completed on all applications prior to the establishment of evaluation priority batches. For applications identified as

part of a contention set, the entire contention set will be kept together in the same batch.

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

Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate will not exceed 1,000 per year in any case, no matter how many applications are received.<sup>3</sup>

#### *1.1.2.6 Objection Filing*

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

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

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

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where possible, consult with interested parties to mitigate any concerns in advance.

#### *1.1.2.7 Receipt of GAC Advice on New gTLDs*

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<sup>3</sup> See "Delegation Rate Scenarios for New gTLDs" at <http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf> for additional discussion.

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

GAC Advice on New gTLDs that includes a consensus statement<sup>4</sup> from the GAC that an application should not proceed as submitted (or other terms created by the GAC to express that intent), and that includes a thorough explanation of the public policy basis for such advice, will create a strong presumption for the Board that the application should not be approved. If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.

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

#### **1.1.2.8 Extended Evaluation**

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

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

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

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

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<sup>4</sup> The GAC will clarify the basis on which consensus advice is developed.

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

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

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

### **1.1.2.9 Dispute Resolution**

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

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

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

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

#### 1.1.2.10 String Contention

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

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

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

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

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

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

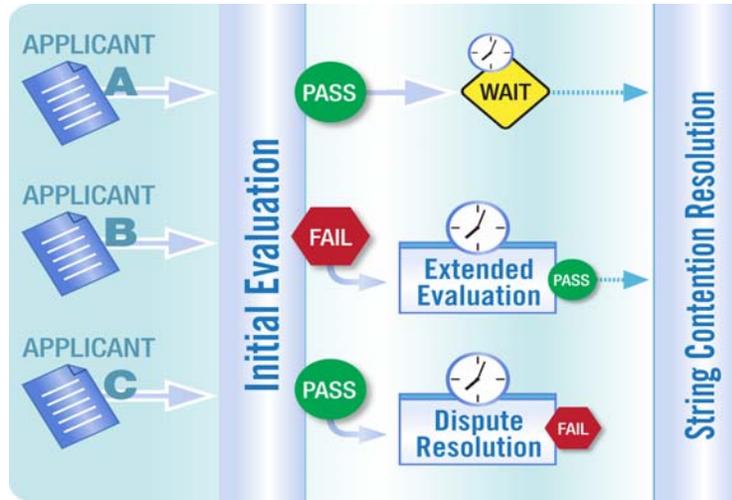


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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

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

#### 1.1.2.11 Transition to Delegation

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

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

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

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

### 1.1.3 Lifecycle Timelines

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

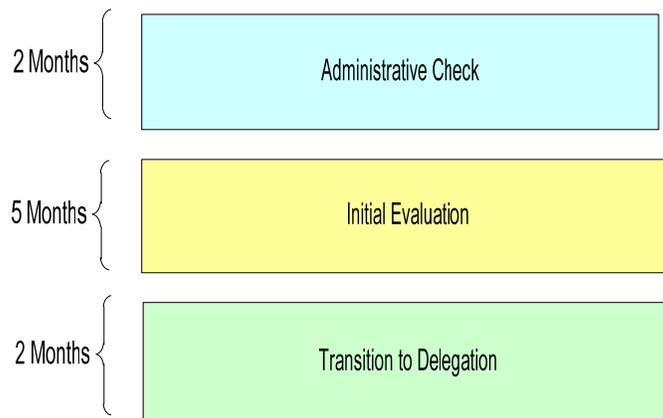


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

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

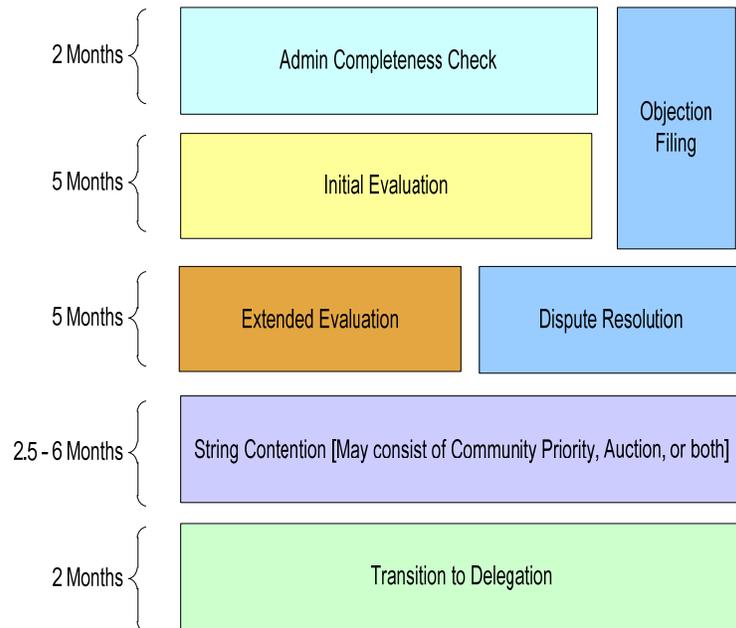


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

#### 1.1.4 Posting Periods

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

Period	Posting Content
During Administrative Completeness Check	Public portions of all applications (posted within 2 weeks of the start of the Administrative Completeness Check).
End of Administrative Completeness Check	Results of Administrative Completeness Check.
GAC Early Warning Period	GAC Early Warnings received.
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review. Contention sets resulting from String Similarity review.
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	GAC Advice received.
End of Extended Evaluation	Application status updates with all Extended Evaluation results. Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection	Information on filed objections and status

Period	Posting Content
Filing/Dispute Resolution	updates available via Dispute Resolution Service Provider websites. Notice of all objections posted by ICANN after close of objection filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed. Pre-delegation testing status updated.

### 1.1.5 Sample Application Scenarios

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

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond nine months, it is expected that most applications will complete the process within the nine-month timeframe.

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

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

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

**Scenario 2 – Extended Evaluation, No Objection, No Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

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

**Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with

standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

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

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

**Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation** -- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the application fails Extended Evaluation also. The application does not proceed.

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

**Scenario 9 – Extended Evaluation, Objection, Fail Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate

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

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

### ***1.1.6 Subsequent Application Rounds***

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

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

## ***1.2 Information for All Applicants***

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### ***1.2.1 Eligibility***

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

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

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

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section.

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

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

- a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;
- b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;

- c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;
- e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
- f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;
- g. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;
- h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988<sup>5</sup>;
- i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)<sup>6,7</sup>;
- j. has been convicted of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes within the respective timeframes specified above;

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<sup>5</sup> <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

<sup>6</sup> <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

<sup>7</sup> It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

- k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) for any of the listed crimes within the respective timeframes listed above;
- l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;
- m. has been involved in a pattern of adverse, final decisions indicating that the applicant or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.
- n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;
- o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

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

Deceptive Commercial Practices Across Borders<sup>8</sup> may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

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

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

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

### 1.2.2 Required Documents

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

1. **Proof of legal establishment** – Documentation of the applicant's establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.

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<sup>8</sup> [http://www.oecd.org/document/56/0,3746,en\\_2649\\_34267\\_2515000\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1,00.html)

2. **Financial statements.** Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.

Supporting documentation should be submitted in the original language. English translations are not required.

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

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

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

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

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

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

application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

### 1.2.3 *Community-Based Designation*

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

#### 1.2.3.1 *Definitions*

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

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

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

means here that the applicant has not designated the application as community-based.

### **1.2.3.2 Implications of Application Designation**

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

**Objection / Dispute Resolution** – All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or declared the gTLD to be aimed at a particular community. Refer to Module 3, Objection Procedures.

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

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

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

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

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

### ***1.2.3.3 Changes to Application Designation***

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

### ***1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs***

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

Similarly, software applications sometimes attempt to validate domain names and may not recognize new or unknown top-level domains. ICANN has no authority or ability to require that software accept new top-level domains, although it does prominently publicize which top-level domains are valid and has developed a basic tool to

assist application providers in the use of current root-zone data.

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

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

### *1.2.5 Notice concerning TLD Delegations*

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

### *1.2.6 Terms and Conditions*

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

### *1.2.7 Notice of Changes to Information*

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

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

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

### *1.2.8 Voluntary Designation for High Security Zones*

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

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

### ***1.2.9 Security and Stability***

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*Root Zone Stability:* There has been significant study, analysis, and consultation in preparation for launch of the New gTLD Program, indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

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

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

### ***1.2.10 Resources for Applicant Assistance***

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A variety of support resources are available to gTLD applicants. For example, ICANN may establish a means for providing financial assistance to eligible applicants, as well as providing a webpage as an informational resource for applicants seeking assistance, and organizations offering support. More information will be available on ICANN's

website at <http://www.icann.org/en/topics/new-gtld-program.htm>.<sup>9</sup>

### *1.2.11 Updates to the Applicant Guidebook*

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As approved by the ICANN Board of Directors, this Guidebook forms the basis of the New gTLD Program. ICANN reserves the right to make reasonable updates and changes to the Applicant Guidebook at any time, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process. Any such updates or revisions will be posted on ICANN's website.

## *1.3 Information for Internationalized Domain Name Applicants*

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

### *1.3.1 IDN-Specific Requirements*

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

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

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

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<sup>9</sup> The Joint SO/AC New gTLD Applicant Support Working Group is currently developing recommendations for support resources that may be available to gTLD applicants. Information on these resources will be published on the ICANN website once identified.

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

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

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

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for TLD string, both according to the ISO codes for the representation of names of languages and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).<sup>10</sup>

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

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<sup>10</sup> See examples at <http://stupid.domain.name/node/683>

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

### 1.3.2 IDN Tables

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

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

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

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines<sup>11</sup> and any updates thereto, including:

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

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<sup>11</sup> See <http://www.icann.org/en/topics/idn/idn-guidelines-26apr07.pdf>

- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

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

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

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

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

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

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

### **1.3.3 IDN Variant TLDs**

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

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD

in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.<sup>12</sup> Declaring variant strings is informative only and will not imply any right or claim to the declared variant strings.

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

The following scenarios are possible during the gTLD evaluation process:

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

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

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

- b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.

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<sup>12</sup> The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5>.

- c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

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

Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

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

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

## *1.4 Submitting an Application*

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

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

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in

accordance with specific instructions from ICANN to applicants.

### ***1.4.1 Accessing the TLD Application System***

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

#### ***1.4.1.1 User Registration***

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

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

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

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

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

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

No new user registrations will be accepted after [date to be inserted in final version of Applicant Guidebook].

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

#### ***1.4.1.2 Application Form***

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

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

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

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

### **1.4.2 Customer Service during the Application Process**

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Assistance will be available to applicants throughout the application process via the Applicant Service Center (ASC). The ASC will be staffed with customer service agents to answer questions relating to the New gTLD Program, the application process, and TAS.

### **1.4.3 Backup Application Process**

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

## 1.5 Fees and Payments

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

### 1.5.1 gTLD Evaluation Fee

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

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

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

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

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early Warning	80%	USD 148,000
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial	35%	USD 65,000

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

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

An applicant that wishes to withdraw an application must initiate the process through TAS and submit the required form to request a refund, including agreement to the terms and conditions for withdrawal. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN will be deducted from the amount paid.

***Note on 2000 proof-of-concept round applicants --***

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

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

that such entity applied for in the 2000 proof-of-concept application round.

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

### **1.5.2 Fees Required in Some Cases**

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Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees<sup>13</sup> include:

- **Registry Services Review Fee** – If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.
- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider's payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Advance Payment of Costs** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in

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<sup>13</sup> The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

accordance with that provider's procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider's rules.

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

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

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

scores at or above the threshold for the community priority evaluation will have its deposit refunded.

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

### *1.5.3 Payment Methods*

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Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.<sup>14</sup>

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

### *1.5.4 Requesting a Remittance Form*

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

## *1.6 Questions about this Applicant Guidebook*

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For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

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

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

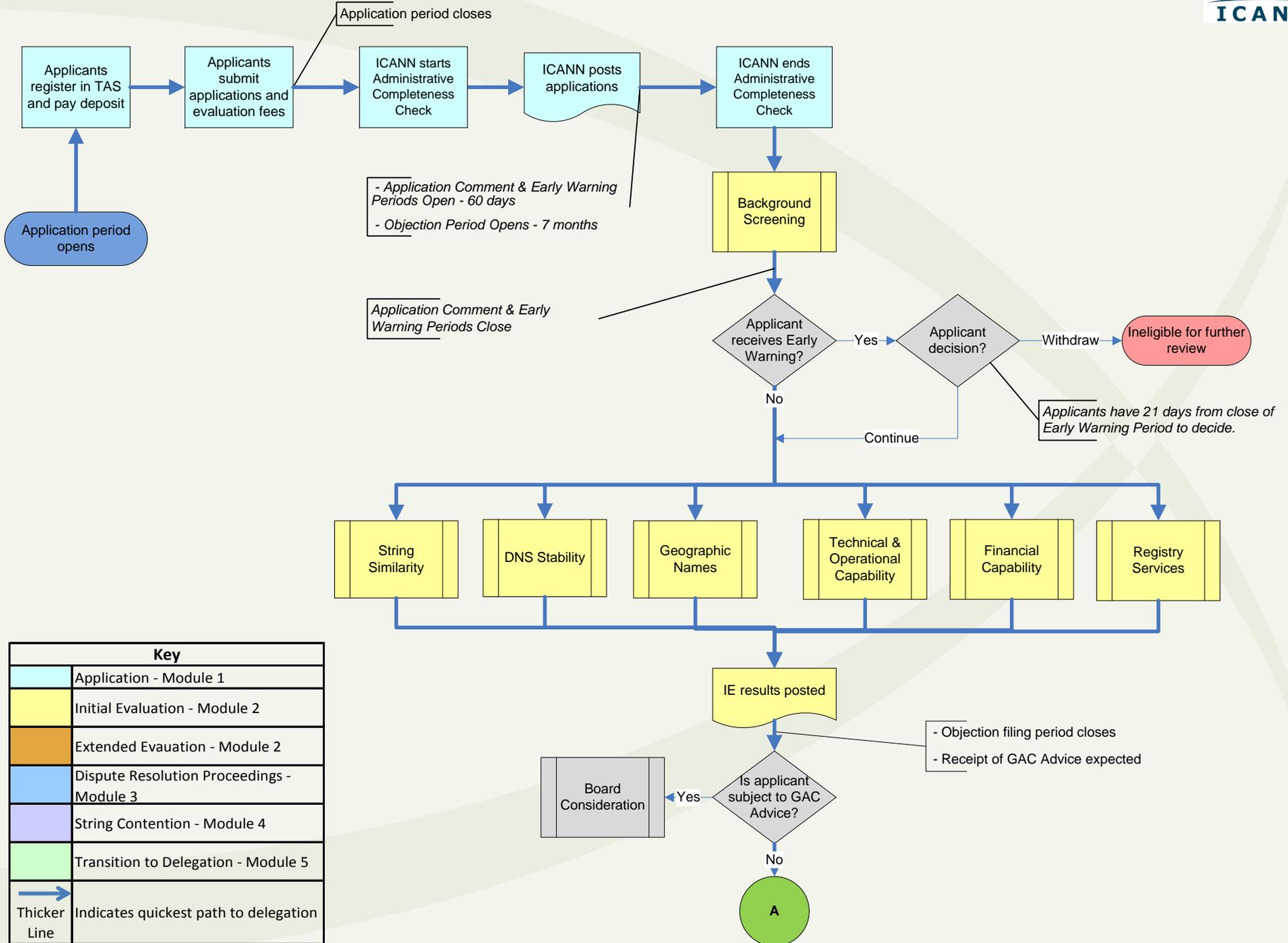
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<sup>14</sup> Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

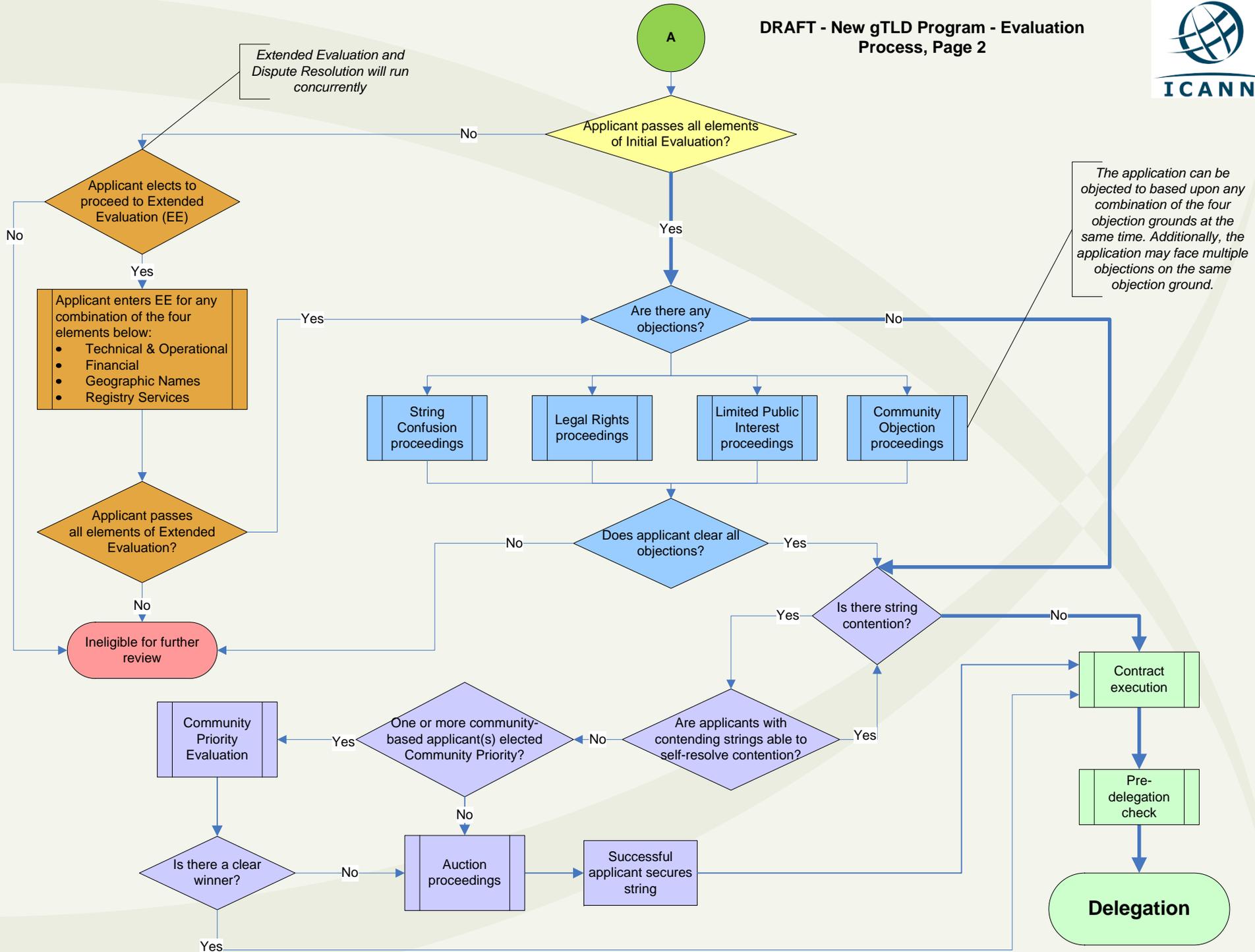
regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

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

# DRAFT - New gTLD Program - Evaluation Process



Key	
<span style="background-color: #e0ffff; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Application - Module 1
<span style="background-color: #ffffe0; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Initial Evaluation - Module 2
<span style="background-color: #ffcc99; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Extended Evaluation - Module 2
<span style="background-color: #add8e6; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Dispute Resolution Proceedings - Module 3
<span style="background-color: #ccccff; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	String Contention - Module 4
<span style="background-color: #ccffcc; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Transition to Delegation - Module 5
<span style="border-bottom: 3px solid blue; display: inline-block; width: 15px;"></span>	Indicates quickest path to delegation
<span style="border-left: 3px solid blue; display: inline-block; width: 10px; height: 10px;"></span>	Thicker Line





# Applicant Guidebook

(30 May 2011)

## Module 2

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 2

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## *Evaluation Procedures*

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

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

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

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

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

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

### *2.1 Background Screening*

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Background screening will be conducted in two areas:

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

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

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

### *2.1.1 General business diligence and criminal history*

---

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

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

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

Note that the applicant is expected to disclose potential problems in meeting the criteria in the application, and provide any clarification or explanation at the time of application submission. Results returned from the background screening process will be matched with the disclosures provided by the applicant and those cases will be followed up to resolve issues of discrepancies or potential false positives.

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

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

### *2.1.2 History of cybersquatting*

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

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

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

## *2.2 Initial Evaluation*

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

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

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

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

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

## 2.2.1 String Reviews

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

### 2.2.1.1 String Similarity Review

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

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

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

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

#### 2.2.1.1.1 Reviews Performed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **2.2.1.1.2 Review Methodology**

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

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

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

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

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

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

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

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

#### ***2.2.1.1.3 Outcomes of the String Similarity Review***

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

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

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

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

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

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

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

#### 2.2.1.2 *Reserved Names*

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

Top-Level Reserved Names List

<i>AFRNIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>
<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	

\*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.

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

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

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

### *2.2.1.3 DNS Stability Review*

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

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

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

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

string raises significant security or stability issues as described in the following section.

#### **2.2.1.3.1 DNS Stability: String Review Procedure**

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

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

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

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

If the panel determines that the string complies with relevant standards and does not create the conditions described above, the application will pass the DNS Stability review.

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

#### **2.2.1.3.2 String Requirements**

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

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

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

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

**Part II -- Requirements for Internationalized Domain Names**

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

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:

- 2.1.1 Must be a valid A-label according to IDNA.
  - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).<sup>4</sup>
  - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn).
  - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
  - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>. This includes the following, non-exhaustive, list of limitations:
- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property.
  - 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

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

### **Part III - Policy Requirements for Generic Top-Level**

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

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

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

#### **2.2.1.4 Geographic Names Review**

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

##### **2.2.1.4.1 Treatment of Country or Territory Names<sup>6</sup>**

Applications for strings that are country or territory names will not be approved, as they are not available under the

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

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

New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”
- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

#### 2.2.1.4.2 *Geographic Names Requiring Government Support*

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

1. An application for any string that is a representation, in any language, of the capital city

name of any country or territory listed in the ISO 3166-1 standard.

2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

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

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

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and
  - (b) The applied-for string is a city name as listed on official city documents.<sup>7</sup>
3. An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard.
  4. An application for a string listed as a UNESCO region<sup>8</sup> or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.<sup>9</sup>

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and

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

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

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

there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

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

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

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

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

It is the applicant's responsibility to:

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

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration

to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

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

#### **2.2.1.4.3 Documentation Requirements**

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant Governmental Advisory Committee (GAC) representative.<sup>10</sup>

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

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

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

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions

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<sup>10</sup> See <http://gac.icann.org/gac-members>

at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

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

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

#### *2.2.1.4.4 Review Procedure for Geographic Names*

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic name, and verify the relevance and authenticity of the supporting documentation where necessary.

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

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

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or

members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

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

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

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

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

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

## 2.2.2 *Applicant Reviews*

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

### 2.2.2.1 *Technical/Operational Review*

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

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

### 2.2.2.2 *Financial Review*

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

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

### 2.2.2.3 *Evaluation Methodology*

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews,

according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

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

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made available in the application and submitted by the due date, unless explicitly requested by the evaluators.

### *2.2.3 Registry Services Review*

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

#### *2.2.3.1 Definitions*

**Registry services** are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;

2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

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

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

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

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

**Security** – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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

#### 2.2.3.2 Customary Services

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

- Receipt of data from registrars concerning registration of domain names and name servers

- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations
- DNS Security Extensions

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

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

### 2.2.3.3 TLD Zone Contents

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

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

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

### 2.2.3.4 Methodology

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

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

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

#### ***2.2.4 Applicant's Withdrawal of an Application***

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

### ***2.3 Extended Evaluation***

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

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

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

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

### ***2.3.1 Geographic Names Extended Evaluation***

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

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

### ***2.3.2 Technical/Operational or Financial Extended Evaluation***

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

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

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same

evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

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

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

### *2.3.3 Registry Services Extended Evaluation*

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

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

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

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

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent

to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

## **2.4 Parties Involved in Evaluation**

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

### **2.4.1 Panels and Roles**

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

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

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

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

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application.

This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

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

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

### **2.4.2 Panel Selection Process**

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ICANN is in the process of selecting qualified third-party providers to perform the various reviews.<sup>11</sup> In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

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

The providers will be formally engaged and announced on ICANN's website prior to the opening of the Application Submission period.

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<sup>11</sup> See <http://icann.org/en/topics/new-gtlds/open-tenders-eoi-en.htm>.

### 2.4.3 Code of Conduct Guidelines for Panelists

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

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

***Bias*** -- Panelists shall:

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

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

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

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

**Confidentiality** -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source, except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

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

#### **2.4.3.1 Conflict of Interest Guidelines for Panelists**

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

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

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.

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

**Compliance Period** -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the final outcomes of all the applications from the Applicant in question.

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

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.

- Must not be a:
  - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
  - Promoter, underwriter, or voting trustee of the Applicant; or
  - Trustee for any pension or profit-sharing trust of the Applicant.

#### ***Definitions--***

**Evaluation Panelist:** An Evaluation Panelist is any individual associated with the review of an application. This includes any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

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

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

#### ***2.4.3.2 Code of Conduct Violations***

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

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

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns

of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

#### **2.4.4 Communication Channels**

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



## Annex: Separable Country Names List

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

Separable Country Names List

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

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

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

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

## Maintenance

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

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

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

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

## **Eligibility**

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

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

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

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

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# *Attachment to Module 2*

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## *Sample Letter of Government Support*

**[This letter should be provided on official letterhead]**

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

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

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

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

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

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

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

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

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

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

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# *Attachment to Module 2*

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## *Evaluation Questions and Criteria*

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

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

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

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

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

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

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

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

Evaluation and scoring (detailed below) will emphasize:

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

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

### *III. Scoring*

#### Evaluation

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

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

#### Scoring

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

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

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

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

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

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Applicant Information	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact will receive all communications regarding the application. Either the primary or the secondary contact may respond. In the event of a conflict, the communication received from the primary contact will be taken as authoritative. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Address	Y				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact will be copied on all communications regarding the application. Either the primary or the secondary contact may respond.			
		Title	Y				
		Address	Y				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution).	Y				

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

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(c) Enter the full name, contact information (permanent residence of individual or principal place of business of entity) and position of all shareholders holding at least 15% of shares, and percentage held by each.	Partial				
		(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, contact information (permanent residence of individual or principal place of business of entity) and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
		<p>(e) Indicate whether the applicant or any of the individuals named above:</p> <p>i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these;</p> <p>ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others;</p> <p>iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;</p> <p>iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;</p> <p>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;</p> <p>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</p> <p>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or</p>	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>x. has been convicted of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes within the respective timeframes specified above;</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) for any of the listed crimes within the respective timeframes listed above;</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					
		<p>(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.</p>	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
<b>Evaluation Fee</b>	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.			
		(b) Payer name	N				
		(c) Payer address	N				
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
<b>Applied-for gTLD string</b>	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes.  The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+006F.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> <li>1. the applied-for gTLD string relevant to the tables,</li> <li>2. the script or language designator (as defined in BCP 47),</li> <li>3. table version number,</li> <li>4. effective date (DD Month YYYY), and</li> <li>5. contact name, email address, and phone number.</li> </ol> <p>Submission of IDN tables in a standards-based format is encouraged.</p>	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	<b>OPTIONAL.</b> Provide a representation of the label according to the International Phonetic Alphabet ( <a href="http://www.langsci.ucl.ac.uk/ipa/">http://www.langsci.ucl.ac.uk/ipa/</a> ).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Mission/Purpose	18	(a) Describe the mission/purpose of your proposed gTLD.	Y	<p>The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space.</p> <p>For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.</p> <p>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</p> <p>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored.</p> <p>An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.</p>			
		<p>(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others? Answers should address the following points:</p> <ul style="list-style-type: none"> <li>i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation?</li> <li>ii. What do you anticipate your proposed gTLD will add to the current space, in terms of</li> </ul>	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>competition, differentiation, or innovation?</p> <p>iii. What goals does your proposed gTLD have in terms of user experience?</p> <p>iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above.</p> <p>v. Will your proposed gTLD impose any measures for protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.</p> <p>vi. Describe whether and in what ways outreach and communications will help to achieve your projected benefits.</p>					
	18	<p>(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers? Answers should address the following points:</p> <p>i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis?</p> <p>ii. Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts).</p> <p>iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry</p>	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans.					
Community-based Designation	19	Is the application for a community-based TLD?	Y	<p>There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.</p> <p>The applicant's designation as standard or community-based cannot be changed once the application is submitted.</p>			
	20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> <li>• How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language.</li> <li>• How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required.</li> <li>• When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date.</li> <li>• The current estimated size of the community, both as to membership and geographic extent.</li> </ul>		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> <li>• Relations to any community organizations.</li> <li>• Relations to the community and its constituent parts/groups.</li> <li>• Accountability mechanisms of the applicant to the community.</li> </ul>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> <li>• Intended registrants in the TLD.</li> <li>• Intended end-users of the TLD.</li> <li>• Related activities the applicant has carried out or intends to carry out in service of this purpose.</li> <li>• Explanation of how the purpose is of a lasting nature.</li> </ul>			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> <li>• relationship to the established name, if any, of the community.</li> <li>• relationship to the identification of community members.</li> <li>• any connotations the string may have beyond the community.</li> </ul>			
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	<p>Descriptions should include proposed policies, if any, on the following:</p> <ul style="list-style-type: none"> <li>• Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined.</li> <li>• Name selection: what types of second-level names may be registered in the gTLD.</li> <li>• Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name.</li> <li>• Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants.</li> </ul>			
		(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	<p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.			
Geographic Names	21	(a) Is the application for a geographic name?	Y	<p>An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	See the documentation requirements in Module 2 of the Applicant Guidebook.			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	<p>Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at <a href="http://gac.icann.org/important-documents">http://gac.icann.org/important-documents</a>.</p> <p>For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See <a href="http://gac.icann.org/system/files/dotinfocircular_0.pdf">http://gac.icann.org/system/files/dotinfocircular_0.pdf</a>.</p> <p>Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				must be separately approved according to Specification 5 of the Registry Agreement.			
Registry Services	23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> <li>A. Receipt of data from registrars concerning registration of domain names and name servers.</li> <li>B. Dissemination of TLD zone files.</li> <li>C. Dissemination of contact or other information concerning domain name registrations (Whois service).</li> <li>D. Internationalized Domain Names, where offered.</li> <li>E. DNS Security Extensions (DNSSEC).</li> </ul> <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at <a href="http://www.icann.org/en/registries/rsep/rsep.html">http://www.icann.org/en/registries/rsep/rsep.html</a>.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.			
Demonstration of Technical & Operational Capability (External)	24	<p>Shared Registration System (SRS) Performance: describe</p> <ul style="list-style-type: none"> <li>the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>A high-level SRS system description;</li> <li>Representative network diagram(s);</li> </ul>	Y	<p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</p> <p>Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>a plan for operating a robust and reliable SRS, one of the five critical registry functions;</li> <li>scalability and performance consistent with the overall business approach, and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>Details of a well-developed plan to operate a robust and reliable SRS;</li> <li>SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement;</li> <li>SRS is consistent with the technical, operational and financial approach described in the application; and</li> <li>Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>• Number of servers;</li> <li>• Description of interconnectivity with other registry systems;</li> <li>• Frequency of synchronization between servers; and</li> <li>• Synchronization scheme (e.g., hot standby, cold standby).</li> </ul> <p>A complete answer is expected to be approximately 2-5 pages.</p>					
	25	<p>Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be approximately 2 to 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be 2 to 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <ul style="list-style-type: none"> <li>(1) complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</li> <li>(4) ability to comply with relevant RFCs;</li> <li>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</li> <li>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</li> </ul>	<p><b>1 - meets requirements:</b> Response includes</p> <ul style="list-style-type: none"> <li>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</li> <li>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</li> </ul> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> <li>• how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement;</li> <li>• how the Applicant's Whois service will comply with RFC 3912; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>• A high-level Whois system description;</li> <li>• Relevant network diagram(s);</li> <li>• IT and infrastructure resources (e.g., servers, switches, routers and other components);</li> <li>• Description of interconnectivity with other registry systems; and</li> <li>• Frequency of synchronization between servers.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>• Provision for Searchable Whois capabilities; and</li> <li>• A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions.</li> </ul> <p>A complete answer is expected to be approximately 2 to 5 pages.</p>	Y	The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.	0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p><b>2 – exceeds requirements:</b> Response meets all the attributes for a score of 1 and includes:</p> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the application demonstrates compliance with any applicable privacy laws or policies.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> <li>explain the various registration states as well as the criteria and procedures that are used to change state;</li> <li>describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply;</li> <li>clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and</li> <li>describe resourcing plans for this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be approximately 3 to 5 pages.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are already on hand or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller;</li> </ul>	Y	<p>Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at <a href="http://www.icann.org/en/committees/security/sac048.pdf">http://www.icann.org/en/committees/security/sac048.pdf</a>) when provided with evidence in written form that such records are present in connection with malicious conduct.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD;</p> <p>(2) Plans are adequately resourced in the planned costs detailed in the financial section;</p>	<p><b>2 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and includes:</p> <p>(1) Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and</p> <p>(2) Measures from at least one additional area to be eligible for 2 points as described in the question.</p> <p><b>1 - meets requirements</b> Response includes:</p> <p>(1) An adequate description of abuse prevention and mitigation policies</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>• Policies for handling complaints regarding abuse;</li> <li>• Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and</li> <li>• Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as described below.</p> <ul style="list-style-type: none"> <li>• Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> <li>○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means.</li> <li>○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and</li> <li>○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA</li> </ul> </li> </ul>				<ul style="list-style-type: none"> <li>(3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and</li> <li>(4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements.</li> </ul>	<ul style="list-style-type: none"> <li>and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>(2) Details of well-developed abuse policies and procedures;</li> <li>(3) Plans are sufficient to result in compliance with contractual requirements;</li> <li>(4) Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and</li> <li>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</li> </ul> <p><b>0 – fails requirements</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>will continue to apply to all ICANN-accredited registrars.</p> <ul style="list-style-type: none"> <li>• A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners;</li> <li>• Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> <li>○ Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests;</li> <li>○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and</li> <li>○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted.</li> </ul> </li> </ul> <p>A complete answer is expected to be approximately 10 to 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> <li>• A description of how the registry operator will implement safeguards</li> </ul>	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <p>(1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <p>(1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement).</p> <p><b>1 - meets requirements:</b> Response includes</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and</p> <ul style="list-style-type: none"> <li>• A description of resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</p> <p>A complete answer is expected to be approximately 1 to 10 pages.</p>					<p>(1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7;</p> <p>(3) Plans that are sufficient to result in compliance with contractual requirements;</p> <p>(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> <li>• indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities;</li> <li>• description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided);</li> <li>• list of commitments made to registrants concerning security levels.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001).</li> </ul> <p>A summary of the above should be no more than 10 to 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>				<p>levels; and (5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).</p>	<p>Security Top Level Domain (HSTLD) designation, this could also be included.)</p> <p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) A description of adequate security capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed;</li> <li>(3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants;</li> <li>(4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and</li> <li>(5) Proposed security measures are commensurate with the nature of the applied-for gTLD string.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
Demonstration of Technical & Operational Capability (Internal)	30	<p>(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> <li>system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up;</li> <li>resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any;</li> <li>independent assessment reports demonstrating security capabilities (submitted as attachments), if any;</li> <li>provisioning and other measures that</li> </ul>	N	<p>Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>mitigate risks posed by denial of service attacks;</p> <ul style="list-style-type: none"> <li>• computer and network incident response policies, plans, and processes;</li> <li>• plans to minimize the risk of unauthorized access to its systems or tampering with registry data;</li> <li>• intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates;</li> <li>• details for auditing capability on all network access;</li> <li>• physical security approach;</li> <li>• identification of department or group responsible for the registry's security organization;</li> <li>• background checks conducted on security personnel;</li> <li>• description of the main security threats to the registry operation that have been identified; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul>					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p>	N	To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) complete knowledge and understanding of technical aspects of registry requirements;</li> <li>(2) an adequate level of resiliency for the registry's technical operations;</li> <li>(3) consistency with planned or currently deployed technical/operational solutions;</li> <li>(4) consistency with the overall business approach and planned size of the</li> </ol>	<p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>(2) Technical plans consistent with the technical, operational, and financial approach as described in the application;</li> <li>(3) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions. If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical &amp; Operational components conform.</p> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>				<p>registry;</p> <p>(5) adequate resourcing for technical plan in the planned costs detailed in the financial section; and</p> <p>(6) consistency with subsequent technical questions.</p>	
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> <li>• Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions;</li> <li>• Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> <li>▪ Anticipated TCP / IP addressing scheme,</li> <li>▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)),</li> <li>▪ Operating system and versions, and</li> <li>▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring</li> </ul> </li> <li>• General overview of capacity planning, including bandwidth allocation plans;</li> <li>• List of providers / carriers; and</li> <li>• Resourcing plans for the initial</li> </ul>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed and coherent network architecture;</p> <p>(2) architecture providing resiliency for registry systems;</p> <p>(3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and</p> <p>(4) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and</p> <p>(2) Evidence of a highly available, robust, and secure infrastructure.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for network architecture describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate network architecture providing robustness and security of the</p>

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		<p>implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>					<p>registry;</p> <p>(4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> <li>• database software;</li> <li>• storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions);</li> <li>• maximum transaction throughput (in total and by type of transaction);</li> <li>• scalability;</li> <li>• procedures for object creation, editing, and deletion, and user and credential management;</li> <li>• high availability;</li> <li>• change management procedures;</li> <li>• reporting capabilities; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also include evidence of database capabilities that</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be approximately 3 to 5 pages.</p>					<p>database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and</p> <p>b. operations centers.</p> <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> <li>the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure;</li> <li>any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included;</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.</p> <p>A complete answer is expected to be approximately 3 to 5 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers;</p> <p>(2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and</p> <p>(2) A high level of availability, security, and bandwidth.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence;</p> <p>(3) Geo-diversity plans are consistent with technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates adequate resources</p>

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							that are on hand, or committed or readily available to carry out this function. <b>0 - fails requirements:</b> Does not meet all the requirements to score 1.
	35	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> <li>• Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. How will these be scaled as a function of growth in the TLD? Similarly, describe how services will scale for name server update method and performance.</li> <li>• RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones.</li> <li>• The resources used to implement the services - describe complete server hardware and software. including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> <li>• Demonstrate how the system will function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</li> </ul>	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: <a href="http://www.iana.org/procedures/nameserver-requirements.html">http://www.iana.org/procedures/nameserver-requirements.html</a>.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;</li> <li>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</li> <li>(4) evidence of compliance with Specification 6 to the Registry Agreement; and</li> <li>(5) evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix;</li> <li>(3) Plans are consistent with technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

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		<p>Examples of evidence include:</p> <ul style="list-style-type: none"> <li>• Server configuration standard (i.e., planned configuration).</li> <li>• Network addressing and bandwidth for query load and update propagation.</li> <li>• Headroom to meet surges.</li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>					
	36	<p>IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> <li>• How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement.</li> <li>• How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6.</li> <li>• List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used.</li> <li>• Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be approximately 3 to 5 pages.</p>	N	<p>IANA nameserver requirements are available at <a href="http://www.iana.org/procedures/nameserver-requirements.html">http://www.iana.org/procedures/nameserver-requirements.html</a>.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>(4) evidence of compliance with Specification 6 to the Registry Agreement.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>(1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10;</li> <li>(3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	37	<p>Data Backup Policies &amp; Procedures: provide</p> <ul style="list-style-type: none"> <li>• details of frequency and procedures for backup of data,</li> <li>• hardware, and systems used for backup,</li> <li>• data format,</li> <li>• data backup features,</li> <li>• backup testing procedures,</li> <li>• procedures for retrieval of data/rebuild of database,</li> <li>• storage controls and procedures, and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be approximately 3 to 5 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) detailed backup and retrieval processes deployed;</p> <p>(2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) A description of leading practices being or to be followed;</p> <p>(3) Backup procedures consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	38	<p>Data Escrow: describe</p> <ul style="list-style-type: none"> <li>• how the applicant will comply with the data escrow requirements documented in the Registry Data Escrow Specification (Specification 2 of the Registry Agreement); and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be approximately 3 to 5 pages</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of data escrow, one of the five critical registry functions;</p> <p>(2) compliance with Specification 2 of the Registry Agreement;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry.</p>	<p><b>1 – meets requirements:</b> Response includes</p> <p>(1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement);</p> <p>(3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p><b>0 – fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 1.3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p> <ul style="list-style-type: none"> <li>• Identification of risks and threats to compliance with registry continuity obligations;</li> <li>• Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology;</li> <li>• Definitions of Recovery Point Objectives and Recovery Time Objective; and</li> <li>• Descriptions of testing plans to promote compliance with relevant obligations.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>• A highly detailed plan that provides for leading practice levels of availability; and</li> <li>• Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site.</li> </ul> <p>A complete answer is expected to be approximately 10 to 15 pages.</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at <a href="http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf">http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf</a>.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) detailed description showing plans for compliance with registry continuity obligations;</li> <li>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>(4) evidence of compliance with Specification 6 to the Registry Agreement.</li> </ol>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> <li>(1) Highly developed and detailed processes for maintaining registry continuity; and</li> <li>(2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site.</li> </ol> <p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element;</li> <li>(2) Continuity plans are sufficient to result in compliance with requirements (Specification 6);</li> <li>(3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) complete knowledge and understanding of the Registry Transition Processes; and</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>(1) Adequate description of a registry transition plan that substantially demonstrates the applicant's capability and knowledge required</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Preparatory steps needed for the transition of critical registry functions;</li> <li>• Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and</li> <li>• Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan.</li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>				(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.	<p>to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> <li>• a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> <li>• Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing;</li> <li>• How results are captured, what is done with the results, and with whom results are shared;</li> <li>• How test plans are updated (e.g., what triggers an update, change management</li> </ul>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results;</p> <p>(3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p><b>0 - fails requirements</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>processes for making updates);</p> <ul style="list-style-type: none"> <li>Length of time to restore critical registry functions;</li> <li>Length of time to restore all operations, inclusive of critical registry functions; and</li> <li>Length of time to migrate from one site to another.</li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>					
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> <li>a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems.</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>Meeting the fault tolerance / monitoring guidelines described</li> <li>Evidence of commitment to provide a 24x7 fault response team.</li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>consistency with the commitments made to registrants and registrars regarding system maintenance.</li> </ol>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> <li>Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly;</li> <li>A high level of availability that allows for the ability to respond to faults through a 24x7 response team.</li> </ol> <p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed;</li> <li>Plans are consistent with the technical, operational, and financial approach described in the application; and</li> <li>Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
							all the requirements to score 1.
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> <li>The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material;</li> <li>Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be 3 to 5 pages. Note, the DPS is required to be submitted as part of the application</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>an ability to comply with relevant RFCs.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key material from registrants through the SRS ;</li> <li>An adequate description of key management procedures in the <i>proposed</i> TLD, including providing secure encryption key management (generation, exchange, and storage);</li> <li>Technical plan is consistent with the technical, operational, and financial approach as described in the application; and</li> <li>Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	44	<p><b>OPTIONAL.</b> IDNs:</p> <ul style="list-style-type: none"> <li>State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP.</li> <li>Describe how the IDN implementation</li> </ul>	N	IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.	0-1	<p>IDNs are an optional service. Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section;</li> <li>consistency with the commitments made to</li> </ol>	<p><b>1 - meets requirements for this optional element:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations;</li> <li>Evidence of ability to resolve</li> </ol>

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		<p>will comply with RFCs 5809-5893 as well as the ICANN IDN Guidelines at <a href="http://www.icann.org/en/topics/idn/implementation-guidelines.htm">http://www.icann.org/en/topics/idn/implementation-guidelines.htm</a>.</p> <ul style="list-style-type: none"> <li>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be approximately 5 to 10 pages plus attachments.</p>				<p>registrants and the technical, operational, and financial approach described in the application;</p> <p>(4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and</p> <p>(5) ability to comply with relevant RFCs.</p>	<p>rendering and known IDN issues or spoofing attacks;</p> <p>(4) IDN plans are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
<b>Demonstration of Financial Capability</b>	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> <li>audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and</li> <li>audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released.</li> </ul> <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> <li>the latest available unaudited financial statements; and</li> <li>an explanation as to why audited or independently certified financial statements are not available.</li> </ul> <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p> <p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> <li>balance sheet;</li> <li>income statement;</li> <li>statement of shareholders equity/partner capital;</li> <li>cash flow statement, and</li> <li>letter of auditor or independent certification, if applicable.</li> </ul>	N	The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.	0-1	<p>Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history (less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.</p>	<p><b>1 - meets requirements:</b> Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1. For example, entity with an operating history fails to provide audited or independently certified statements.</p>

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	46	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be 5-10 pages in addition to the template.</p>	N		0-1	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p><b>1 - meets requirements:</b></p> <p>(1) Financial projections adequately describe the cost, funding and risks for the application</p> <p>(2) Demonstrates resources and plan for sustainable operations; and</p> <p>(3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported.</p> <p><b>0 - fails requirements:</b> Does not meet all of the requirements to score a 1.</p>
	47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> <li>the expected operating costs and capital expenditures of setting up and operating the proposed registry;</li> <li>any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing;</li> <li>any significant variances between years in any category of expected costs; and</li> <li>a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</li> </ul> <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical &amp; Operational Capability section. Costs should include both fixed and variable costs.</p>	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.</p> <p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>Key components of capital expenditures;</li> <li>Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and</li> <li>Costs of outsourcing,</li> </ul>	<p><b>2 - exceeds requirements:</b> Response meets all of the attributes for a score of 1 and:</p> <p>(1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant;</p> <p>(2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and</p> <p>(3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant);</p> <p>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and</p> <p>(3) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>				if any.	
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>V) A description of the basis / key assumptions</p>	N		0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described. Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Executed funding agreements;</li> <li>• A letter of credit;</li> <li>• A commitment letter; or</li> <li>• A bank statement.</li> </ul> <p>Funding commitments may</p>	<p><b>2 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and</p> <p>(1) Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ;</p> <p>(2) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and earmarked for this purpose only in an amount adequate for three years operation;</p> <p>(3) If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and</p> <p>(4) Cash flow models are prepared which link funding and revenue assumptions to projected actual</p>

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		<p>including rationale for the funding and revenue provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate:</p> <p>I) A conservative estimate of funding and revenue; and  II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>				<p>be conditional on the approval of the application. Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> <li>• Key components of the funding plan and their key terms; and</li> <li>• Price and number of registrations.</li> </ul>	<p>business activity.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> <li>• Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning;</li> <li>• Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and</li> <li>• Describe the measures to mitigate the</li> </ul>	N		0-2	<p>Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and:</p> <p>(1) Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks);</p> <p>(2) Response gives consideration to probability and resource impact of</p>

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		<p>key risks as described in this question.</p> <p>A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario).</p> <p>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>					<p>contingencies identified; and</p> <p>(3) If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> <li>• how on-going technical requirements will be met; and</li> <li>• what alternative funding can be reasonably raised at a later time.</li> </ul> <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p> <p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be approximately 5-10 pages, in addition to the template.</p>	N				
		<p>(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>	N				
	50	<p>(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical, operational, and financial approach</p>	N	<p>Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best</p>	0-3	<p>Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund on-going critical registry</p>	<p><b>3 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and:</p> <p>(1) Financial instrument is secured and in place to provide for on-going</p>

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		<p>described in the application.</p> <p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</p> <p>(4) Registry data escrow deposits</p> <p>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database).</p>		<p>protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>Note that ICANN is building a model for these costs in conjunction with potential EBERO service providers. Thus, guidelines for determining the appropriate amount for the COI will be available to the applicant. However, the applicant will still be required to provide its own estimates and explanation in response to this question.</p>		<p>functions for registrants for a period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>operations for at least three years in the event of failure.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Costs are commensurate with technical, operational, and financial approach as described in the application; and</p> <p>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

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		<p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be approximately 5-10 pages.</p>					
		<p>(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC)</u> issued by a reputable financial institution.</p> <ul style="list-style-type: none"> <li>The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions.</li> <li>The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions.</li> <li>The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required</li> </ul>	N	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p>			

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		<p>to obtain a replacement instrument.</p> <ul style="list-style-type: none"> <li>• The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard &amp; Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.</li> <li>• The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li>• Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement.</li> <li>• The LOC must contain at least the following required elements: <ul style="list-style-type: none"> <li>○ Issuing bank and date of issue.</li> <li>○ Beneficiary: ICANN / 4676 Admiralty Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</li> <li>○ Applicant's complete name and address.</li> <li>○ LOC identifying number.</li> <li>○ Exact amount in USD.</li> <li>○ Expiry date.</li> <li>○ Address, procedure, and required forms whereby presentation for payment is to be made.</li> <li>○ Conditions: <ul style="list-style-type: none"> <li>▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit.</li> <li>▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number.</li> <li>▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument.</li> <li>▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or</li> </ul> </li> </ul> </li> </ul>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>to an alternative standard that has been demonstrated to be reasonably equivalent.</p> <p>(ii) A <u>deposit into an irrevocable cash escrow account</u> held by a reputable financial institution.</p> <ul style="list-style-type: none"> <li>• The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years.</li> <li>• Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met.</li> <li>• The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard &amp; Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.</li> <li>• The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li>• The escrow agreement must have a term of five years from the delegation of the TLD.</li> <li>• The funds in the deposit escrow account are not considered to be an asset of ICANN.</li> <li>• Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow.</li> <li>• The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater.</li> <li>• The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the</li> </ul>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>time of submitting an application.</p> <ul style="list-style-type: none"> <li>Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement.</li> </ul>					

## Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

### Section I – Projected Cash inflows and outflows

#### Projected Cash Inflows

**Lines A and B.** Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

**Line C.** Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

**Line D.** Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line D, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line D as that is covered in Section VI.

**Line E.** Add lines C and D to arrive at the total cash inflow.

#### Projected Operating Cash Outflows

**Start up costs** - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

**Line F.** Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L (Other Costs)* and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

**Line G.** *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F*).

**Lines H through K.** Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

**Line L.** Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

**Line M.** Add lines *F* through *L* to arrive at the total costs for line *M*.

**Line N.** Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

## **Section IIa – Breakout of Fixed and Variable Operating Cash Outflows**

**Line A.** Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

**Line B.** Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

**Line C –** Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

## **Section IIb – Breakout of Critical Registry Function Operating Cash Outflows**

**Lines A – E.** Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. The projected cash outflow for these functions will form the basis of the 3-year reserve required in Question 50 of the application.

**Line F.** If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box.

**Line G.** Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

**Line H –** Equals the cash outflows for the critical registry functions projected over 3 years (Columns H, I, and J)

## Section III – Projected Capital Expenditures

**Lines A through C.** Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line D.** Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

**Line E** – Please describe “other” capital expenditures in the *Comments/Notes* box.

**Line F.** Add lines A through E to arrive at the Total Capital Expenditures.

## Section IV – Projected Assets & Liabilities

**Lines A through C.** Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line D.** Add lines A, B, C to arrive at the Total Current Assets.

**Lines E through G.** Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

**Line H.** Ad lines E through G to arrive at the total current liabilities.

**Lines I through K.** Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line L.** Ad lines I through K to arrive at the total long-term assets.

**Line M.** Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

## Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

**Line A.** Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line B.** Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

**Lines C through F.** Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line G.** Add lines A through F to arrive at the projected net cash flow for line H.

## **Section VI – Sources of Funds**

**Lines A & B.** Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

**Line C.** Add lines A and B to arrive at the total sources of funds for line C.

## **General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.**

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

## **General Comments – Regarding how the Applicant Plans to Fund Operations**

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

## **General Comments – Regarding Contingencies**

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

TLD Applicant – Financial Projections : **Sample**

In local currency (unless noted otherwise)

Start-up Costs	Live / Operational		
	Year 1	Year 2	Year 3

**Comments / Notes**

Provide name of local currency used.

Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3
I) Projected Cash Inflows and Outflows					
A) Forecasted registration volume		-	62,000	80,600	104,780
B) Registration fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05
C) Registration cash inflows	A * B	-	310,000	443,300	633,919
D) Other cash inflows		-	35,000	48,000	62,000
E) Total Cash Inflows		-	345,000	491,300	695,919

Registration was forecasted based on recent market surveys which we have attached and discussed below.  
We do not anticipate significant increases in Registration Fees subsequent to year 3.  
Other cash inflows represent advertising monies expected from display ads on our website.

Projected Operating Cash Outflows					
F) Labor:					
i) Marketing Labor		25,000	66,000	72,000	81,000
ii) Customer Support Labor		5,000	68,000	71,000	74,000
iii) Technical Labor		32,000	45,000	47,000	49,000
G) Marketing		40,000	44,000	26,400	31,680
H) Facilities		7,000	10,000	12,000	14,400
I) General & Administrative		14,000	112,000	122,500	136,000
J) Interest and Taxes		27,500	29,000	29,800	30,760
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
i) Hot site maintenance		5,000	7,500	7,500	7,500
ii) Critical Registry Functions		32,000	37,500	41,000	43,000
iii) (list type of activities being outsourced)		-	-	-	-
iv) (list type of activities being outsourced)		-	-	-	-
v) (list type of activities being outsourced)		-	-	-	-
vi) (list type of activities being outsourced)		-	-	-	-
L) Other Operating Costs		12,200	18,000	21,600	25,920
M) Total Operating Cash Outflows		199,700	437,000	450,800	493,260
N) Projected Net Operating Cash flow	E - M	(199,700)	(92,000)	40,500	202,659

Costs are further detailed and explained in response to question 47.  
Provide a list and associated cost for each outsourced function.  
Outsourcing hot site to ABC Company, cost based on number of servers hosted and customer support  
Outsourced critical registry and other functions to ABC registry. Costs are based on expected domains and queries  
Provide a description of the outsourced activities and how costs were determined  
Provide a description of the outsourced activities and how costs were determined  
Provide a description of the outsourced activities and how costs were determined  
Provide a description of the outsourced activities and how costs were determined

IIa) Break out of Fixed and Variable Operating Cash Outflows					
A) Total Variable Operating Costs		72,067	163,417	154,464	200,683
B) Total Fixed Operating Costs		127,633	273,583	296,336	292,577
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199,700	437,000	450,800	493,260

Variable Costs:  
Start Up equals all labor plus 75% of marketing.  
Years 1 through 3 equal 75% of all labor plus 50% of Marketing, and 30% of G&A and Other costs  
Fixed Costs: equals Total Costs less Variable Costs

Check that II) C equals I) N.

IIb) Break out of Critical Registry Function Operating Cash Outflows					
A) Operation of SRS		5,000	5,500	6,050	
B) Provision of Whois		6,000	6,600	7,260	
C) DNS Resolution for Registered Domain Names		7,000	7,700	8,470	
D) Registry Data Escrow		8,000	8,800	9,680	
E) Maintenance of Zone in accordance with DNSSEC		9,000	9,900	10,890	
G) Total Critical Function Cash Outflows		-	35,000	38,500	42,350
H) 3-year Total		115,850			

Note: ICANN is working on cost model that will be provided at a later date  
Commensurate with Question 24  
Commensurate with Question 26  
Commensurate with Question 35  
Commensurate with Question 38  
Commensurate with Question 43

III) Projected Capital Expenditures					
A) Hardware		98,000	21,000	16,000	58,000
B) Software		32,000	18,000	24,000	11,000
C) Furniture & Other Equipment		43,000	22,000	14,000	16,000
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
i)		-	-	-	-
ii)		-	-	-	-
iii)		-	-	-	-
iv)		-	-	-	-
v)		-	-	-	-
vi)		-	-	-	-
EB) Other Capital Expenditures					
F) Total Capital Expenditures		173,000	61,000	54,000	85,000

-Hardware & Software have a useful life of 3 years  
-Furniture & other equipment have a useful life of 5 years

List and describe each identifiable type of outsourcing.  
List and describe each identifiable type of outsourcing.

IV) Projected Assets & Liabilities					
A) Cash		705,300	556,300	578,600	784,600
B) Accounts receivable		70,000	106,000	106,000	160,000
C) Other current assets			40,000	60,000	80,000
D) Total Current Assets		705,300	666,300	744,600	1,024,600
E) Accounts payable		41,000	110,000	113,000	125,300
F) Short-term Debt					
G) Other Current Liabilities					
H) Total Current Liabilities		41,000	110,000	113,000	125,300
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Years + Cur Yr	173,000	234,000	288,000	373,000
J) 3-year Reserve	= IIb) H)	115,850	115,850	115,850	115,850
K) Other Long-term Assets					
L) Total Long-term Assets		288,850	349,850	403,850	488,850
M) Total Long-term Debt		1,000,000	1,000,000	1,000,000	1,000,000

Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec I) J.

V) Projected Cash flow (excl. 3-year Reserve)					
A) Net operating cash flows	= Sec. I) N	(199,700)	(92,000)	40,500	202,659
B) Capital expenditures	= Sec. III) FE	(173,000)	(61,000)	(54,000)	(85,000)
C) Change in Non Cash Current Assets	= Sec. IV) (B+C): Prior Yr - Cur Yr	n/a	(110,000)	(56,000)	(74,000)
D) Change in Total Current Liabilities	= Sec. IV) H: Cur Yr - Prior Yr	41,000	69,000	3,000	12,300
E) Debt Adjustments	= Sec IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-
F) Other Adjustments					
G) Projected Net Cash flow		(331,700)	(194,000)	(66,500)	55,959

The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year

VI) Sources of funds					
A) Debt:					
i) On-hand at time of application		1,000,000			
ii) Contingent and/or committed but not yet on-hand					
B) Equity:					
i) On-hand at time of application					
ii) Contingent and/or committed but not yet on-hand					
C) Total Sources of funds		1,000,000			

See below for comments on funding. Revenues are further detailed and explained in response to question 48.

**General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):**

We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods. Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached

**Comments regarding how the Applicant plans to fund operations:**

We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e., revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

**General Comments regarding contingencies:**

Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown. are adequate to fund our Worst Case Scenario.

**Template 1 - Financial Projections: Most Likely**

**Comments / Notes**

In local currency (unless noted otherwise)		Reference / Formula	Live / Operational				Provide name of local currency used.
Sec.			Start-up Costs	Year 1	Year 2	Year 3	
<b>I) Projected Cash inflows and outflows</b>							
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
<b>Projected Operating Cash Outflows</b>							
<b>F) Labor:</b>							
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
<b>IIa) Break out of Fixed and Variable Operating Cash Outflows</b>							
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
<b>IIb) Break out of Critical Function Operating Cash Outflows</b>							
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
<b>III) Projected Capital Expenditures</b>							
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
<b>IV) Projected Assets &amp; Liabilities</b>							
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
<b>V) Projected Cash flow (excl. 3-year Reserve)</b>							
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets		n/a				
	D) Change in Total Current Liabilities						
	E) Debt Adjustments		n/a				
	F) Other Adjustments						
	G) Other Adjustments						
	H) Projected Net Cash flow						
<b>VI) Sources of funds</b>							
<b>A) Debt:</b>							
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
<b>B) Equity:</b>							
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
<b>General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):</b>							
<b>Comments regarding how the Applicant plans to Fund operations:</b>							
<b>General Comments regarding contingencies:</b>							

Template 2 - Financial Projections: Worst Case						Comments / Notes	
In local currency (unless noted otherwise)			Live / Operational				Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3		
I)	Projected Cash inflows and outflows						
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
	Projected Operating Cash Outflows						
	F) Labor:						
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
IIa)	Break out of Fixed and Variable Operating Cash Outflows						
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
IIb)	Break out of Critical Function Operating Cash Outflows						
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
III)	Projected Capital Expenditures						
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
IV)	Projected Assets & Liabilities						
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
V)	Projected Cash flow (excl. 3-year Reserve)						
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets	n/a					
	D) Change in Total Current Liabilities						
	E) Debt Adjustments	n/a					
	F) Other Adjustments						
	G) Projected Net Cash flow						
VI)	Sources of funds						
	A) Debt:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	B) Equity:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):							
Comments regarding how the Applicant plans to Fund operations:							
General Comments regarding contingencies:							



# Applicant Guidebook

(30 May 2011)

## Module 3

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 3

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## Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

### 3.1 GAC Advice on New gTLDs

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ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

ICANN's transparency requirements indicate that GAC Advice on New gTLDs should identify objecting countries, the public policy basis for the objection, and the process by which consensus was reached. To be helpful to the Board, the explanation might include, for example, sources of data and the information on which the GAC relied in formulating its advice.

The GAC has expressed the intention to create, in discussion with the ICANN Board, "a mutually agreed and understandable formulation for the communication of actionable GAC consensus advice regarding proposed new gTLD strings."

GAC Advice may take several forms, among them:

- I. The GAC advises ICANN that it is the consensus<sup>1</sup> of the GAC that a particular application should not proceed, (or other terms created by the GAC to express that intent). This will create a strong presumption for ICANN that the application should not be approved. In the event that the ICANN Board determines to approve an application despite the consensus advice of the GAC, the GAC and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. In the event the Board determines not to accept the GAC Advice, the Board will provide a rationale for its decision.
- II. The GAC provides advice that does not indicate the presence of a GAC consensus, or any advice that does not state that the application should not proceed (or other terms created by the GAC to express that intent). Such advice will be passed on to the applicant but will not create the presumption that the application should be denied, and such advice would not require the Board to undertake the process for attempting to find a

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<sup>1</sup> The GAC will clarify the basis on which consensus advice is developed.

mutually acceptable solution with the GAC should the application be approved. Note that in any case, that the Board will take seriously any other advice that GAC might provide.

- III. The GAC advises ICANN that GAC consensus is that an application should not proceed unless remediated (or other terms created by the GAC to express that intent). This will raise a strong presumption for the Board that the application should not proceed. If there is a remediation method available in the Guidebook (such as securing government approval), that action may be taken. However, material amendments to applications are generally prohibited and if there is no remediation method available, the application will not go forward and the applicant can re-apply in the second round.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

### ***3.2 Public Objection and Dispute Resolution Process***

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The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process.

Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

### **3.2.1 Grounds for Objection**

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A formal objection may be filed on any one of the following four grounds:

**String Confusion Objection** – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

**Legal Rights Objection** – The applied-for gTLD string infringes the existing legal rights of the objector.

**Limited Public Interest Objection** – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

**Community Objection** – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

### **3.2.2 Standing to Object**

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Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round
Legal rights	Rightsholders
Limited public interest	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

### 3.2.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

### 3.2.2.2 *Legal Rights Objection*

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name<sup>2</sup>:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

### 3.2.2.3 *Limited Public Interest Objection*

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a “quick look” procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.<sup>3</sup>

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<sup>2</sup> See also <http://www.iana.org/domains/int/policy/>.

<sup>3</sup> The jurisprudence of the European Court of Human Rights offers specific examples of how the term “manifestly ill-founded” has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: “The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.” The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court’s website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

#### 3.2.2.4 Community Objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

***It is an established institution*** – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

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Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Durringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

***It has an ongoing relationship with a clearly delineated community*** – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

### ***3.2.3 Dispute Resolution Service Providers***

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To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed in principle to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed in principle to administer disputes brought pursuant to legal rights objections.
- The International Center of Expertise of the International Chamber of Commerce has agreed in principle to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest<sup>4</sup> followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including

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<sup>4</sup> See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

### **3.2.4 Options in the Event of Objection**

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Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

### **3.2.5 Independent Objector**

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A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

**Mandate and Scope** - The IO may file objections against "highly objectionable" gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

**Selection** – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

**Budget and Funding** – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

### 3.3 Filing Procedures

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The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure (“Procedure”) included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed.

- For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN’s New gTLD Program. These rules are available in draft form and have been posted along with this module.
- For a Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution. These rules are available in draft form and have been posted along with this module.
- For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.<sup>5</sup>
- For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.<sup>6</sup>

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<sup>5</sup> See <http://www.iccwbo.org/court/expertise/id4379/index.html>

<sup>6</sup> *Ibid.*

### 3.3.1 Objection Filing Procedures

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The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date. Objections will not be accepted by the DRSPs after this date.
- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.
- A description of the basis for the objection, including:
  - A statement giving the specific ground upon which the objection is being filed.
  - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

### **3.3.2 Objection Filing Fees**

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At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

### **3.3.3 Response Filing Procedures**

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Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file

a separate response and pay the accompanying filing fee to respond to each objection.

- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.
- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

### ***3.3.4 Response Filing Fees***

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At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

## ***3.4 Objection Processing Overview***

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The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

### ***3.4.1 Administrative Review***

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Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new

objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

### ***3.4.2 Consolidation of Objections***

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Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

### ***3.4.3 Mediation***

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The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent

exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

#### ***3.4.4 Selection of Expert Panels***

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A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

#### ***3.4.5 Adjudication***

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The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

### 3.4.6 Expert Determination

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The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;
- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

### 3.4.7 Dispute Resolution Costs

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Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) business days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

### ***3.5 Dispute Resolution Principles (Standards)***

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Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

#### ***3.5.1 String Confusion Objection***

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A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

#### ***3.5.2 Legal Rights Objection***

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In interpreting and giving meaning to GNSO Recommendation 3 ("Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law"), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as

identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
  - a. Level of global recognition of both entities;
  - b. Length of time the entities have been in existence;
  - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6 *ter* of the Paris Convention for the Protection of Industrial Property.
3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

### 3.5.3 Limited Public Interest Objection

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An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;

- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of discrimination that violate generally accepted legal norms recognized under principles of international law;
- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

#### 3.5.4 *Community Objection*

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The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

**Community** – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;

- The level of formal boundaries around the community and what persons or entities are considered to form the community;
- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

**Substantial Opposition** – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
  - Regional
  - Subsectors of community
  - Leadership of community
  - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

**Targeting** – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

**Detriment** – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

Factors that could be used by a panel in making this determination include but are not limited to:

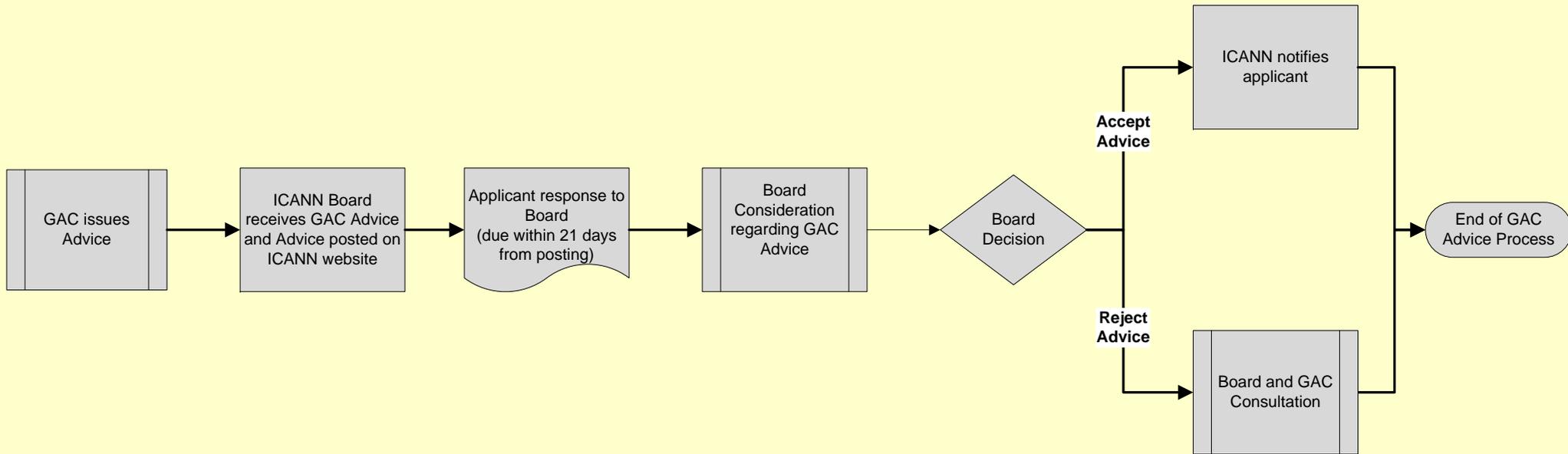
- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and

- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

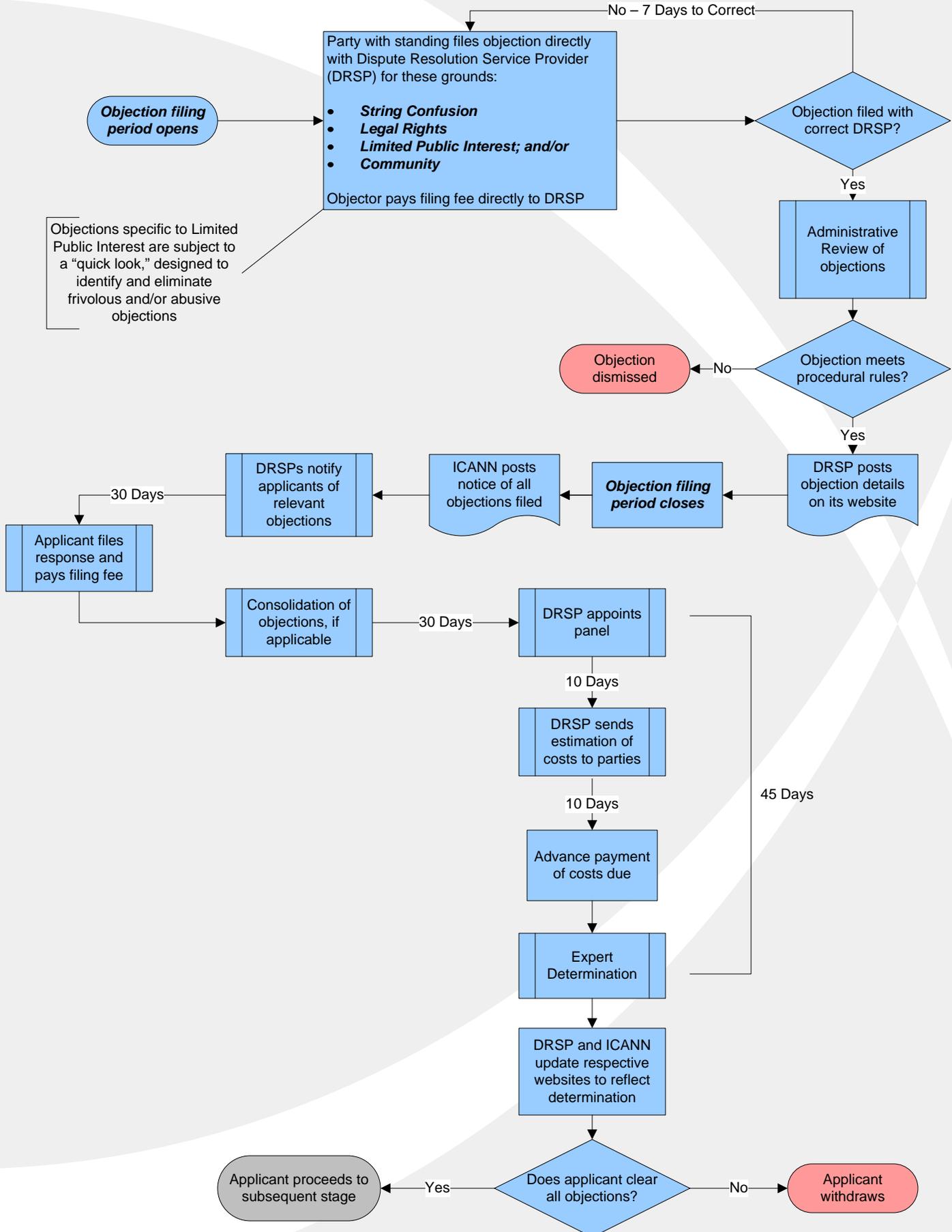
The objector must meet all four tests in the standard for the objection to prevail.

# Draft – New gTLD Program - GAC Advice on New gTLDs



Note: Process depicts scenario in which GAC issues consensus advice that an application should not proceed

# DRAFT - New gTLD Program – Objection and Dispute Resolution



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# *Attachment to Module 3*

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## *New gTLD Dispute Resolution Procedure*

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

## NEW gTLD DISPUTE RESOLUTION PROCEDURE

### Article 1. ICANN's New gTLD Program

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

### Article 2. Definitions

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
  - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
  - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) "Limited Public Interest Objection" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
  - (iv) "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

### **Article 3. Dispute Resolution Service Providers**

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

### **Article 4. Applicable Rules**

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
  - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program.
  - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
  - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.
  - (iv) For a Community Objection, Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

#### **Article 5. Language**

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

#### **Article 6. Communications and Time Limits**

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

#### **Article 7. Filing of the Objection**

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
  - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
  - (iii) A Limited Public Interest Objection must be filed at: [●].
  - (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
  - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of its receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of its receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

## **Article 8. Content of the Objection**

- (a) The Objection shall contain, *inter alia*, the following information:
- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
  - (ii) A statement of the Objector's basis for standing; and
  - (iii) A description of the basis for the Objection, including:
    - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
    - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

## **Article 9. Administrative Review of the Objection**

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

#### **Article 10. ICANN's Dispute Announcement**

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

#### **Article 11. Response to the Objection**

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
  - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
  - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

## **Article 12. Consolidation of Objections**

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

### **Article 13. The Panel**

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
  - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
  - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
  - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
  - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

### **Article 14. Costs**

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
  - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

#### **Article 15. Representation and Assistance**

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

#### **Article 16. Negotiation and Mediation**

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

#### **Article 17. Additional Written Submissions**

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

## **Article 18. Evidence**

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

## **Article 19. Hearings**

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
  - (i) The Panel shall decide how and where the hearing shall be conducted.
  - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
  - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
  - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

## **Article 20. Standards**

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

## **Article 21. The Expert Determination**

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

## **Article 22. Exclusion of Liability**

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

## **Article 23. Modification of the Procedure**

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.

International Centre for Dispute Resolution (ICDR)

Fees & Costs Schedule for String Confusion Objections  
(Fee Schedule)

May 20, 2010

Administrative Filing Fees (non-refundable)

- US \$2750 Filing Fee; per party; per objection.  
This amount is due on all objections filed.
- US \$1250<sup>1</sup> Case Service Fee; per party; per objection.  
This additional amount only becomes due if any type of hearing is conducted in accordance with Article 19 of the gTLD Dispute Resolution Procedures.

Neutral Panel Compensation (limited to one arbitrator)

- US \$6000<sup>2</sup> per objector/applicant.  
This is collected for all cases to be heard on documents only and includes all arbitrator expenses.
- US \$3000<sup>3</sup> per party.  
This is billed if any type of hearing is conducted.
  - Same amount billed for each additional day of hearing beyond one day.
  - Includes all travel time of the neutral.
  - Does not include travel expenses which will be billed separately

<sup>1</sup>See Article 19 of the gTLD Dispute Resolution Procedures.

<sup>2</sup>See Article 14(b) of the gTLD Dispute Resolution Procedures.

<sup>3</sup>See Article 14(c) of the gTLD Dispute Resolution Procedures.

International Centre for Dispute Resolution (ICDR)

Supplementary Procedures for String Confusion Objections  
(DRSP Rules)

May 20, 2010

**Impartiality and Independence of Experts**

**Article 1**

1. Arbitrators, who shall be referred to as "Experts", acting under the **gTLD DISPUTE RESOLUTION PROCEDURES** and these Rules shall be impartial and independent. Prior to accepting appointment, a prospective Expert shall disclose to the DRSP any circumstance likely to give rise to justifiable doubts as to the Expert's impartiality or independence. If, at any stage during the proceedings, new circumstances arise that may give rise to such doubts, an Expert shall promptly disclose such circumstances to the parties and to the DRSP. Upon receipt of such information from an Expert or a party, the DRSP shall communicate it to the other parties and to the panel.
2. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any Expert.

**Challenge of Experts**

**Article 2**

1. A party may challenge any Expert whenever circumstances exist that give rise to justifiable doubts as to the Expert's impartiality or independence. A party wishing to challenge an Expert shall send notice of the challenge to the DRSP within 10 days after being notified of the appointment of the Expert or within 10 days after the circumstances giving rise to the challenge become known to that party.
2. The challenge shall state in writing the reasons for the challenge.
3. Upon receipt of such a challenge, the DRSP shall notify the other parties of the challenge. Upon review of the challenge the DRSP in its sole discretion shall make the decision on the challenge and advise the parties of its decision. The challenged arbitrator may also withdraw from office upon notice of the challenge.

## **Replacement of an Expert**

### **Article 3**

If an Expert withdraws after a challenge, or the DRSP sustains the challenge, or the DRSP determines that there are sufficient reasons to accept the resignation of an Expert, or an Expert dies, a substitute Expert shall be appointed pursuant to the provisions of Article 13 of the **gTLD Dispute Resolution Procedures**.

## **Waiver of Rules**

### **Article 4**

A party who knows that any provision of the Rules or requirement under the Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, shall be deemed to have waived the right to object.

## **Confidentiality**

### **Article 5**

Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by an Expert or by the DRSP.

## **Interpretation of Rules**

### **Article 6**

The tribunal shall interpret and apply these Rules insofar as they relate to its powers and duties.

## **Exclusion of Liability**

### **Article 7**

1. Neither the International Centre for Dispute Resolution (ICDR), the American Arbitration Association (AAA), nor any Expert in a proceeding under the gTLD Dispute Resolution Procedures and/or these Rules is a necessary or proper party in judicial proceedings relating to the Objection proceeding.
2. Parties to an Objection proceeding under the gTLD Dispute Resolution Procedures and/or these Rules shall be deemed to have consented that neither the ICDR, the AAA, nor any Expert shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any Objection proceeding under the gTLD Dispute Resolution Procedures and/or these Rules.

DRAFT

**SCHEDULE OF FEES AND COSTS:  
NEW GTLD PRE-DELEGATION LEGAL RIGHTS OBJECTION PROCEDURE**  
(All amounts are in United States dollars)

*(This Schedule may be amended by the DRSP in accordance with its DRSP Rules.)*

**DRSP Fee<sup>1</sup>**

	DRSP Fee
Single-Expert Panel	2,000
Three-Expert Panel	3,000

**Panel Fee<sup>2</sup>**

*Base Panel Fee for Single Objection to Single Application Dispute*

Single-Expert Panel	8,000
Three-Expert Panel	20,000
[Presiding Expert: 10,000, Co-Expert: 5,000]	

*Panel Fee for Multiple Objections to Single Application:<sup>3</sup>  
60% of Regular Base Fee (to be paid per Objection filed)*

Single-Expert Panel	4,800
Three-Expert Panel	12,000
[Presiding Expert: 6,000, Co-Expert: 3,000]	

*Panel Fee for Multiple Objections filed by Same Objector to Multiple Applications:  
80% of Regular Base Fee (to be paid per Objection filed)<sup>3</sup>*

Single-Expert Panel	6,400
Three-Expert Panel	16,000
[Presiding Expert: 8,000, Co-Expert: 4,000]	

*All Other Scenarios<sup>3</sup>*

In all other scenarios, the DRSP shall determine the applicable fees in consultation with the Panel, taking into account the base fees stipulated above and the circumstances of the consolidated objections and applications.

**Additional Advance Payments**

Depending on the circumstances of the case, additional advance payments may be required to be made. In determining whether additional advance payments shall be required, the DRSP, in consultation with the Panel, may consider the following non-exclusive factors: the number of Applications and/or Objections to the TLD, the number of parties, the complexity of the dispute, the anticipated time required for rendering an Expert Determination, and the possible need for hearings, phone or video conferences, or additional pleading rounds.

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<sup>1</sup> See Articles 8(c) and 11(f) of the New gTLD Dispute Resolution Procedure.

<sup>2</sup> See Article 14 of the New gTLD Dispute Resolution Procedure.

<sup>3</sup> See Article 12 of the New gTLD Dispute Resolution Procedure.

*[Draft WIPO Rules for New gTLD Dispute Resolution,  
Version 1 of August \_\_, 2009]*

**World Intellectual Property Organization Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections (“WIPO Rules for New gTLD Dispute Resolution”)**

*(In effect as of [Month Date, Year])*

**1. Scope of WIPO Rules for New gTLD Dispute Resolution in Relation to Procedure**

(a) Set out below are the applicable WIPO Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections as referred to in Article [4] of the New gTLD Dispute Resolution Procedure (“Procedure”) as approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on [Month Date, Year]. The WIPO Rules for New gTLD Dispute Resolution are to be read and used in connection with the Procedure which provides the basic framework for the four categories of objections [defined in Article [4] of the Procedure] arising from Applications under ICANN’s New gTLD Program.

(b) The version of the WIPO Rules for New gTLD Dispute Resolution applicable to a proceeding conducted under the Procedure is the version in effect on the day when the relevant Application for a new gTLD is submitted. *[Language to be aligned with ultimate language of Article 23(b) of the Procedure.]*

**2. Definitions**

Terms defined in the Procedure shall have the same meaning in the WIPO Rules for New gTLD Dispute Resolution. Words used in the singular shall include the plural and *vice versa* as the context may require.

**3. Communications**

(a) Subject to Article [6] of the Procedure, except where otherwise agreed beforehand with the WIPO Arbitration and Mediation Center (“Center”), and subject to the discretion of any appointed Panel, any submission to the Center or to the Panel shall be made:

- (i) [By electronic mail (email) using [...@wipo.int]; or
- (ii) In consultation with the Center, and where available, through the WIPO Electronic Case Facility (WIPO ECAF).]

(b) Subject to Article [6(a)] of the Procedure, if a party wishes to submit a hard copy or other non-electronic submission prior to Panel appointment, it shall first request leave to do so from the Center; the Center shall, in its sole discretion, then make a *prima facie* determination whether to accept the non-electronic submission, subject to the ultimate discretion of the Panel on appointment whether to accept the non-electronic submission in accordance with Article [6(a)] of the Procedure.

(c) Absent a request from a party for a hard copy of the Expert Determination, and subject to Article [21(f)] of the Procedure, the Center shall provide the parties and ICANN with an electronic copy of the Expert Determination.

#### **4. Submission of Objection and Response**

(a) In accordance with Articles [7] and [8] of the Procedure, the Objector shall transmit its Objection using the Objection Model Form set out in Annex [A] hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex [B] hereto and posted on the Center's website.

(b) In accordance with Article [11] of the Procedure, the Applicant shall transmit its Response using the Response Model Form set out in Annex [C] hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex [B] hereto and posted on the Center's website.

#### **5. Center Review of Objections**

(a) In accordance with Article [9] of the Procedure if an Objection is dismissed due to the Objector's failure to remedy an administrative deficiency, there shall be no refund of any DRSP Fee paid by the Objector pursuant to Article [14] of the Procedure and Paragraph [10] of the WIPO Rules for New gTLD Dispute Resolution.

(b) If an Objector submits a new Objection within ten (10) calendar days of closure of a proceeding as provided in Article [9(d)] of the Procedure and Paragraph [5(a)] of the WIPO Rules for New gTLD Dispute Resolution to remedy an administratively deficient Objection, such new Objection may be accompanied by a request for a DRSP Fee waiver, in whole or in part, for the Center's consideration in its sole discretion.

#### **6. Appointment of Case Manager**

(a) The Center shall advise the parties of the name and contact details of the Case Manager who shall be responsible for all administrative matters relating to the dispute and communications to the Panel.

(b) The Case Manager may provide administrative assistance to the parties or Panel, but shall have no authority to decide matters of a substantive nature concerning the dispute.

## **7. Consolidation**

(a) In accordance with Article [12] of the Procedure, the Center may, where possible and practicable, and in its sole discretion, decide to consolidate Objections by appointing the same Panel to decide multiple Objections sharing certain commonalities. In the event of consolidation, the Panel shall render individual Expert Determinations for each Objection.

(b) A party may submit a consolidation request pursuant to Article [12(b)] of the Procedure, or may oppose any consolidation request submitted. Any such opposition to a consolidation request shall be provided within seven (7) calendar days of the consolidation request. Any consolidation request or opposition thereto shall be limited to 1,500 words in length.

(c) In the case of consolidated Objections, the applicable reduced Panel fees are specified in Annex [D] hereto and posted on the Center's website.

(d) Pursuant to Article [12] of the Procedure, in weighing the that may result from consolidation against the possible prejudice or inconvenience that consolidation may cause, the Center in reaching its decision concerning consolidation, may take into account, *inter alia*, the following non-exclusive factors:

- (i) Whether the Objections concern the same or similar TLD(s);
- (ii) Whether the same Objector files Objections concerning multiple TLD applications;
- (iii) Whether in any consolidation request, or opposition thereto, the Objector or Applicant relies on single or multiple mark(s);
- (iv) The scope of evidence relied on by an Objector or Applicant in any Objection or application;
- (v) Any other arguments raised in any consolidation request, or opposition thereto;
- (vi) Expert availability to accept appointment.

(e) The Center's decision on any consolidation of multiple Objections for Expert Determination by the same Panel is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

## 8. Panel Appointment Procedures

- (a) The Center will maintain and publish on its website a publicly-available List of Experts.
- (b) Pursuant to Article [13(b)(ii)] of the Procedure, there shall be a Single-Expert Panel unless all the Parties agree to the appointment of a Three-Expert Panel.
- (c) In the event of a Single-Expert Panel, the Center shall in its sole discretion appoint an Expert from its List of Experts.
- (d) In the event all the Parties agree to the appointment of a Three-Expert Panel, any such agreement shall be communicated to the Center within five (5) calendar days of the Center's receipt of the Response filed in accordance with Article [11] of the Procedure and Paragraph [4(b)] of the WIPO Rules for New gTLD Dispute Resolution.
- (i) If Objections are not consolidated, and if the parties have communicated their agreement on the appointment of a Three-Expert Panel, within five (5) calendar days of such communication each party shall separately submit to the Center (notwithstanding Article [6(b)] of the Procedure) the names of three (3) candidates from the Center's List of Experts, in the order of their respective preference, for appointment by the Center as a Co-Expert. In the event none of a party's three (3) candidates is available for appointment as a Co-Expert, the Center shall appoint the Co-Expert in its sole discretion.
  - (ii) In the event of consolidation in accordance with Paragraph [7] of the WIPO Rules for New gTLD Dispute Resolution, the Objectors or Applicants shall, as the case may be, jointly submit the names of the three (3) candidates from the Center's List of Experts in order of preference (i.e., one list on behalf of all Objector(s) and one list on behalf of all Applicant(s)). If the Objectors or Applicants as the case may be do not jointly agree on and submit the names of three (3) candidates within five (5) calendar days of the parties' communication to the Center on their agreement to the appointment of a Three-Expert Panel, the Center shall in its sole discretion appoint the Co-Experts.
  - (iii) The third Expert, who shall be the Presiding Expert, shall absent exceptional circumstances be appointed by the Center from a list of five (5) candidates submitted by the Center to the parties. The Center's selection of a Presiding Expert shall be made in a manner that seeks to reasonably balance the preferences of each party as communicated to the Center within five (5) calendar days of the Center's communication of the list of candidates to the parties.

- (iv) Where any party fails to indicate its order of preference for the Presiding Expert to the Center, the Center shall nevertheless proceed to appoint the Presiding Expert in its sole discretion, taking into account any preferences of any other party.

## **9. Expert Impartiality and Independence**

(a) In accordance with Article [13(c)] of the Procedure, any prospective Expert shall, before accepting appointment, disclose to the Center and parties any circumstance that might give rise to justifiable doubt as to the Expert's impartiality or independence, or confirm in writing that no such circumstance exist by submitting to the Center a *Declaration of Impartiality and Independence* using the form set out in Annex [E] hereto and posted on the Center's website.

(b) If at any stage during a proceeding conducted under the Procedure, circumstances arise that might give rise to justifiable doubt as to an Expert's impartiality or independence, the Expert shall promptly disclose such circumstances to the parties and the Center.

(c) A party may challenge an Expert if circumstances exist which give rise to justifiable doubt as to the Expert's impartiality or independence. A party may challenge an Expert whom it has appointed or in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

- (i) A party challenging an Expert shall send notice to the Center and the other party, stating the reasons for the challenge, within five (5) calendar days after being notified of that Expert's appointment or becoming aware of circumstances that it considers give rise to justifiable doubt as to that Expert's impartiality or independence.
- (ii) The decision on the challenge shall be made by the Center in its sole discretion. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision. In the event of an Expert's removal, the Center shall appoint a new Expert in accordance with the Procedure and these WIPO Rules for New gTLD Dispute Resolution.

## **10. Fees**

(a) The applicable fees for the Procedure for Existing Legal Rights Objections are specified in Annex [D] hereto and posted on the Center's website.

(b) After the Expert Determination has been rendered or a proceeding conducted under the Procedure has been terminated, the Center shall provide an accounting to the parties

of the payments received and, in consultation with any Panel, return any unexpended balance of the Panel Fee to the parties.

## **11. Confidentiality**

(a) A party invoking the confidentiality of any information it wishes or is required to submit in any Existing Legal Rights Objection proceeding conducted under the Procedure, shall submit the request for confidentiality to the Center for the Panel's consideration, stating the reasons for which it considers the information to be confidential. If the Panel decides that the information is to be treated as confidential, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(b) Further to Article [6(b)] of the Procedure, except in exceptional circumstances as decided by the Panel and in consultation with the parties and the Center, no party or anyone acting on its behalf shall have any *ex parte* communication with the Panel.

## **12. Mediation**

Further to Article [16] of the Procedure, prior to the Panel rendering its Expert Determination in a proceeding conducted under the Procedure, the parties may inform the Center that they wish to participate in mediation to attempt to resolve the dispute and may request the Center to administer the mediation. In such event, unless both parties agree otherwise, the [WIPO Mediation Rules](#) shall apply *mutatis mutandis*. On request from the parties, and absent exceptional circumstances, the Center's mediation administration fee shall be waived.

## **13. Effect of Court Proceedings**

(a) The Objector and Applicant shall include in any Objection or Response relevant information regarding any other legal proceedings concerning the TLD. In the event that a party initiates any legal proceedings during the pendency of a proceeding conducted under the Procedure, it shall promptly notify the Center.

(b) In the event of any legal proceedings initiated prior to or during a proceeding conducted under the Procedure, the Panel shall have the discretion to decide whether to suspend or terminate such proceeding under the Procedure, or to proceed to an Expert Determination.

## **14. Termination**

(a) If, before the Panel renders an Expert Determination, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Panel may in its discretion terminate the proceeding.

(b) If, prior to Panel appointment, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Center in consultation with the parties and ICANN, may in its discretion terminate the proceeding.

## **15. Amendments**

Subject to the Procedure, the Center may amend these WIPO Rules for New gTLD Dispute Resolution in its sole discretion.

## **16. Exclusion of Liability**

Except in respect of deliberate wrongdoing, an Expert, the World Intellectual Property Organization, and the Center shall not be liable to any party or ICANN for any act or omission in connection with any proceeding conducted under the Procedure and the WIPO Rules for New gTLD Dispute Resolution.



# Applicant Guidebook

(30 May 2011)

## Module 4

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 4

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## *String Contention Procedures*

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

### *4.1 String Contention*

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String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

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

#### *4.1.1 Identification of Contention Sets*

---

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

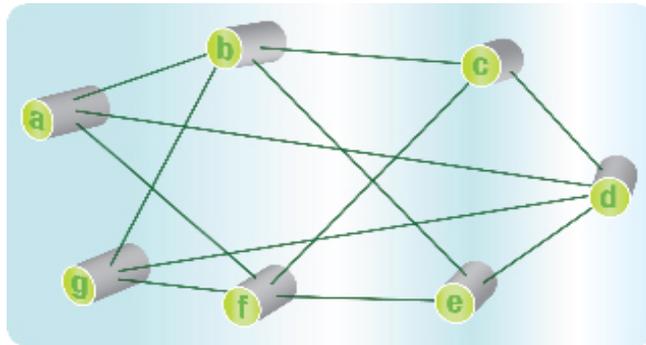
Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.



**Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.**

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

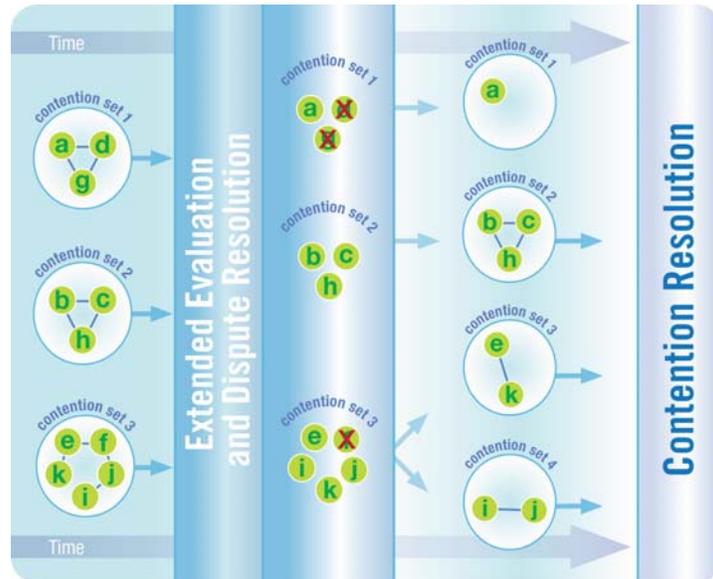


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

#### 4.1.2 *Impact of String Confusion Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

#### *4.1.3 Self-Resolution of String Contention*

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Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

#### *4.1.4 Possible Contention Resolution Outcomes*

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An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

## ***4.2 Community Priority Evaluation***

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Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

### ***4.2.1 Eligibility for Community Priority Evaluation***

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As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

#### ***4.2.2 Community Priority Evaluation Procedure***

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Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

### ***4.2.3 Community Priority Evaluation Criteria***

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The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

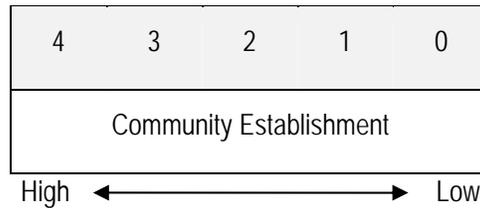
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

**Criterion #1: Community Establishment (0-4 points)**

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application.

(The implicit reach of the applied-for string is not considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

**Criterion 1 Definitions**

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some

examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

**Criterion 1 Guidelines**

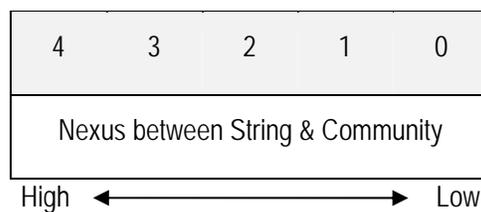
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

**Criterion #2: Nexus between Proposed String and Community (0-4 points)**

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

3	2	0
The string matches the name of the community or	String identifies the community, but does not qualify for a	String nexus does not fulfill the requirements for

3	2	0
is a well known short-form or abbreviation of the community name.	score of 3.	a score of 2.

B. Uniqueness (1)

1	0
String has no other significant meaning beyond identifying the community described in the application.	String does not fulfill the requirement for a score of 1.

This section evaluates the relevance of the string to the specific community that it claims to represent.

**Criterion 2 Definitions**

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

**Criterion 2 Guidelines**

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for

example, a globally well-known but local tennis club applying for “.TENNIS”) then it would not qualify for a 2.

With respect to “Uniqueness,” “significant meaning” relates to the public in general, with consideration of the community language context added.

“Uniqueness” will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing “...beyond identifying the community” in the score of 1 for “uniqueness” implies a requirement that the string does identify the community, i.e. scores 2 or 3 for “Nexus,” in order to be eligible for a score of 1 for “Uniqueness.”

It should be noted that “Uniqueness” is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be “unique” in the sense of “alone.”

### Criterion #3: Registration Policies (0-4 points)

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

#### A. Eligibility (1)

1	0
Eligibility restricted to community members.	Largely unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective

registrants, i.e. those desiring to register second-level domain names under the registry.

### **Criterion 3 Definitions**

- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

### **Criterion 3 Guidelines**

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and

demonstrate continuing accountability to the community named in the application.

**Criterion #4: Community Endorsement (0-4 points)**

4	3	2	1	0
Community Endorsement				
High	←————→			Low

As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

#### **Criterion 4 Definitions**

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community.
- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

#### **Criterion 4 Guidelines**

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support.

Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for "Opposition." To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

### ***4.3 Auction: Mechanism of Last Resort***

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It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.<sup>1</sup>

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<sup>1</sup> The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of

### 4.3.1 Auction Procedures

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An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based

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funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants (“bidders”) will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.

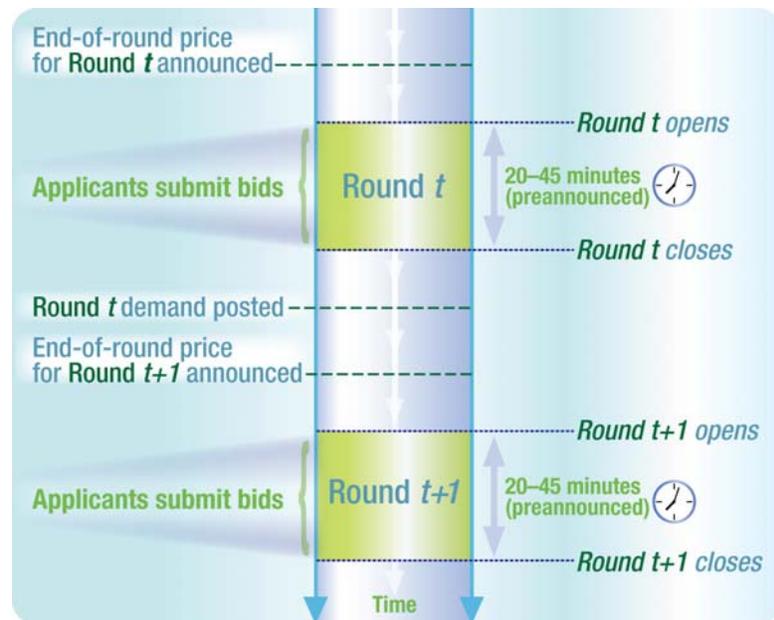


Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.
4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
  - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
  - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
  - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the

bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.

- To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.
  - No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
  - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

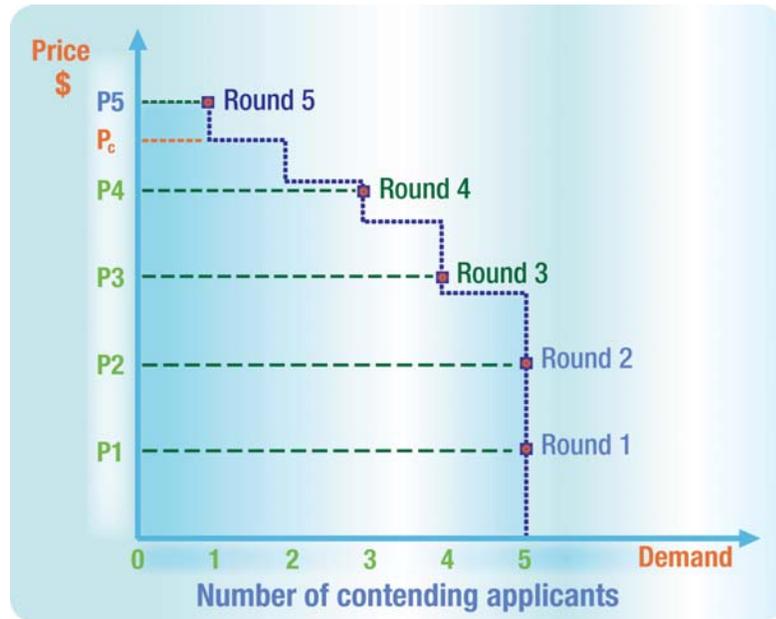


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price  $P_1$ .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_1$ . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at  $P_1$  and announces the end-of-round price  $P_2$ .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_2$ . The auctioneer discloses that five contending applications remained at  $P_2$  and announces the end-of-round price  $P_3$ .
- During Auction round 3, one of the bidders submits an exit bid at slightly below  $P_3$ , while the other four bidders submit bids of at least  $P_3$ . The auctioneer discloses that four contending applications remained at  $P_3$  and announces the end-of-round price  $P_4$ .

- During Auction round 4, one of the bidders submits an exit bid midway between  $P_3$  and  $P_4$ , while the other three remaining bidders submit bids of at least  $P_4$ . The auctioneer discloses that three contending applications remained at  $P_4$  and announces the end-of-auction round price  $P_5$ .
- During Auction round 5, one of the bidders submits an exit bid at slightly above  $P_4$ , and one of the bidders submits an exit bid at  $P_c$  midway between  $P_4$  and  $P_5$ . The final bidder submits a bid greater than  $P_c$ . Since the aggregate demand at  $P_5$  does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is  $P_c$ , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

#### 4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

#### 4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from nondefaulting losing bidders will be returned following the close of the auction.

### *4.3.2 Winning Bid Payments*

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Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

### 4.3.3 Post-Default Procedures

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Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.<sup>2</sup> Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

## 4.4 Contention Resolution and Contract Execution

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An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD

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<sup>2</sup> If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.

string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

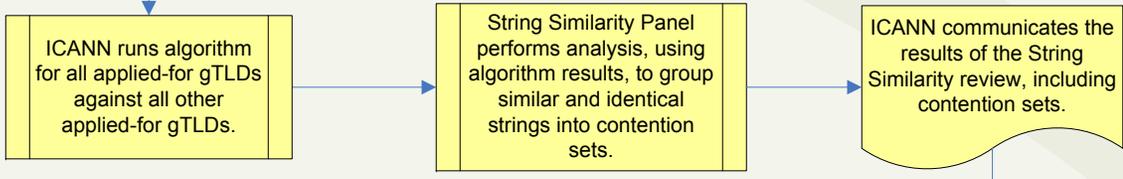
# DRAFT - New gTLD Program - String Contention



Application/  
Admin Check



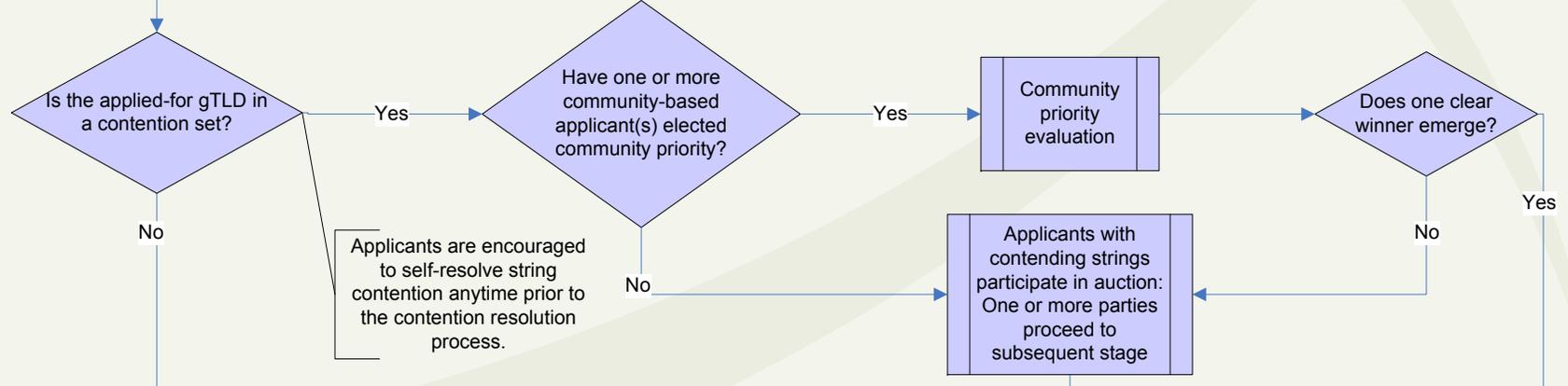
Initial Evaluation (IE)  
String Review



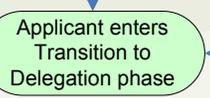
IE + EE  
+ Dispute Res

IE, Extended Evaluation (EE), and Dispute Resolution continue. Some applications may not pass certain elements of the review process, **which may alter the contention sets.**

String Contention



Transition to  
Delegation





# Applicant Guidebook

(30 May 2011)

## Module 5

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 5

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## *Transition to Delegation*

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

### *5.1 Registry Agreement*

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All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request

and negotiate terms by exception; however, this extends the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

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

## *5.2 Pre-Delegation Testing*

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Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

### *5.2.1 Testing Procedures*

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The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and

accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

### **5.2.2 Test Elements: DNS Infrastructure**

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The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

**UDP Support** -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

**TCP support** -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform

TCP reachability and transaction capability tests across a randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

***DNSSEC support*** -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

### 5.2.3 Test Elements: Registry Systems

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As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

**System performance** -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

**Whois support** -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

**EPP Support** -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to

the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

**IPv6 support** -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

**DNSSEC support** -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

**IDN support** -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in <http://iana.org/procedures/idn-repository.html>.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

**Escrow deposit** -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from

escrowed data. ICANN may elect to test the data release process with the escrow agent.

### 5.3 Delegation Process

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Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at <http://iana.org/domains/root/>.

### 5.4 Ongoing Operations

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An applicant that is successfully delegated a gTLD will become a "Registry Operator." In being delegated the role of operating part of the Internet's domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

#### 5.4.1 What is Expected of a Registry Operator

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The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator's obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

***Operate the TLD in a stable and secure manner.*** The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591<sup>1</sup>:

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<sup>1</sup> See <http://www.rfc-editor.org/rfc/rfc1591.txt>

“The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping the central IR<sup>2</sup> (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

***Comply with consensus policies and temporary policies.***

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)<sup>3</sup> following the process in Annex A of the ICANN Bylaws.<sup>4</sup> The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

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<sup>2</sup> IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

<sup>3</sup> <http://gns0.icann.org>

<sup>4</sup> <http://www.icann.org/en/general/bylaws.htm#AnnexA>

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

***Implement start-up rights protection measures.*** The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

***Implement post-launch rights protection measures.*** The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry

operators may introduce additional rights protection measures relevant to the particular gTLD.

***Implement measures for protection of country and territory names in the new gTLD.*** All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

***Pay recurring fees to ICANN.*** In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

***Regularly deposit data into escrow.*** This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

***Deliver monthly reports in a timely manner.*** A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

***Provide Whois service.*** A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

***Maintain partnerships with ICANN-accredited registrars.*** A registry operator creates a Registry-Registrar Agreement

(RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

***Maintain an abuse point of contact.*** A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

***Cooperate with contractual compliance audits.*** To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

***Maintain a Continued Operations Instrument.*** A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

***Maintain community-based policies and procedures.*** If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its

application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

***Have continuity and transition plans in place.*** This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

***Make TLD zone files available via a standardized process.*** This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

***Implement DNSSEC.*** The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

#### ***5.4.2 What is Expected of ICANN***

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ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See

<http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

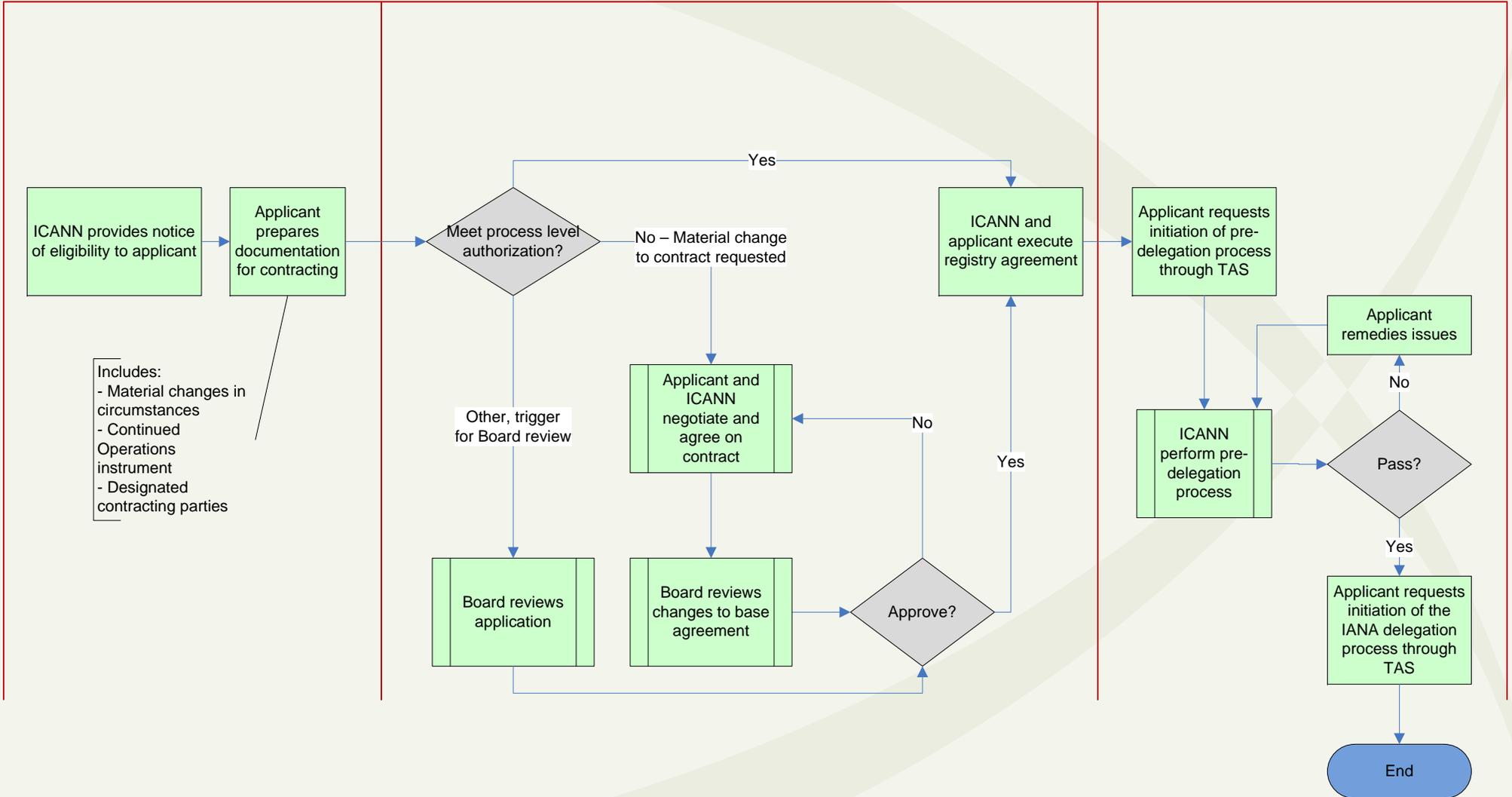
# Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

## Applicant Doc Prep 1 Month

## Contracting – 1 day to 9 months

## Pre-Delegation Testing – 1 to 12 months



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# *New gTLD Agreement*

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This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Background information on how this version of the draft agreement differs from the previous draft is available in the explanatory memorandum *Summary of Changes to Base Agreement*.

## REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and \_\_\_\_\_, a \_\_\_\_\_ (“Registry Operator”).

### ARTICLE 1.

#### DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

**1.1 Domain and Designation.** The Top-Level Domain to which this Agreement applies is \_\_\_\_\_ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

**1.2 Technical Feasibility of String.** While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

#### **1.3 Representations and Warranties.**

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

## ARTICLE 2.

### COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

**2.1 Approved Services; Additional Services.** Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

**2.2 Compliance with Consensus Policies and Temporary Policies.** Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]\* (“Specification 1”).

**2.3 Data Escrow.** Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]\*.

**2.4 Monthly Reporting.** Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]\*.

**2.5 Publication of Registration Data.** Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]\* (“Specification 4”).

**2.6 Reserved Names.** Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]\* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

**2.7 Registry Interoperability and Continuity.** Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

**2.8 Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]\* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

**2.9 Registrars.**

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

**2.10 Pricing for Registry Services.**

(a) With respect to initial domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

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duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

## **2.11 Contractual and Operational Compliance Audits.**

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

**2.12 Continued Operations Instrument.** Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

**2.13 Emergency Transition.** Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at \_\_\_\_\_) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

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provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

**2.14 Registry Code of Conduct.** In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

**2.15 Cooperation with Economic Studies.** If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

**2.16 Registry Performance Specifications.** Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]\*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

**2.17 Personal Data.** Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

**2.18 [*Note: For Community-Based TLDs Only*] Obligations of Registry Operator to TLD Community.** Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

### ARTICLE 3.

#### COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

**3.1 Open and Transparent.** Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

**3.2 Equitable Treatment.** ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

**3.3 TLD Nameservers.** ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

**3.4 Root-zone Information Publication.** ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

**3.5 Authoritative Root Database.** To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

### ARTICLE 4.

#### TERM AND TERMINATION

**4.1 Term.** The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

**4.2 Renewal.**

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

#### **4.3 Termination by ICANN.**

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

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(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*  
ICANN may terminate this Agreement pursuant to Section 7.14.

#### **4.4 Termination by Registry Operator.**

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

**4.5 Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

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escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

*[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:*

**“Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

**4.6 Effect of Termination.** Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

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Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

## ARTICLE 5.

### DISPUTE RESOLUTION

**5.1 Cooperative Engagement.** Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

**5.2 Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

**“Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."}]

**5.3 Limitation of Liability.** ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

**5.4 Specific Performance.** Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

## ARTICLE 6.

### FEES

**6.1 Registry-Level Fees.** Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

**6.2 Cost Recovery for RSTEP.** Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

**6.3 Variable Registry-Level Fee.**

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

**6.4 Adjustments to Fees.** Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

**6.5 Additional Fee on Late Payments.** For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

## ARTICLE 7.

### MISCELLANEOUS

#### 7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

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litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

**7.2 Indemnification Procedures.** If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

**7.3 Defined Terms.** For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

**7.4 No Offset.** All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

**7.5 Change in Control; Assignment and Subcontracting.** Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

**7.6 Amendments and Waivers.**

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

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Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

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Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

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**7.7 No Third-Party Beneficiaries.** This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

**7.8 General Notices.** Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:  
Internet Corporation for Assigned Names and Numbers  
4676 Admiralty Way, Suite 330  
Marina Del Rey, California 90292  
Telephone: 1-310-823-9358  
Facsimile: 1-310-823-8649  
Attention: President and CEO

With a Required Copy to: General Counsel  
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Telephone:

Facsimile:

Attention:

With a Required Copy to:  
Email: (As specified from time to time.)

**7.9 Entire Agreement.** This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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**7.10 English Language Controls.** Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

**7.11 Ownership Rights.** Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

**7.12 Severability.** This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

**7.13 Court Orders.** ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

*[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]*

**7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.**

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the “Applicable Laws”). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator’s compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, “ICANN Requirements”), may conflict with or violate Applicable Law (hereinafter, a “Potential Conflict”), Registry Operator shall provide detailed notice (a “Notice”) of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an “ICANN Determination”). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN’s complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator’s compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

\* \* \* \* \*

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\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_  
[\_\_\_\_\_] President and CEO

Date:

**[Registry Operator]**

By: \_\_\_\_\_  
[\_\_\_\_\_] \_\_\_\_\_  
[\_\_\_\_\_]

Date:

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

**EXHIBIT A**

**Approved Services**

# SPECIFICATION 1

## CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

### 1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
  - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
  - 1.2.2. functional and performance specifications for the provision of Registry Services;
  - 1.2.3. Security and Stability of the registry database for the TLD;
  - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
  - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
  - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
  - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
  - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
  - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
  - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
  - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
  - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
  - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
  - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
    - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
    - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

## SPECIFICATION 2

### DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

#### PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
  - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday. Pending transactions at that time (i.e., transactions that have not been committed) will not be reflected in the Full Deposit.
  - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).
  
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
  - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
  - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
  
3. **Escrow Format Specification.**
  - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.
  
  - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section

3.1. ICANN and the respective Registry shall work together to agree on such new objects' data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
  - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
  - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
  - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
  - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
  - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}\_{YYYY-MM-DD}\_{type}\_S{#}\_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
  - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
  - 5.3 {type} is replaced by:
    - (1) "full", if the data represents a Full Deposit;
    - (2) "diff", if the data represents a Differential Deposit;
    - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
  - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
  - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0":

- 5.6 {ext} is replaced by “sig” if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by “ryde”.
6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
- (1) The signature file of each processed file is validated.
  - (2) If processed files are pieces of a bigger file, the latter is put together.
  - (3) Each file obtained in the previous step is then decrypted and uncompressed.
  - (4) Each data file contained in the previous step is then validated against the format defined in [1].
  - (5) If [1] includes a verification process, that will be applied at this step.  
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
- [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
- [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
- [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

## PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
  - 6.1 the Registry Agreement has expired without renewal, or been terminated; or
  - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
  - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
  - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
  - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
  - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
  - 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
  - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

## SPECIFICATION 3

### FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to \_\_\_\_\_ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

**1. Per-Registrar Transactions Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	<a href="http://www.iana.org/assignments/registrar-ids">http://www.iana.org/assignments/registrar-ids</a>
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-noddecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

**2. Registry Functions Activity Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

## SPECIFICATION 4

### SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

#### 1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

Domain Name: EXAMPLE.TLD  
Domain ID: D1234567-TLD  
WHOIS Server: whois.example.tld  
Referral URL: http://www.example.tld  
Updated Date: 2009-05-29T20:13:00Z  
Creation Date: 2000-10-08T00:45:00Z  
Registry Expiry Date: 2010-10-08T00:44:59Z  
Sponsoring Registrar: EXAMPLE REGISTRAR LLC  
Sponsoring Registrar IANA ID: 5555555  
Domain Status: clientDeleteProhibited  
Domain Status: clientRenewProhibited  
Domain Status: clientTransferProhibited  
Domain Status: serverUpdateProhibited  
Registrant ID: 5372808-ERL  
Registrant Name: EXAMPLE REGISTRANT  
Registrant Organization: EXAMPLE ORGANIZATION  
Registrant Street: 123 EXAMPLE STREET  
Registrant City: ANYTOWN  
Registrant State/Province: AP  
Registrant Postal Code: A1A1A1  
Registrant Country: EX

Registrant Phone: +1.5555551212  
Registrant Phone Ext: 1234  
Registrant Fax: +1.5555551213  
Registrant Fax Ext: 4321  
Registrant Email: EMAIL@EXAMPLE.TLD  
Admin ID: 5372809-ERL  
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE  
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION  
Admin Street: 123 EXAMPLE STREET  
Admin City: ANYTOWN  
Admin State/Province: AP  
Admin Postal Code: A1A1A1  
Admin Country: EX  
Admin Phone: +1.5555551212  
Admin Phone Ext: 1234  
Admin Fax: +1.5555551213  
Admin Fax Ext:  
Admin Email: EMAIL@EXAMPLE.TLD  
Tech ID: 5372811-ERL  
Tech Name: EXAMPLE REGISTRAR TECHNICAL  
Tech Organization: EXAMPLE REGISTRAR LLC  
Tech Street: 123 EXAMPLE STREET  
Tech City: ANYTOWN  
Tech State/Province: AP  
Tech Postal Code: A1A1A1  
Tech Country: EX  
Tech Phone: +1.1235551234  
Tech Phone Ext: 1234  
Tech Fax: +1.5555551213  
Tech Fax Ext: 93  
Tech Email: EMAIL@EXAMPLE.TLD  
Name Server: NS01.EXAMPLEREGISTRAR.TLD  
Name Server: NS02.EXAMPLEREGISTRAR.TLD  
DNSSEC: signedDelegation  
DNSSEC: unsigned  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

### 1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.  
Street: 1234 Admiralty Way  
City: Marina del Rey  
State/Province: CA  
Postal Code: 90292  
Country: US  
Phone Number: +1.3105551212  
Fax Number: +1.3105551213

Email: registrar@example.tld  
WHOIS Server: whois.example-registrar.tld  
Referral URL: http://www.example-registrar.tld  
Admin Contact: Joe Registrar  
Phone Number: +1.3105551213  
Fax Number: +1.3105551213  
Email: joeregistrar@example-registrar.tld  
Admin Contact: Jane Registrar  
Phone Number: +1.3105551214  
Fax Number: +1.3105551213  
Email: janeregistrar@example-registrar.tld  
Technical Contact: John Geek  
Phone Number: +1.3105551215  
Fax Number: +1.3105551216  
Email: johngeek@example-registrar.tld  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

#### 1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD  
IP Address: 192.0.2.123  
IP Address: 2001:0DB8::1  
Registrar: Example Registrar, Inc.  
WHOIS Server: whois.example-registrar.tld  
Referral URL: http://www.example-registrar.tld  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

## 2. Zone File Access

### 2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard.** Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

**2.1.5. Use of Data by User.** Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

**2.1.6. Term of Use.** Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

**2.1.7. No Fee for Access.** Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

## **2.2 Co-operation**

**2.2.1. Assistance.** Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

**2.3 ICANN Access.** Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

**2.4 Emergency Operator Access.** Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

### 3. Bulk Registration Data Access to ICANN

**3.1. Periodic Access to Thin Registration Data.** In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

**3.1.1. Contents.** Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

**3.1.2. Format.** The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

**3.1.3. Access.** Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

**3.2. Exceptional Access to Thick Registration Data.** In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

## SPECIFICATION 5

### SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
  - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union  
<[http://www.iso.org/iso/support/country\\_codes/iso\\_3166\\_code\\_lists/iso-3166-1\\_decoding\\_table.htm#EU](http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU)>;
  - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
  - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

## SPECIFICATION 6

### REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

#### 1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <<http://www.icann.org/en/topics/idn/implementation-guidelines.htm>>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

## 2. Registry Services

2.1. **Registry Services.** “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

## 3. Registry Continuity

3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

## 4. Abuse Mitigation

4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

4. **Supported Initial and Renewal Registration Periods**

4.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

4.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

## SPECIFICATION 7

### MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

## SPECIFICATION 8

### CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [\_\_] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6<sup>th</sup>) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [\_\_] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

## SPECIFICATION 9

### Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a "Registry Related Party"), to:
  - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
  - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
  - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
  - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
  - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days

- following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.
4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
  5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
  6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

## SPECIFICATION 10

### REGISTRY PERFORMANCE SPECIFICATIONS

#### 1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

#### 2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
<b>DNS</b>	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
<b>RDDS</b>	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
<b>EPP</b>	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

### 3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

- 3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.
- 3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

#### 4. **RDDS**

- 4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.
- 4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.
- 4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.
- 4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.
- 4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

## 5. **EPP**

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**“ of the EPP servers of the TLD being monitored and make an “**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

<b>Critical Function</b>	<b>Emergency Threshold</b>
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

### 7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

### 7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

## 8. Covenants of Performance Measurement

- 8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).
- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

## **TRADEMARK CLEARINGHOUSE**

**30 MAY 2011**

### **1. PURPOSE OF CLEARINGHOUSE**

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

### **2. SERVICE PROVIDERS**

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

- 2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.
  - 2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.
  - 2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).
- 2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.
- 2.4 Contractual Relationship.
  - 2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.
  - 2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.
  - 2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.
  - 2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
  - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
  - 2.5.2 employ systems that are technically reliable and secure (database administrator);
  - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
  - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
  - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
  - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
  - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
  - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

### **3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE**

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
  - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
  - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
  - 3.2.4 Other marks that constitute intellectual property.
  - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

#### **4. USE OF CLEARINGHOUSE DATA**

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

## **5. DATA AUTHENTICATION AND VALIDATION GUIDELINES**

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
  - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
  - 5.1.3 Electronic contact information is provided and accurate;
  - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

## **6. MANDATORY RIGHTS PROTECTION MECHANISMS**

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
  - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

## 6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and incorporate a Sunrise Dispute Resolution Policy (SDRP).
- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SRDP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

## 7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii)

specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.

- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

## **8. COSTS OF CLEARINGHOUSE**

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

## TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

***Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]***

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

***If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.***

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below. The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

\*\*\*\*\* [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)  
30 MAY 2011**

**DRAFT PROCEDURE**

**1. Complaint**

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

## **2. Fees**

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 A limited “loser pays” model has been adopted for the URS. Complaints listing twenty-six (26) or more disputed domain names will be subject to an Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

## **3. Administrative Review**

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

## **4. Notice and Locking of Domain**

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) (“Notice of Complaint”) after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall “lock” the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name (“Notice of Lock”).

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

## **5. The Response**

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
  - 5.4.1 Confirmation of Registrant data.
  - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
  - 5.4.3 Any defense which contradicts the Complainant's claims.
  - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
  - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
  - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
  - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
  - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
  - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
  - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility

## **6. Default**

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

## **7. Examiners**

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

## **8. Examination Standards and Burden of Proof**

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

## **9. Determination**

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

## **10. Remedy**

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.2 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.3 No other remedies should be available in the event of a Determination in favor of the Complainant.

## **11. Abusive Complaints**

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
  - 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
  - 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

## **12. Appeal**

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

## **13. Other Available Remedies**

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

**14. Review of URS**

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

**TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)**  
**30 MAY 2011**

**1. Parties to the Dispute**

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

**2. Applicable Rules**

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

**3. Language**

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

**4. Communications and Time Limits**

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

## 5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

## 6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

### 6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

*(a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or*

*(b) impairing the distinctive character or the reputation of the complainant's mark; or*

*(c) creating a likelihood of confusion with the complainant's mark.*

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

### 6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

*(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and*

*(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:*

*(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or*

*(ii) impairs the distinctive character or the reputation of the complainant's mark, or*

*(iii) creates a likelihood of confusion with the complainant's mark.*

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

## **7. Complaint**

### **7.1 Filing:**

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

### **7.2 Content:**

**7.2.1** The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
  - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
  - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
  - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
  - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
  - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
  - (g) A statement that the proceedings are not being brought for any improper purpose.
  - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

## **8. Administrative Review of the Complaint**

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

## **9. Threshold Review**

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
  - 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
    - 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
    - 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
  - 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
  - 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein  
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

- 9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.
- 9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.
- 9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.
- 9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.
- 9.6 Provider shall electronically serve the Threshold Determination on all parties.
- 9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.
- 9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

## **10. Response to the Complaint**

- 10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.
- 10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.
- 10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

**11. Reply**

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

**12. Default**

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

**13. Expert Panel**

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider appoint a one-person Expert Panel, unless any party requests a three-member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

**14. Costs**

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the “Complaint” section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant’s share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator’s share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

**15. Discovery**

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel’s own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

**16. Hearings**

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

**17. Burden of Proof**

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

**18. Remedies**

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
  - 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
  - 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
    - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
      - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
      - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
    - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
  - 18.5.1 Temporary bans from filing Complaints;
  - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
  - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

## **19. The Expert Panel Determination**

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

## **20. Appeal of Expert Determination**

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

## **21. Challenge of a Remedy**

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

**22. Availability of Court or Other Administrative Proceedings**

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

**REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)<sup>1</sup>**  
**30 MAY 2011**

**1. Parties to the Dispute**

The parties to the dispute will be the harmed organization or individual and the gTLD registry operator. ICANN shall not be a party.

**2. Applicable Rules**

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

**3. Language**

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

**4. Communications and Time Limits**

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

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<sup>1</sup> Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

## **5. Standing**

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- 5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.
- 5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

## **6. Standards**

- 6.1 For an claim to be successful, the claims must prove that:
  - 6.1.1 The community invoked by the objector is a defined community;
  - 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
  - 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
  - 6.1.3 There is a measureable harm to the Complainant and the community named by the objector.

## **7. Complaint**

- 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will

electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.

7.2.3 A statement of the nature of the dispute, which must include:

7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and

7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.

7.2.4 A statement that the proceedings are not being brought for any improper purpose.

7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.

7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

**8. Administrative Review of the Complaint**

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

## **9. Response to the Complaint**

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

## **10 Reply**

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

## **11. Default**

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

## **12. Expert Panel**

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed .
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

## **13. Costs**

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

**14. Discovery/Evidence**

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

**15. Hearings**

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

**16. Burden of Proof**

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

## **17. Recommended Remedies**

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
  - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

## **18. The Expert Determination**

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

## **19. Appeal of Expert Determination**

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

## **20. Breach**

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

**21. Availability of Court or Other Administrative Proceedings**

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



# Applicant Guidebook

(30 May 2011)

## Module 6

Potential applicants should be aware that this version of the Guidebook is for consideration and not yet approved. The proposed details of the New gTLD Program remain subject to further consultation and revision.

30 May 2011

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# Module 6

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## *Top-Level Domain Application - Terms and Conditions*

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

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

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval or rejection of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.
7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other materials prepared in connection with the

evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:

- a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
  - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.
12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and

evaluation of its application to represent ICANN adverse to Applicant in the matter.

14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

**EXHIBIT JJN-47**

# gTLD Applicant Guidebook

Version 2011-09-19



19 September 2011



The Internet Corporation for Assigned Names and Numbers

19 September 2011

ICANN's Board of Directors approved the New Generic Top-Level Domain Program in June 2011, ushering in a vast change to the Internet's domain name system. The historic decision was featured in thousands of media outlets around the world. It followed years of discussion, debate and deliberation with many different communities, including business groups, cultural organizations and governments. We expect the program to bring benefits to language and other communities, provide opportunities for innovation, and introduce new protections for users and rights holders.

Today, we are just months away from the scheduled opening of the application window and in the execution stage of a global communications effort to raise awareness of this dramatic change. In keeping with our established timeline, the Applicant Guidebook has been updated based on the direction given within the Board's resolution at the 20 June meeting in Singapore.

The New gTLD Program is the result of thousands of hours of work by our stakeholders, and is a testament to the value of the multi-stakeholder process, ICANN's unique bottom-up, consensus-driven approach. As we have developed this program, we have laid the foundation for the future of the Internet.

ICANN will provide further refinements to the Guidebook as warranted. In addition, information will be given on the process for providing assistance for potential applicants from developing countries. Details are currently under development by the Joint Applicant Support Working Group, staffed by independent stakeholders.

At the heart of ICANN's mission is the security and stability of the domain name system. In performing its core functions of overseeing the Internet's unique identifier systems, ICANN also promotes competition and consumer choice. New gTLDs are in line with those goals, and I thank you for your anticipated participation and support.

Rod Beckstrom  
President and CEO

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# Preamble

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## *New gTLD Program Background*

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

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

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

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

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



# gTLD Applicant Guidebook

(v. 2011-09-19)

**Module 1**

19 September 2011

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# Module 1

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## *Introduction to the gTLD Application Process*

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

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

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

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

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

### *1.1 Application Life Cycle and Timelines*

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

#### *1.1.1 Application Submission Dates*

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

The user registration period closes at **23:59 UTC 29 March 2012**. New users to TAS will not be accepted beyond this time. Users already registered will be able to complete the application submission process.

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

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

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

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

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

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

### *1.1.2 Application Processing Stages*

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This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The

shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be applicable in any given case are also shown. A brief description of each stage follows.

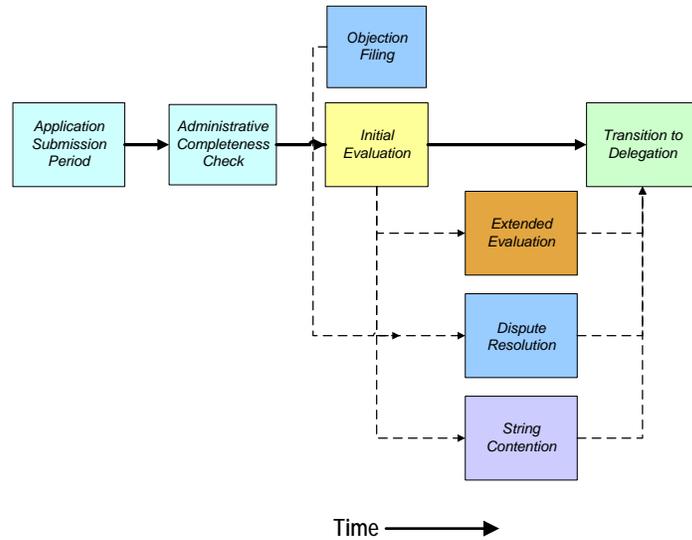


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

### 1.1.2.1 Application Submission Period

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

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

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

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

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

### *1.1.2.2 Administrative Completeness Check*

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

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

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

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

### *1.1.2.3 Comment Period*

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **1.1.2.4 GAC Early Warning**

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

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

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

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

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

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

#### *1.1.2.5 Initial Evaluation*

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

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

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

There are two main elements of the Initial Evaluation:

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

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

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

If batching is required, a process external to the application submission process will be employed to establish evaluation priority. This process will be based on an online ticketing system or other objective criteria.

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

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

Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate

will not exceed 1,000 per year in any case, no matter how many applications are received.<sup>2</sup>

#### *1.1.2.6 Objection Filing*

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

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

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

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where possible, consult with interested parties to mitigate any concerns in advance.

#### *1.1.2.7 Receipt of GAC Advice on New gTLDs*

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

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

GAC Advice on New gTLDs that includes a consensus statement<sup>3</sup> from the GAC that an application should not proceed as submitted (or other terms created by the GAC to express that intent), and that includes a thorough explanation of the public policy basis for such advice, will create a strong presumption for the Board that the application should not be approved. If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.

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

#### ***1.1.2.8 Extended Evaluation***

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

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

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

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

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

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

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<sup>3</sup> The GAC will clarify the basis on which consensus advice is developed.

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

### **1.1.2.9 Dispute Resolution**

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

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

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

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

### **1.1.2.10 String Contention**

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

String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings. In this Applicant Guidebook, "similar" means strings so similar that they create a

probability of user confusion if more than one of the strings is delegated into the root zone.

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

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

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

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

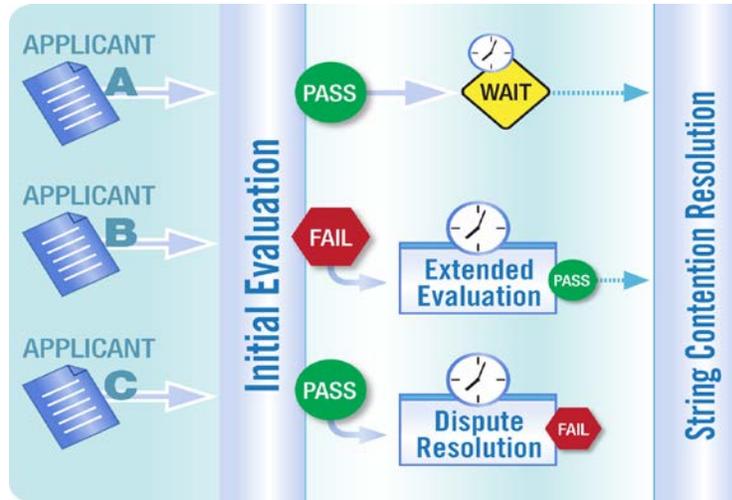


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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

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

#### 1.1.2.11 Transition to Delegation

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

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

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

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

### 1.1.3 Lifecycle Timelines

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

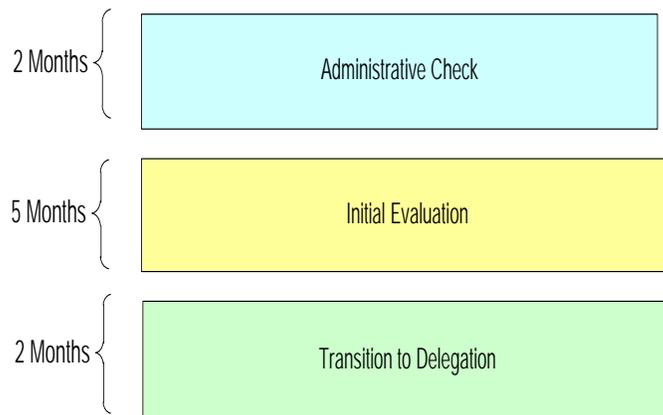


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

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

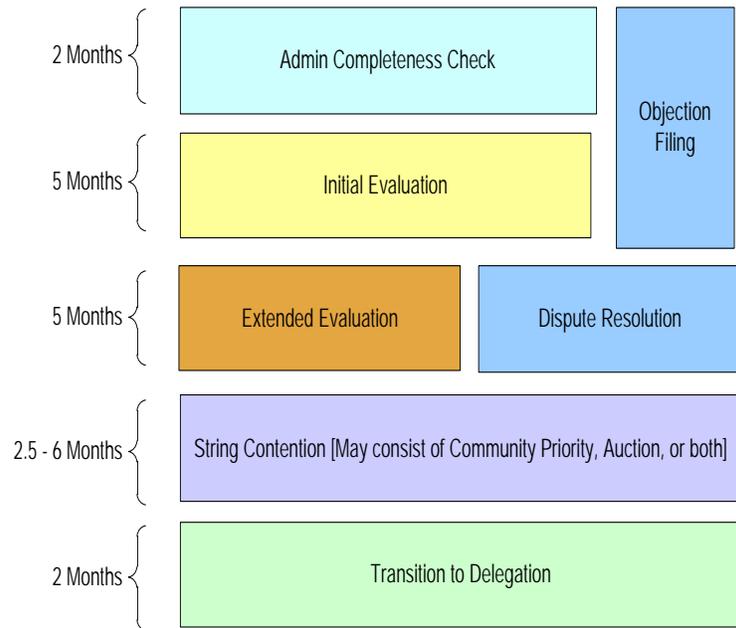


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

### 1.1.4 Posting Periods

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

Period	Posting Content
During Administrative Completeness Check	Public portions of all applications (posted within 2 weeks of the start of the Administrative Completeness Check).
End of Administrative Completeness Check	Results of Administrative Completeness Check.
GAC Early Warning Period	GAC Early Warnings received.
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review. Contention sets resulting from String Similarity review.
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	GAC Advice received.
End of Extended Evaluation	Application status updates with all Extended Evaluation results. Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection	Information on filed objections and status

Period	Posting Content
Filing/Dispute Resolution	updates available via Dispute Resolution Service Provider websites. Notice of all objections posted by ICANN after close of objection filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed. Pre-delegation testing status updated.

### 1.1.5 Sample Application Scenarios

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

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond nine months, it is expected that most applications will complete the process within the nine-month timeframe.

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

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

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

**Scenario 2 – Extended Evaluation, No Objection, No Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

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

**Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with

standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

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

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

**Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation** -- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the application fails Extended Evaluation also. The application does not proceed.

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

**Scenario 9 – Extended Evaluation, Objection, Fail Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate

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

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

### ***1.1.6 Subsequent Application Rounds***

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

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

## ***1.2 Information for All Applicants***

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### ***1.2.1 Eligibility***

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

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

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

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section.

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

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

- a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;
- b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;

- c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;
- e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
- f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;
- g. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;
- h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988<sup>4</sup>;
- i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)<sup>5,6</sup>;
- j. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes above (i.e., within the past 10 years for crimes listed in

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<sup>4</sup> <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

<sup>5</sup> <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

<sup>6</sup> It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

- (a) - (d) above, or ever for the crimes listed in (e) – (i) above);
- k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents), within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (a) – (d) above, or ever for the crimes listed in (e) – (i) above);
  - l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;
  - m. has been involved in a pattern of adverse, final decisions indicating that the applicant or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.
  - n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;
  - o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application based on any information identified during the background screening process. For example, a final and legally binding decision obtained by a national law enforcement or consumer protection authority finding that the applicant was engaged in fraudulent and deceptive

commercial practices as defined in the Organization for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders<sup>7</sup> may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

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

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

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

### ***1.2.2 Required Documents***

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

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<sup>7</sup> [http://www.oecd.org/document/56/0,3746,en\\_2649\\_34267\\_2515000\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1,00.html)

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

Supporting documentation should be submitted in the original language. English translations are not required.

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

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

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

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

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

2. **Government support or non-objection** – If an applicant has applied for a gTLD string that is a geographic name (as defined in this Guidebook), the applicant is required to submit documentation of support for or non-objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.

3. **Documentation of third-party funding commitments** – If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

### 1.2.3 Community-Based Designation

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

#### 1.2.3.1 Definitions

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

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

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

not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based.

### 1.2.3.2 *Implications of Application Designation*

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

**Objection / Dispute Resolution** – All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or declared the gTLD to be aimed at a particular community. Refer to Module 3, Objection Procedures.

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

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

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

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

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

### *1.2.3.3 Changes to Application Designation*

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

### *1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs*

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

Similarly, software applications sometimes attempt to validate domain names and may not recognize new or unknown top-level domains. ICANN has no authority or ability to require that software accept new top-level domains, although it does prominently publicize which top-level domains are valid and has developed a basic tool to

assist application providers in the use of current root-zone data.

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

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

### *1.2.5 Notice concerning TLD Delegations*

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

### *1.2.6 Terms and Conditions*

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

### *1.2.7 Notice of Changes to Information*

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

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

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

### *1.2.8 Voluntary Designation for High Security Zones*

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

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

### *1.2.9 Security and Stability*

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*Root Zone Stability:* There has been significant study, analysis, and consultation in preparation for launch of the New gTLD Program, indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

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

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

### *1.2.10 Resources for Applicant Assistance*

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A variety of support resources are available to gTLD applicants. For example, ICANN is establishing a means for providing financial assistance to eligible applicants, through a process independent of this Guidebook. In addition, ICANN will maintain a webpage as an

informational resource for applicants seeking assistance, and organizations offering support. More information will be available on ICANN's website at <http://www.icann.org/en/topics/new-gtld-program.htm>.<sup>8</sup>

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### *1.2.11 Updates to the Applicant Guidebook*

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As approved by the ICANN Board of Directors, this Guidebook forms the basis of the New gTLD Program. ICANN reserves the right to make reasonable updates and changes to the Applicant Guidebook at any time, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process. Any such updates or revisions will be posted on ICANN's website.

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## *1.3 Information for Internationalized Domain Name Applicants*

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

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### *1.3.1 IDN-Specific Requirements*

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

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

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

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<sup>8</sup> The Joint SO/AC New gTLD Applicant Support Working Group is currently developing recommendations for support resources that may be available to gTLD applicants. Information on these resources will be published on the ICANN website once identified.

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

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

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

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for gTLD string, both according to the ISO codes for the representation of names of languages, and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).<sup>9</sup>

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

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<sup>9</sup> See examples at <http://stupid.domain.name/node/683>

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

### 1.3.2 IDN Tables

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

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

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

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines<sup>10</sup> and any updates thereto, including:

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

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<sup>10</sup> See <http://www.icann.org/en/topics/idn/idn-guidelines-26apr07.pdf>

- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

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

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

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

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

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

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

### **1.3.3 IDN Variant TLDs**

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

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD

in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.<sup>11</sup> Declaring variant strings is informative only and will not imply any right or claim to the declared variant strings.

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

The following scenarios are possible during the gTLD evaluation process:

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

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

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

- b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.

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<sup>11</sup> The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5>.

- c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

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

Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

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

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

## *1.4 Submitting an Application*

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

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

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in

accordance with specific instructions from ICANN to applicants.

### **1.4.1 Accessing the TLD Application System**

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

#### **1.4.1.1 User Registration**

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

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

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

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

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

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

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

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

#### *1.4.1.2 Application Form*

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

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

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

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

### **1.4.2 Customer Service during the Application Process**

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Assistance will be available to applicants throughout the application process via the Applicant Service Center (ASC). The ASC will be staffed with customer service agents to answer questions relating to the New gTLD Program, the application process, and TAS.

### **1.4.3 Backup Application Process**

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

## 1.5 Fees and Payments

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

### 1.5.1 gTLD Evaluation Fee

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

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

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

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

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early Warning	80%	USD 148,000
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial	35%	USD 65,000

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

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

An applicant that wishes to withdraw an application must initiate the process through TAS and submit the required form to request a refund, including agreement to the terms and conditions for withdrawal. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN will be deducted from the amount paid.

**Note on 2000 proof-of-concept round applicants --**

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

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

that such entity applied for in the 2000 proof-of-concept application round.

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

### **1.5.2 Fees Required in Some Cases**

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Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees<sup>12</sup> include:

- **Registry Services Review Fee** – If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.
- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider's payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Advance Payment of Costs** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in

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<sup>12</sup> The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

accordance with that provider's procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider's rules.

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

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

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

scores at or above the threshold for the community priority evaluation will have its deposit refunded.

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

### *1.5.3 Payment Methods*

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Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.<sup>13</sup>

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

### *1.5.4 Requesting a Remittance Form*

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

## *1.6 Questions about this Applicant Guidebook*

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For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

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

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

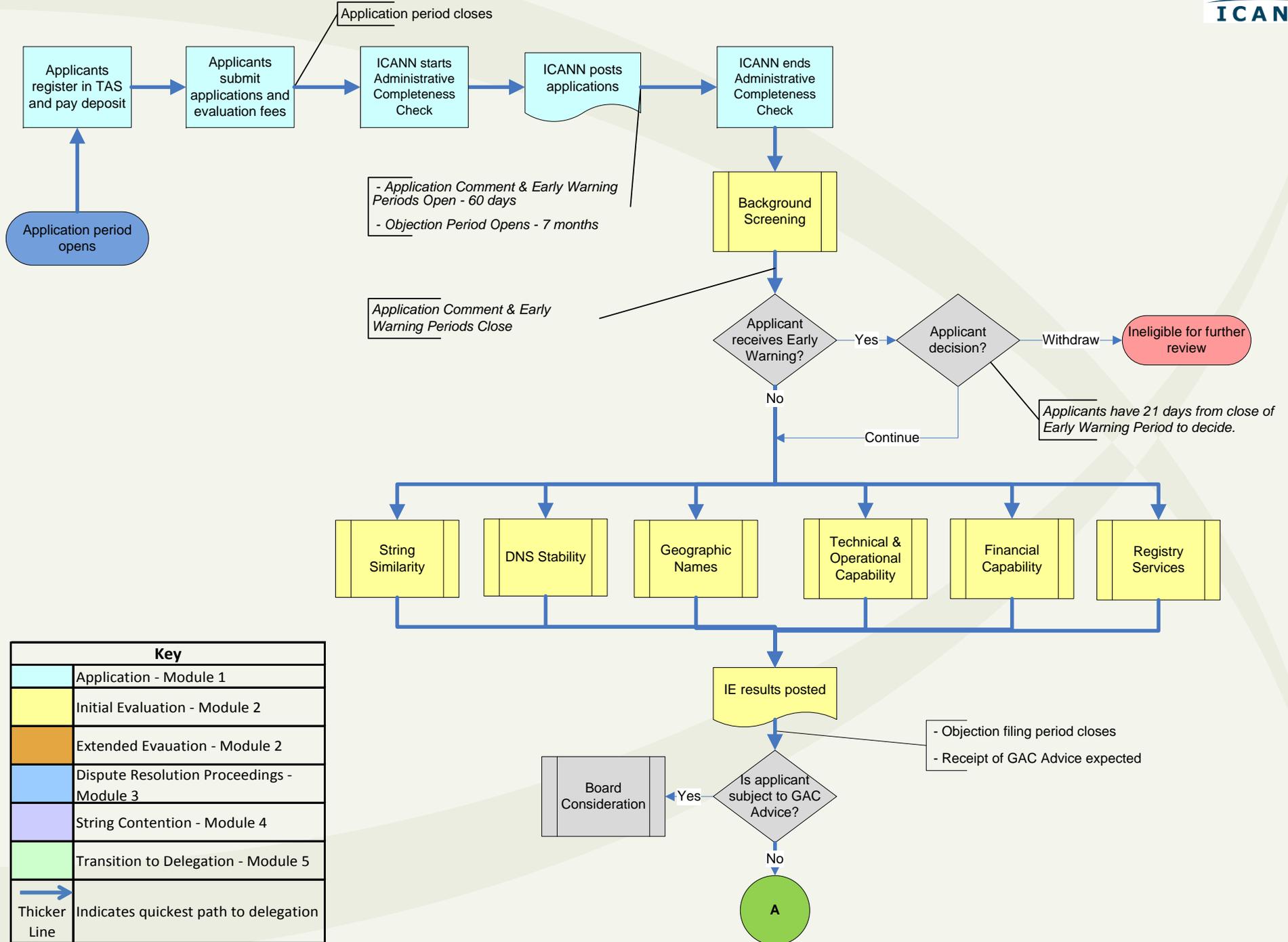
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<sup>13</sup> Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

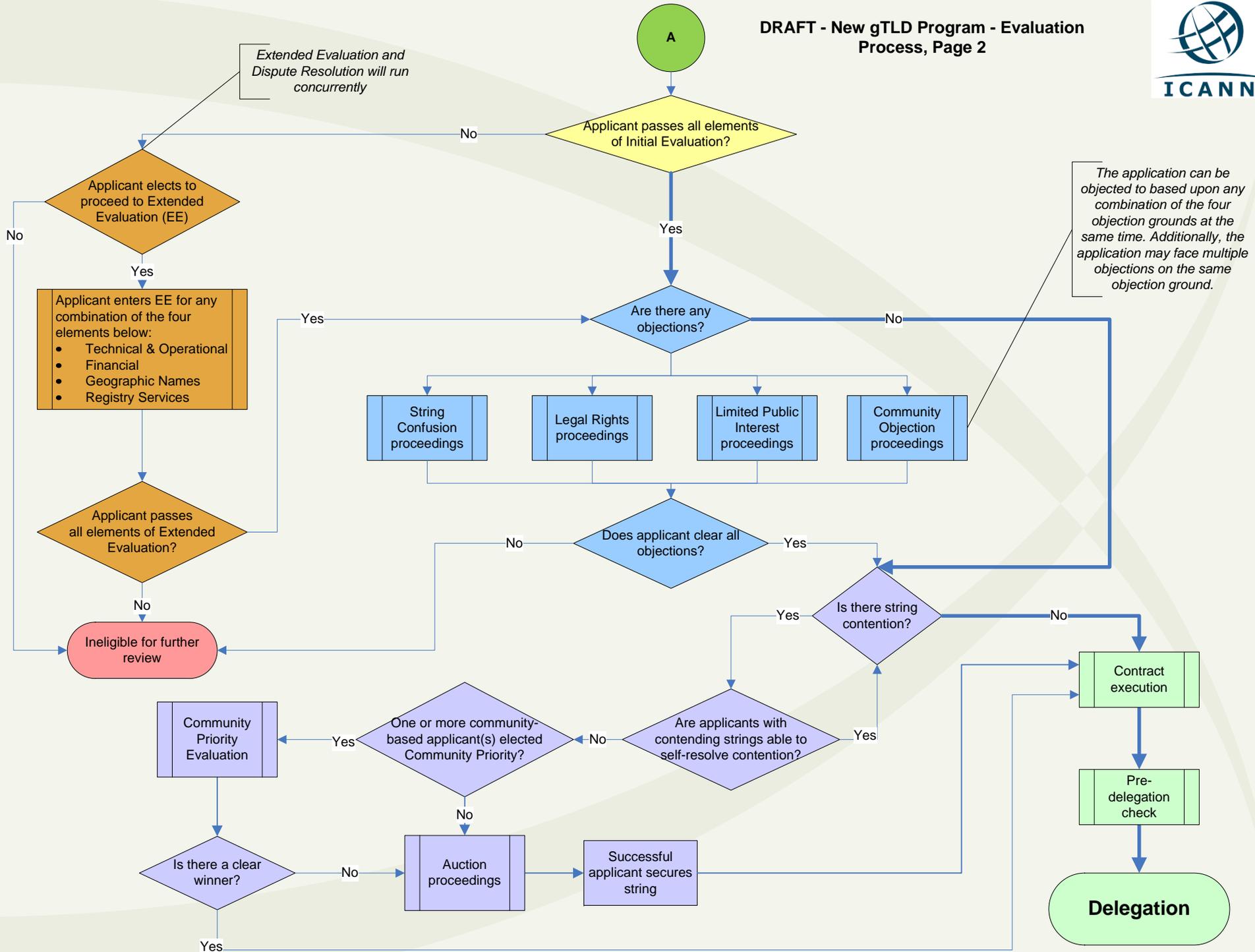
regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

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

# DRAFT - New gTLD Program - Evaluation Process



Key	
<span style="background-color: #e0ffff; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Application - Module 1
<span style="background-color: #ffffe0; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Initial Evaluation - Module 2
<span style="background-color: #ffcc99; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Extended Evaluation - Module 2
<span style="background-color: #add8e6; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Dispute Resolution Proceedings - Module 3
<span style="background-color: #ccccff; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	String Contention - Module 4
<span style="background-color: #ccffcc; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Transition to Delegation - Module 5
<span style="border-bottom: 3px solid blue; display: inline-block; width: 15px;"></span>	Indicates quickest path to delegation
<span style="border-left: 3px solid blue; display: inline-block; width: 15px; height: 10px;"></span>	Thicker Line





# gTLD Applicant Guidebook

(v. 2011-09-19)

Module 2

19 September 2011

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# Module 2

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## *Evaluation Procedures*

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

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

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

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

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

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

### *2.1 Background Screening*

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Background screening will be conducted in two areas:

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

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

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

### *2.1.1 General business diligence and criminal history*

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

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

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

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

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

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

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

### *2.1.2 History of cybersquatting*

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

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

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

## *2.2 Initial Evaluation*

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

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

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

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

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

## 2.2.1 String Reviews

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

### 2.2.1.1 String Similarity Review

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

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

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

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

#### 2.2.1.1.1 Reviews Performed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **2.2.1.1.2 Review Methodology**

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

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

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

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

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

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

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

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

#### *2.2.1.1.3 Outcomes of the String Similarity Review*

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

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

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

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

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

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

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

### 2.2.1.2 *Reserved Names and Other Unavailable Strings*

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

#### 2.2.1.2.1 *Reserved Names*

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

**Top-Level Reserved Names List**

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

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

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

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

#### **2.2.1.2.2**      *Declared Variants*

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

#### **2.2.1.2.3**      *Strings Ineligible for Delegation*

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

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

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

International Olympic Committee		
OLYMPIC	OLYMPIAD	OLYMPIQUE
OLYMPIADE	OLYMPISCH	OLÍMPICO
OLIMPÍADA	أوليمبي	أوليمبياد
奥林匹克	奥林匹亚	奥林匹克
奥林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림픽아드	Олимпийский
Олимпиада		
International Red Cross and Red Crescent Movement		
REDCROSS	REDCRESCENT	REDCRYSTAL
REDLIONANDSUN	MAGENDDAVIDADOM	REDSTAROFDAVID
CROIXROUGE	CROIX-ROUGE	CROISSANTROUGE
CROISSANT-ROUGE	CRISTALROUGE	CRISTAL-ROUGE
מגן דוד אדום	CRUZROJA	MEDIALUNAROJA
CRISTALROJO	Красный Крест	Красный Полумесяц
Красный Кристалл	رمح آلا بيلصل	لالملا رمح آلا
ءارمحل ءرولبل	الكريستلة الحمراء	紅十字
紅十字	紅新月	紅新月
紅水晶	紅水晶	

### 2.2.1.3 DNS Stability Review

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

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

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

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

#### ***2.2.1.3.1 DNS Stability: String Review Procedure***

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

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

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

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

If the panel determines that the string complies with relevant standards and does not create the conditions described above, the application will pass the DNS Stability review.

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

#### **2.2.1.3.2 String Requirements**

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

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

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

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

## **Part II -- Requirements for Internationalized Domain Names**

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

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

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

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

**Part III - Policy Requirements for Generic Top-Level Domains** – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

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

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

**2.2.1.4 Geographic Names Review**

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements

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

and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

#### *2.2.1.4.1 Treatment of Country or Territory Names<sup>6</sup>*

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

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

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

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

#### 2.2.1.4.2 *Geographic Names Requiring Government Support*

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

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

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

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

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and
- (b) The applied-for string is a city name as listed on official city documents.<sup>7</sup>

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

3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
4. An application for a string listed as a UNESCO region<sup>8</sup> or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.<sup>9</sup>

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

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

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

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

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments

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

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

or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- identify and consult with the relevant governments or public authorities; and
- identify which level of government support is required.

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

#### **2.2.1.4.3 Documentation Requirements**

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant Governmental Advisory Committee (GAC) representative.<sup>10</sup>

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public

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<sup>10</sup> See <https://gacweb.icann.org/display/gacweb/GAC+Members>

authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

#### *2.2.1.4.4 Review Procedure for Geographic Names*

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the

application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or

the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

## ***2.2.2 Applicant Reviews***

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Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

### ***2.2.2.1 Technical/Operational Review***

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

### ***2.2.2.2 Financial Review***

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form)

intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

### **2.2.2.3 Evaluation Methodology**

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made available in the application and submitted by the due date, unless explicitly requested by the evaluators.

### **2.2.3 Registry Services Review**

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Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact

on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

### 2.2.3.1 Definitions

**Registry services** are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;
2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at <http://www.icann.org/en/registries/rsep/>. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See <http://www.icann.org/en/registries/agreements.htm>.

A full definition of registry services can be found at <http://www.icann.org/en/registries/rsep/rsep.html>.

For purposes of this review, security and stability are defined as follows:

**Security** – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

**Stability** – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current

practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.

### 2.2.3.2 *Customary Services*

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations
- DNS Security Extensions

The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at [http://www.icann.org/en/registries/rsep/rrs\\_sample.html](http://www.icann.org/en/registries/rsep/rrs_sample.html).

### 2.2.3.3 *TLD Zone Contents*

ICANN receives a number of inquiries about use of various record types in a registry zone, as entities contemplate different business and technical models. Permissible zone contents for a TLD zone are:

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD's DNS servers.
- NS records and in-bailiwick glue for DNS servers of registered names in the TLD.
- DS records for registered names in the TLD.
- Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3).

An applicant wishing to place any other record types into its TLD zone should describe in detail its proposal in the registry services section of the application. This will be evaluated and could result in an extended evaluation to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Applicants should be aware that a service based on use of less-common DNS resource records in the TLD zone, even if approved in the registry services review, might not work as intended for all users due to lack of application support.

#### *2.2.3.4 Methodology*

Review of the applicant's proposed registry services will include a preliminary determination of whether any of the proposed registry services could raise significant security or stability issues and require additional consideration.

If the preliminary determination reveals that there may be significant security or stability issues (as defined in subsection 2.2.3.1) surrounding a proposed service, the application will be flagged for an extended review by the Registry Services Technical Evaluation Panel (RSTEP), see <http://www.icann.org/en/registries/rsep/rstep.html>). This review, if applicable, will occur during the Extended Evaluation period (refer to Section 2.3).

In the event that an application is flagged for extended review of one or more registry services, an additional fee to cover the cost of the extended review will be due from the applicant. Applicants will be advised of any additional fees due, which must be received before the additional review begins.

#### *2.2.4 Applicant's Withdrawal of an Application*

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An applicant who does not pass the Initial Evaluation may withdraw its application at this stage and request a partial refund (refer to subsection 1.5 of Module 1).

### *2.3 Extended Evaluation*

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An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Geographic names (refer to subsection 2.2.1.4). There is no additional fee for an extended evaluation in this instance.

- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.
- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.
- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

An Extended Evaluation does not imply any change of the evaluation criteria. The same criteria used in the Initial Evaluation will be used to review the application in light of clarifications provided by the applicant.

From the time an applicant receives notice of failure to pass the Initial Evaluation, eligible applicants will have 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation. If the applicant does not explicitly request the Extended Evaluation (and pay an additional fee in the case of a Registry Services inquiry) the application will not proceed.

### ***2.3.1 Geographic Names Extended Evaluation***

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In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

### ***2.3.2 Technical/Operational or Financial Extended Evaluation***

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The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

### ***2.3.3 Registry Services Extended Evaluation***

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This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

## **2.4** *Parties Involved in Evaluation*

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A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

### **2.4.1** *Panels and Roles*

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The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

#### **2.4.2 Panel Selection Process**

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ICANN is in the process of selecting qualified third-party providers to perform the various reviews.<sup>11</sup> In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

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<sup>11</sup> See <http://icann.org/en/topics/new-gtlds/open-tenders-eoi-en.htm>.

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.
- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.
- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.
- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

The providers will be formally engaged and announced on ICANN's website prior to the opening of the Application Submission period.

### *2.4.3 Code of Conduct Guidelines for Panelists*

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The purpose of the New gTLD Program ("Program") Code of Conduct ("Code") is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist ("Panelist").

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

**Bias** -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;
- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;
- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and
- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

**Compensation/Gifts** -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

**Conflicts of Interest** -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

**Confidentiality** -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source, except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

**Affirmation** -- All Panelists shall read this Code prior to commencing evaluation services and shall certify in writing that they have done so and understand the Code.

#### **2.4.3.1 Conflict of Interest Guidelines for Panelists**

It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants.

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established detailed Conflict of Interest guidelines and procedures that will be followed by the Evaluation Panelists. To help ensure that the guidelines are appropriately followed ICANN will:

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.
- Require each Evaluation Panelist to disclose all business relationships engaged in at any time during the past six months.
- Where possible, identify and secure primary and backup providers for evaluation panels.
- In conjunction with the Evaluation Panelists, develop and implement a process to identify conflicts and re-assign applications as appropriate to secondary or contingent third party providers to perform the reviews.

**Compliance Period** -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the final outcomes of all the applications from the Applicant in question.

**Guidelines** -- The following guidelines are the minimum standards with which all Evaluation Panelists must comply. It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluation Panelist should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest.

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
  - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
  - Promoter, underwriter, or voting trustee of the Applicant; or
  - Trustee for any pension or profit-sharing trust of the Applicant.

**Definitions--**

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist.

Professional Services: include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

#### ***2.4.3.2 Code of Conduct Violations***

Evaluation panelist breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Serious breaches of the Code may be cause for dismissal of the person, persons or provider committing the infraction.

In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists.

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

#### ***2.4.4 Communication Channels***

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Defined channels for technical support or exchanges of information with ICANN and with evaluation panels are available to applicants during the Initial Evaluation and Extended Evaluation periods. Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate. In the interests of fairness and equivalent treatment for all applicants, any such individual contacts will be referred to the appropriate communication channels.



## Annex: Separable Country Names List

gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an “English short name” field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Sint Eustatius and Saba	A	Bonaire
		A	Sint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	Trinidad Island
io	British Indian Ocean Territory	C	Chagos Archipelago
		C	Diego Garcia
bn	Brunei Darussalam	B1	Brunei
		C	Negara Brunei Darussalam
cv	Cape Verde	C	São Tiago
		C	São Vicente
ky	Cayman Islands	C	Grand Cayman
cl	Chile	C	Easter Island
		C	Juan Fernández Islands
		C	Sala y Gómez Island
		C	San Ambrosio Island
		C	San Félix Island
cc	Cocos (Keeling) Islands	A	Cocos Islands
		A	Keeling Islands
co	Colombia	C	Malpelo Island
		C	San Andrés Island
		C	Providencia Island
km	Comoros	C	Anjouan
		C	Grande Comore
		C	Mohéli
ck	Cook Islands	C	Rarotonga
cr	Costa Rica	C	Coco Island
ec	Ecuador	C	Galápagos Islands
gq	Equatorial Guinea	C	Annobón Island
		C	Bioko Island

		C	Rio Muni
fk	Falkland Islands (Malvinas)	B1	Falkland Islands
		B1	Malvinas
fo	Faroe Islands	A	Faroe
fj	Fiji	C	Vanua Levu
		C	Viti Levu
		C	Rotuma Island
pf	French Polynesia	C	Austral Islands
		C	Gambier Islands
		C	Marquesas Islands
		C	Society Archipelago
		C	Tahiti
		C	Tuamotu Islands
		C	Clipperton Island
tf	French Southern Territories	C	Amsterdam Islands
		C	Crozet Archipelago
		C	Kerguelen Islands
		C	Saint Paul Island
gr	Greece	C	Mount Athos
		B1	**
gd	Grenada	C	Southern Grenadine Islands
		C	Carriacou
gp	Guadeloupe	C	la Désirade
		C	Marie-Galante
		C	les Saintes
hm	Heard Island and McDonald Islands	A	Heard Island
		A	McDonald Islands
va	Holy See (Vatican City State)	A	Holy See
		A	Vatican
hn	Honduras	C	Swan Islands
in	India	C	Amindivi Islands
		C	Andaman Islands
		C	Laccadive Islands
		C	Minicoy Island
		C	Nicobar Islands
ir	Iran, Islamic Republic of	B1	Iran
ki	Kiribati	C	Gilbert Islands
		C	Tarawa
		C	Banaba
		C	Line Islands
		C	Kiritimati
		C	Phoenix Islands
		C	Abariringa
		C	Enderbury Island
kp	Korea, Democratic People's Republic of	C	North Korea
kr	Korea, Republic of	C	South Korea
la	Lao People's Democratic Republic	B1	Laos
ly	Libyan Arab Jamahiriya	B1	Libya
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island

fm	Micronesia, Federated States of	B1	Micronesia
		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da India
		C	Europa Island
		C	Glorioso Island
		C	Juan de Nova Island
		C	Tromelin Island
ru	Russian Federation	B1	Russia
		C	Kaliningrad Region
sh	Saint Helena, Ascension, and Tristan de Cunha	A	Saint Helena
		A	Ascension
		A	Tristan de Cunha
		C	Gough Island
		C	Tristan de Cunha Archipelago
kn	Saint Kitts and Nevis	A	Saint Kitts
		A	Nevis
pm	Saint Pierre and Miquelon	A	Saint Pierre
		A	Miquelon
vc	Saint Vincent and the Grenadines	A	Saint Vincent
		A	The Grenadines
		C	Northern Grenadine Islands
		C	Bequia
		C	Saint Vincent Island
ws	Samoa	C	Savai'i
		C	Upolu
st	Sao Tome and Principe	A	Sao Tome
		A	Principe
sc	Seychelles	C	Mahé
		C	Aldabra Islands
		C	Amirante Islands
		C	Cosmoledo Islands
		C	Farquhar Islands
sb	Solomon Islands	C	Santa Cruz Islands

		C	Southern Solomon Islands
		C	Guadalcanal
za	South Africa	C	Marion Island
		C	Prince Edward Island
gs	South Georgia and the South Sandwich Islands	A	South Georgia
		A	South Sandwich Islands
sj	Svalbard and Jan Mayen	A	Svalbard
		A	Jan Mayen
		C	Bear Island
sy	Syrian Arab Republic	B1	Syria
tw	Taiwan, Province of China	B1	Taiwan
		C	Penghu Islands
		C	Pescadores
tz	Tanzania, United Republic of	B1	Tanzania
tl	Timor-Leste	C	Oecussi
to	Tonga	C	Tongatapu
tt	Trinidad and Tobago	A	Trinidad
		A	Tobago
tc	Turks and Caicos Islands	A	Turks Islands
		A	Caicos Islands
tv	Tuvalu	C	Fanafuti
ae	United Arab Emirates	B1	Emirates
us	United States	B2	America
um	United States Minor Outlying Islands	C	Baker Island
		C	Howland Island
		C	Jarvis Island
		C	Johnston Atoll
		C	Kingman Reef
		C	Midway Islands
		C	Palmyra Atoll
		C	Wake Island
		C	Navassa Island
vu	Vanuatu	C	Efate
		C	Santo
ve	Venezuela, Bolivarian Republic of	B1	Venezuela
		C	Bird Island
vg	Virgin Islands, British	B1	Virgin Islands
		C	Anegada
		C	Jost Van Dyke
		C	Tortola
		C	Virgin Gorda
vi	Virgin Islands, US	B1	Virgin Islands
		C	Saint Croix
		C	Saint John
		C	Saint Thomas
wf	Wallis and Futuna	A	Wallis
		A	Futuna
		C	Hoorn Islands
		C	Wallis Islands
		C	Uvea
ye	Yemen	C	Socotra Island

## Maintenance

A Separable Country Names Registry will be maintained and published by ICANN Staff.

Each time the ISO 3166-1 standard is updated with a new entry, this registry will be reappraised to identify if the changes to the standard warrant changes to the entries in this registry. Appraisal will be based on the criteria listing in the "Eligibility" section of this document.

Codes reserved by the ISO 3166 Maintenance Agency do not have any implication on this registry, only entries derived from normally assigned codes appearing in ISO 3166-1 are eligible.

If an ISO code is struck off the ISO 3166-1 standard, any entries in this registry deriving from that code must be struck.

## **Eligibility**

Each record in this registry is derived from the following possible properties:

**Class A:** The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."

**Class B:** The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."

\*\* Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf>.

**Class C:** The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

In the first two cases, the registry listing must be directly derivative from the English Short Name by excising words and articles. These registry listings do not include vernacular or other non-official terms used to denote the country.

Eligibility is calculated in class order. For example, if a term can be derived both from Class A and Class C, it is only listed as Class A.

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# *Attachment to Module 2*

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## *Sample Letter of Government Support*

**[This letter should be provided on official letterhead]**

ICANN  
Suite 330, 4676 Admiralty Way  
Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

This letter is to confirm that [government entity] fully supports the application for [TLD] submitted to ICANN by [applicant] in the New gTLD Program. As the [Minister/Secretary/position] I confirm that I have the authority of the [x government/public authority] to be writing to you on this matter. [Explanation of government entity, relevant department, division, office, or agency, and what its functions and responsibilities are]

The gTLD will be used to [explain your understanding of how the name will be used by the applicant. This could include policies developed regarding who can register a name, pricing regime and management structures.] [Government/public authority/department] has worked closely with the applicant in the development of this proposal.

The [x government/public authority] supports this application, and in doing so, understands that in the event that the application is successful, [applicant] will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

[Government / public authority] further understands that, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

**[Optional]** This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

**[Optional]** I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

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# *Attachment to Module 2*

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## *Evaluation Questions and Criteria*

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

### *I. Principles of the Technical and Financial New gTLD Evaluation Criteria*

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.
- The criteria and evaluation should be as objective as possible.
  - With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.
  - Therefore the criteria should be flexible: able to scale with the overall business approach, providing that the planned approach is consistent and coherent, and can withstand highs and lows.

- Criteria can be objective in areas of registrant protection, for example:
  - Providing for funds to continue operations in the event of a registry failure.
  - Adherence to data escrow, registry failover, and continuity planning requirements.
- The evaluation must strike the correct balance between establishing the business and technical competence of the applicant to operate a registry (to serve the interests of registrants), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.
- New registries must be added in a way that maintains DNS stability and security. Therefore, ICANN asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry. ICANN will ask the applicant to demonstrate actual operational technical compliance prior to delegation. This is in line with current prerequisites for the delegation of a TLD.
- Registrant protection is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:
  - Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,
  - Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,
  - Adhere to DNS stability and security requirements as described in the technical section, and
  - Provide access to the widest variety of services.

## *II. Aspects of the Questions Asked in the Application and Evaluation Criteria*

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?
- Demonstration of the ability to operate and fund the registry on an ongoing basis:
  - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
  - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
  - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.
- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
  - Funding adequately covers technical requirements,
  - Funding covers costs,
  - Risks are identified and addressed, in comparison to other aspects of the plan.

### *III. Scoring*

#### Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.
- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.
- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.
- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

#### Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.
- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.
- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:
  - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
  - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).
- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.
- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:
  - Scoring a 3 on the continuity criteria, or
  - Scoring a 2 on any two financial criteria.
- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Applicant Information	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact will receive all communications regarding the application. Either the primary or the secondary contact may respond. In the event of a conflict, the communication received from the primary contact will be taken as authoritative. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Address	Y				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact will be copied on all communications regarding the application. Either the primary or the secondary contact may respond.			
		Title	Y				
		Address	Y				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution).	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(b) State the specific national or other jurisdiction that defines the type of entity identified in 8(a).	Y	In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further.			
	9	(a) If the applying entity is publicly traded, provide the exchange and symbol.	Y				
		(b) If the applying entity is a subsidiary, provide the parent company.	Y				
		(c) If the applying entity is a joint venture, list all joint venture partners.	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
<b>Applicant Background</b>	11	(a) Enter the full name, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	Partial	<p>Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application.</p> <p>Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected.</p> <p>The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.</p>			
		(b) Enter the full name, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.	Partial				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(c) Enter the full name, contact information (permanent residence of individual or principal place of business of entity) and position of all shareholders holding at least 15% of shares, and percentage held by each.	Partial				
		(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, contact information (permanent residence of individual or principal place of business of entity) and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
		(e) Indicate whether the applicant or any of the individuals named above: <ul style="list-style-type: none"> <li>i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these;</li> <li>ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others;</li> <li>iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;</li> <li>iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;</li> <li>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;</li> <li>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</li> <li>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or</li> </ul>	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					
		<p>(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent</p>	N	<p>ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		legislation.					
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
Evaluation Fee	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	<p>The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.</p> <p>The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation.</p> <p>Fedwire is the preferred wire mechanism; SWIFT is also acceptable. ACH is not recommended as these funds will take longer to clear and could affect timing of the application processing.</p>			
		(b) Payer name	N				
		(c) Payer address	N				
		(d) Wiring bank	N				
		(e) Bank address	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(f) Wire date	N				
Applied-for gTLD string	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes.  The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+0066.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> <li>1. the applied-for gTLD string relevant to the tables,</li> <li>2. the script or language designator (as defined in BCP 47),</li> <li>3. table version number,</li> <li>4. effective date (DD Month YYYY), and</li> <li>5. contact name, email address, and phone number.</li> </ol> Submission of IDN tables in a standards-based format is encouraged.	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	<b>OPTIONAL.</b> Provide a representation of the label according to the International Phonetic Alphabet ( <a href="http://www.langsci.ucl.ac.uk/ipa/">http://www.langsci.ucl.ac.uk/ipa/</a> ).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			
Mission/Purpose	18	(a) Describe the mission/purpose of your proposed gTLD.	Y	<p>The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space.</p> <p>For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.</p> <p>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</p> <p>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.			
		(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> <li>i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation?</li> <li>ii. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation?</li> <li>iii. What goals does your proposed gTLD have in terms of user experience?</li> <li>iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above.</li> <li>v. Will your proposed gTLD impose any measures for protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.</li> </ul> <p>Describe whether and in what ways outreach and communications will help to achieve your projected benefits.</p>			
	18	(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> <li>i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis?</li> <li>ii. Explain any cost benefits for registrants you intend to</li> </ul>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts).</p> <p>iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans.</p>			
Community-based Designation	19	Is the application for a community-based TLD?	Y	<p>There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.</p> <p>The applicant's designation as standard or community-based cannot be changed once the application is submitted.</p>			
	20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> <li>• How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language.</li> <li>• How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required.</li> <li>• When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date.</li> </ul>		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<ul style="list-style-type: none"> <li>The current estimated size of the community, both as to membership and geographic extent.</li> </ul>			
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	Explanations should clearly state: <ul style="list-style-type: none"> <li>Relations to any community organizations.</li> <li>Relations to the community and its constituent parts/groups.</li> <li>Accountability mechanisms of the applicant to the community.</li> </ul>			
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	Descriptions should include: <ul style="list-style-type: none"> <li>Intended registrants in the TLD.</li> <li>Intended end-users of the TLD.</li> <li>Related activities the applicant has carried out or intends to carry out in service of this purpose.</li> <li>Explanation of how the purpose is of a lasting nature.</li> </ul>			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	Explanations should clearly state: <ul style="list-style-type: none"> <li>relationship to the established name, if any, of the community.</li> <li>relationship to the identification of community members.</li> <li>any connotations the string may have beyond the community.</li> </ul>			
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	Descriptions should include proposed policies, if any, on the following: <ul style="list-style-type: none"> <li>Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined.</li> <li>Name selection: what types of second-level names may be registered in the gTLD.</li> <li>Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name.</li> <li>Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for</li> </ul>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				enforcement, and what appeal mechanisms are available to registrants.			
		(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	<p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.</p> <p>Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.</p>			
Geographic Names	21	(a) Is the application for a geographic name?	Y	<p>An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	See the documentation requirements in Module 2 of the Applicant Guidebook.			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name			

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				<p>registrations. See "Principles regarding New gTLDs" at <a href="https://gacweb.icann.org/display/gacweb/New+gTLDs">https://gacweb.icann.org/display/gacweb/New+gTLDs</a>.</p> <p>For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See <a href="https://gacweb.icann.org/display/gacweb/New+gTLDs">https://gacweb.icann.org/display/gacweb/New+gTLDs</a>.</p> <p>Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level must be separately approved according to Specification 5 of the Registry Agreement.</p>			
Registry Services	23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> <li>A. Receipt of data from registrars concerning registration of domain names and name servers.</li> <li>B. Dissemination of TLD zone files.</li> <li>C. Dissemination of contact or other information concerning domain name registrations (Whois service).</li> <li>D. Internationalized Domain Names, where offered.</li> <li>E. DNS Security Extensions (DNSSEC).</li> </ul> <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at <a href="http://www.icann.org/en/registries/rsep/rsep.html">http://www.icann.org/en/registries/rsep/rsep.html</a>.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		unique to the registry must also be described.		<p>information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.</p>			
<b>Demonstration of Technical &amp; Operational Capability (External)</b>	24	<p>Shared Registration System (SRS) Performance: describe</p> <ul style="list-style-type: none"> <li>the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>A high-level SRS system description;</li> </ul>	Y	<p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</p> <p>Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	0-1	<p>Complete answer demonstrates:</p> <p>(1) a plan for operating a robust and reliable SRS, one of the five critical registry functions;</p> <p>(2) scalability and performance consistent with the overall business approach, and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>Details of a well-developed plan to operate a robust and reliable SRS;</li> <li>SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement;</li> <li>SRS is consistent with the technical, operational and financial approach described in the application; and</li> <li>Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>• Representative network diagram(s);</li> <li>• Number of servers;</li> <li>• Description of interconnectivity with other registry systems;</li> <li>• Frequency of synchronization between servers; and</li> <li>• Synchronization scheme (e.g., hot standby, cold standby).</li> </ul> <p>A complete answer is expected to be no more than 5 pages. (As a guide, one page contains approximately 4000 characters).</p>					
	25	<p>Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <ul style="list-style-type: none"> <li>(1) complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</li> <li>(4) ability to comply with relevant RFCs;</li> <li>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</li> <li>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</li> </ul>	<p><b>1 - meets requirements:</b> Response includes</p> <ul style="list-style-type: none"> <li>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</li> <li>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</li> </ul> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> <li>• how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement;</li> <li>• how the Applicant's Whois service will comply with RFC 3912; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>• A high-level Whois system description;</li> <li>• Relevant network diagram(s);</li> <li>• IT and infrastructure resources (e.g., servers, switches, routers and other components);</li> <li>• Description of interconnectivity with other registry systems; and</li> <li>• Frequency of synchronization between servers.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>• Provision for Searchable Whois capabilities; and</li> <li>• A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions.</li> </ul> <p>A complete answer is expected to be no more than 5 pages.</p>	Y	The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.	0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p><b>2 – exceeds requirements:</b> Response meets all the attributes for a score of 1 and includes:</p> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the application demonstrates compliance with any applicable privacy laws or policies.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> <li>explain the various registration states as well as the criteria and procedures that are used to change state;</li> <li>describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply;</li> <li>clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and</li> <li>describe resourcing plans for this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be no more than 5 pages.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are already on hand or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller;</li> </ul>	Y	<p>Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at <a href="http://www.icann.org/en/committees/security/sac048.pdf">http://www.icann.org/en/committees/security/sac048.pdf</a>) when provided with evidence in written form that such records are present in connection with malicious conduct.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD;</p> <p>(2) Plans are adequately resourced in the planned costs detailed in the financial section;</p>	<p><b>2 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and includes:</p> <p>(1) Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and</p> <p>(2) Measures from at least one additional area to be eligible for 2 points as described in the question.</p> <p><b>1 - meets requirements</b> Response includes:</p> <p>(1) An adequate description of abuse prevention and mitigation policies</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>• Policies for handling complaints regarding abuse;</li> <li>• Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and</li> <li>• Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as described below.</p> <ul style="list-style-type: none"> <li>• Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> <li>○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means.</li> <li>○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and</li> <li>○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA</li> </ul> </li> </ul>				<ul style="list-style-type: none"> <li>(3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and</li> <li>(4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements.</li> </ul>	<ul style="list-style-type: none"> <li>and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>(2) Details of well-developed abuse policies and procedures;</li> <li>(3) Plans are sufficient to result in compliance with contractual requirements;</li> <li>(4) Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and</li> <li>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</li> </ul> <p><b>0 – fails requirements</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>will continue to apply to all ICANN-accredited registrars.</p> <ul style="list-style-type: none"> <li>• A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners;</li> <li>• Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> <li>○ Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests;</li> <li>○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and</li> <li>○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted.</li> </ul> </li> </ul> <p>A complete answer is expected to be no more than 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> <li>• A description of how the registry operator will implement safeguards</li> </ul>	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <p>(1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <p>(1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement).</p> <p><b>1 - meets requirements:</b> Response includes</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and</p> <ul style="list-style-type: none"> <li>• A description of resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>(1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7;</p> <p>(3) Plans that are sufficient to result in compliance with contractual requirements;</p> <p>(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> <li>• indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities;</li> <li>• description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided);</li> <li>• list of commitments made to registrants concerning security levels.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High</p>

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		<ul style="list-style-type: none"> <li>Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001).</li> </ul> <p>A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>				<p>levels; and (5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).</p>	<p>Security Top Level Domain (HSTLD) designation, this could also be included.)</p> <p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) A description of adequate security capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed;</li> <li>(3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants;</li> <li>(4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and</li> <li>(5) Proposed security measures are commensurate with the nature of the applied-for gTLD string.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
Demonstration of Technical & Operational Capability (Internal)	30	<p>(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> <li>system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up;</li> <li>resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any;</li> <li>independent assessment reports demonstrating security capabilities (submitted as attachments), if any;</li> <li>provisioning and other measures that</li> </ul>	N	<p>Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.</p>			

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		<p>mitigate risks posed by denial of service attacks;</p> <ul style="list-style-type: none"> <li>• computer and network incident response policies, plans, and processes;</li> <li>• plans to minimize the risk of unauthorized access to its systems or tampering with registry data;</li> <li>• intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates;</li> <li>• details for auditing capability on all network access;</li> <li>• physical security approach;</li> <li>• identification of department or group responsible for the registry's security organization;</li> <li>• background checks conducted on security personnel;</li> <li>• description of the main security threats to the registry operation that have been identified; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul>					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p>	N	<p>To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.</p>	0-1	<p>Complete answer demonstrates:</p> <ul style="list-style-type: none"> <li>(1) complete knowledge and understanding of technical aspects of registry requirements;</li> <li>(2) an adequate level of resiliency for the registry's technical operations;</li> <li>(3) consistency with planned or currently deployed technical/operational solutions;</li> <li>(4) consistency with the overall business approach and planned size of the</li> </ul>	<p><b>1 - meets requirements:</b> Response includes:</p> <ul style="list-style-type: none"> <li>(1) A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>(2) Technical plans consistent with the technical, operational, and financial approach as described in the application;</li> <li>(3) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</li> </ul> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

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		<p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions. If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical &amp; Operational components conform.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>registry;</p> <p>(5) adequate resourcing for technical plan in the planned costs detailed in the financial section; and</p> <p>(6) consistency with subsequent technical questions.</p>	
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> <li>• Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions;</li> <li>• Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> <li>▪ Anticipated TCP / IP addressing scheme,</li> <li>▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)),</li> <li>▪ Operating system and versions, and</li> <li>▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring</li> </ul> </li> <li>• General overview of capacity planning, including bandwidth allocation plans;</li> <li>• List of providers / carriers; and</li> <li>• Resourcing plans for the initial</li> </ul>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed and coherent network architecture;</p> <p>(2) architecture providing resiliency for registry systems;</p> <p>(3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and</p> <p>(4) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and</p> <p>(2) Evidence of a highly available, robust, and secure infrastructure.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for network architecture describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate network architecture providing robustness and security of the</p>

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		<p>implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>registry;</p> <p>(4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> <li>• database software;</li> <li>• storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions);</li> <li>• maximum transaction throughput (in total and by type of transaction);</li> <li>• scalability;</li> <li>• procedures for object creation, editing, and deletion, and user and credential management;</li> <li>• high availability;</li> <li>• change management procedures;</li> <li>• reporting capabilities; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also include evidence of database capabilities that</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate</p>

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		<p>greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and</p> <p>b. operations centers.</p> <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> <li>the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure;</li> <li>any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included;</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.</p> <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers;</p> <p>(2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and</p> <p>(2) A high level of availability, security, and bandwidth.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence;</p> <p>(3) Geo-diversity plans are consistent with technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates adequate resources</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
							that are on hand, or committed or readily available to carry out this function. <b>0 - fails requirements:</b> Does not meet all the requirements to score 1.
	35	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> <li>• Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. How will these be scaled as a function of growth in the TLD? Similarly, describe how services will scale for name server update method and performance.</li> <li>• RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones.</li> <li>• The resources used to implement the services - describe complete server hardware and software. including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> <li>• Demonstrate how the system will function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</li> </ul>	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: <a href="http://www.iana.org/procedures/nameserver-requirements.html">http://www.iana.org/procedures/nameserver-requirements.html</a>.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;</li> <li>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</li> <li>(4) evidence of compliance with Specification 6 to the Registry Agreement; and</li> <li>(5) evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix;</li> <li>(3) Plans are consistent with technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Examples of evidence include:</p> <ul style="list-style-type: none"> <li>• Server configuration standard (i.e., planned configuration).</li> <li>• Network addressing and bandwidth for query load and update propagation.</li> <li>• Headroom to meet surges.</li> </ul> <p>A complete answer is expected to be no more than 10 pages.</p>					
	36	<p>IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> <li>• How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement.</li> <li>• How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6.</li> <li>• List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used.</li> <li>• Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be no more than 5 pages.</p>	N	<p>IANA nameserver requirements are available at <a href="http://www.iana.org/procedures/nameserver-requirements.html">http://www.iana.org/procedures/nameserver-requirements.html</a>.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>(4) evidence of compliance with Specification 6 to the Registry Agreement.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>(1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10;</li> <li>(3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	37	<p>Data Backup Policies &amp; Procedures: provide</p> <ul style="list-style-type: none"> <li>• details of frequency and procedures for backup of data,</li> <li>• hardware, and systems used for backup,</li> <li>• data format,</li> <li>• data backup features,</li> <li>• backup testing procedures,</li> <li>• procedures for retrieval of data/rebuild of database,</li> <li>• storage controls and procedures, and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) detailed backup and retrieval processes deployed;</p> <p>(2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) A description of leading practices being or to be followed;</p> <p>(3) Backup procedures consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	38	<p>Data Escrow: describe</p> <ul style="list-style-type: none"> <li>• how the applicant will comply with the data escrow requirements documented in the Registry Data Escrow Specification (Specification 2 of the Registry Agreement); and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be no more than 5 pages</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of data escrow, one of the five critical registry functions;</p> <p>(2) compliance with Specification 2 of the Registry Agreement;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry.</p>	<p><b>1 – meets requirements:</b> Response includes</p> <p>(1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement);</p> <p>(3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p><b>0 – fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p> <ul style="list-style-type: none"> <li>• Identification of risks and threats to compliance with registry continuity obligations;</li> <li>• Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology;</li> <li>• Definitions of Recovery Point Objectives and Recovery Time Objective; and</li> <li>• Descriptions of testing plans to promote compliance with relevant obligations.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>• A highly detailed plan that provides for leading practice levels of availability; and</li> <li>• Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site.</li> </ul> <p>A complete answer is expected to be no more than 15 pages.</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at <a href="http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf">http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf</a>.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) detailed description showing plans for compliance with registry continuity obligations;</li> <li>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>(4) evidence of compliance with Specification 6 to the Registry Agreement.</li> </ol>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> <li>(1) Highly developed and detailed processes for maintaining registry continuity; and</li> <li>(2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site.</li> </ol> <p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element;</li> <li>(2) Continuity plans are sufficient to result in compliance with requirements (Specification 6);</li> <li>(3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) complete knowledge and understanding of the Registry Transition Processes; and</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>(1) Adequate description of a registry transition plan that substantially demonstrates the applicant's capability and knowledge required</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Preparatory steps needed for the transition of critical registry functions;</li> <li>• Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and</li> <li>• Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan.</li> </ul> <p>A complete answer is expected to be no more than 10 pages.</p>				(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.	<p>to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> <li>• a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> <li>• Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing;</li> <li>• How results are captured, what is done with the results, and with whom results are shared;</li> <li>• How test plans are updated (e.g., what triggers an update, change management</li> </ul>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results;</p> <p>(3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p><b>0 - fails requirements</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>processes for making updates);</p> <ul style="list-style-type: none"> <li>Length of time to restore critical registry functions;</li> <li>Length of time to restore all operations, inclusive of critical registry functions; and</li> <li>Length of time to migrate from one site to another.</li> </ul> <p>A complete answer is expected to be no more than 10 pages.</p>					
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> <li>a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems.</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>Meeting the fault tolerance / monitoring guidelines described</li> <li>Evidence of commitment to provide a 24x7 fault response team.</li> </ul> <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>consistency with the commitments made to registrants and registrars regarding system maintenance.</li> </ol>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> <li>Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly;</li> <li>A high level of availability that allows for the ability to respond to faults through a 24x7 response team.</li> </ol> <p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed;</li> <li>Plans are consistent with the technical, operational, and financial approach described in the application; and</li> <li>Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet</p>

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							all the requirements to score 1.
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> <li>The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material;</li> <li>Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be no more than 5 pages. Note, the DPS is required to be submitted as part of the application</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>an ability to comply with relevant RFCs.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key material from registrants through the SRS ;</li> <li>An adequate description of key management procedures in the <i>proposed</i> TLD, including providing secure encryption key management (generation, exchange, and storage);</li> <li>Technical plan is consistent with the technical, operational, and financial approach as described in the application; and</li> <li>Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	44	<p><b>OPTIONAL.</b> IDNs:</p> <ul style="list-style-type: none"> <li>State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP.</li> <li>Describe how the IDN implementation</li> </ul>	N	IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.	0-1	<p>IDNs are an optional service. Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section;</li> <li>consistency with the commitments made to</li> </ol>	<p><b>1 - meets requirements for this optional element:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations;</li> <li>Evidence of ability to resolve</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>will comply with RFCs 5809-5893 as well as the ICANN IDN Guidelines at <a href="http://www.icann.org/en/topics/idn/implementation-guidelines.htm">http://www.icann.org/en/topics/idn/implementation-guidelines.htm</a>.</p> <ul style="list-style-type: none"> <li>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be no more than 10 pages plus attachments.</p>				<p>registrants and the technical, operational, and financial approach described in the application;</p> <p>(4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and</p> <p>(5) ability to comply with relevant RFCs.</p>	<p>rendering and known IDN issues or spoofing attacks;</p> <p>(4) IDN plans are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
Demonstration of Financial Capability	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> <li>audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and</li> <li>audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released.</li> </ul> <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> <li>the latest available unaudited financial statements; and</li> <li>an explanation as to why audited or independently certified financial statements are not available.</li> </ul> <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p> <p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> <li>balance sheet;</li> <li>income statement;</li> <li>statement of shareholders equity/partner capital;</li> <li>cash flow statement, and</li> <li>letter of auditor or independent certification, if applicable.</li> </ul>	N	The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.	0-1	<p>Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history (less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.</p>	<p><b>1 - meets requirements:</b> Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1. For example, entity with an operating history fails to provide audited or independently certified statements.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	46	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be no more than 10 pages in addition to the template.</p>	N		0-1	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p><b>1 - meets requirements:</b></p> <p>(1) Financial projections adequately describe the cost, funding and risks for the application</p> <p>(2) Demonstrates resources and plan for sustainable operations; and</p> <p>(3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported.</p> <p><b>0 - fails requirements:</b> Does not meet all of the requirements to score a 1.</p>
	47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> <li>the expected operating costs and capital expenditures of setting up and operating the proposed registry;</li> <li>any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing;</li> <li>any significant variances between years in any category of expected costs; and</li> <li>a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</li> </ul> <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical &amp; Operational Capability section. Costs should include both fixed and variable costs.</p>	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.</p> <p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>Key components of capital expenditures;</li> <li>Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and</li> <li>Costs of outsourcing,</li> </ul>	<p><b>2 - exceeds requirements:</b> Response meets all of the attributes for a score of 1 and:</p> <p>(1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant;</p> <p>(2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and</p> <p>(3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant);</p> <p>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and</p> <p>(3) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				if any.	
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>V) A description of the basis / key assumptions</p>	N		0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described. Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Executed funding agreements;</li> <li>• A letter of credit;</li> <li>• A commitment letter; or</li> <li>• A bank statement.</li> </ul> <p>Funding commitments may</p>	<p><b>2 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and</p> <p>(1) Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ;</p> <p>(2) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and earmarked for this purpose only in an amount adequate for three years operation;</p> <p>(3) If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and</p> <p>(4) Cash flow models are prepared which link funding and revenue assumptions to projected actual</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>including rationale for the funding and revenue provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate:</p> <p>I) A conservative estimate of funding and revenue; and  II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>be conditional on the approval of the application. Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> <li>• Key components of the funding plan and their key terms; and</li> <li>• Price and number of registrations.</li> </ul>	<p>business activity.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> <li>• Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning;</li> <li>• Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and</li> <li>• Describe the measures to mitigate the</li> </ul>	N		0-2	<p>Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and:</p> <p>(1) Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks);</p> <p>(2) Response gives consideration to probability and resource impact of</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>key risks as described in this question.</p> <p>A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario).</p> <p>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>contingencies identified; and</p> <p>(3) If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> <li>• how on-going technical requirements will be met; and</li> <li>• what alternative funding can be reasonably raised at a later time.</li> </ul> <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p> <p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be no more than 10 pages, in addition to the template.</p>	N				
		<p>(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	50	<p>(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical, operational, and financial approach described in the application.</p>	N	<p>Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best protected by a clear demonstration that the</p>	0-3	<p>Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund on-going critical registry functions for registrants for a</p>	<p><b>3 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and:</p> <p>(1) Financial instrument is secured and in place to provide for on-going operations for at least three years in</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</p> <p>(4) Registry data escrow deposits</p> <p>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database).</p>		<p>basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>Note that ICANN is building a model for these costs in conjunction with potential EBERO service providers. Thus, guidelines for determining the appropriate amount for the COI will be available to the applicant. However, the applicant will still be required to provide its own estimates and explanation in response to this question.</p>		<p>period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>the event of failure.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Costs are commensurate with technical, operational, and financial approach as described in the application; and</p> <p>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be no more than 10 pages.</p>					
		<p>(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC)</u> issued by a reputable financial institution.</p> <ul style="list-style-type: none"> <li>The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions.</li> <li>The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions.</li> <li>The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument.</li> </ul>	N	Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>• The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard &amp; Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.</li> <li>• The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li>• Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement.</li> <li>• The LOC must contain at least the following required elements: <ul style="list-style-type: none"> <li>○ Issuing bank and date of issue.</li> <li>○ Beneficiary: ICANN / 4676 Admiralty Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</li> <li>○ Applicant's complete name and address.</li> <li>○ LOC identifying number.</li> <li>○ Exact amount in USD.</li> <li>○ Expiry date.</li> <li>○ Address, procedure, and required forms whereby presentation for payment is to be made.</li> <li>○ Conditions: <ul style="list-style-type: none"> <li>▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit.</li> <li>▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number.</li> <li>▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument.</li> <li>▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been</li> </ul> </li> </ul> </li> </ul>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>demonstrated to be reasonably equivalent.</p> <p>(ii) A <u>deposit into an irrevocable cash escrow account</u> held by a reputable financial institution.</p> <ul style="list-style-type: none"> <li>• The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years.</li> <li>• Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met.</li> <li>• The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. This may include a bank or insurance company with a strong international reputation that has a strong credit rating issued by a third party rating agency such as Standard &amp; Poor's (AA or above), Moody's (Aa or above), or A.M. Best (A-X or above). Documentation should indicate by whom the issuing institution is insured.</li> <li>• The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li>• The escrow agreement must have a term of five years from the delegation of the TLD.</li> <li>• The funds in the deposit escrow account are not considered to be an asset of ICANN.</li> <li>• Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow.</li> <li>• The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater.</li> <li>• The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application.</li> </ul>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement.</li> </ul>					

## Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

### Section I – Projected Cash inflows and outflows

#### Projected Cash Inflows

**Lines A and B.** Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

**Line C.** Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

**Line D.** Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line D, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line D as that is covered in Section VI.

**Line E.** Add lines C and D to arrive at the total cash inflow.

#### Projected Operating Cash Outflows

**Start up costs** - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

**Line F.** Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L (Other Costs)* and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

**Line G.** *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F*).

**Lines H through K.** Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

**Line L.** Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

**Line M.** Add lines *F* through *L* to arrive at the total costs for line *M*.

**Line N.** Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

## **Section IIa – Breakout of Fixed and Variable Operating Cash Outflows**

**Line A.** Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

**Line B.** Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

**Line C –** Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

## **Section IIb – Breakout of Critical Registry Function Operating Cash Outflows**

**Lines A – E.** Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. The projected cash outflow for these functions will form the basis of the 3-year reserve required in Question 50 of the application.

**Line F.** If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box.

**Line G.** Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

**Line H –** Equals the cash outflows for the critical registry functions projected over 3 years (Columns H, I, and J)

## Section III – Projected Capital Expenditures

**Lines A through C.** Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line D.** Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

**Line E** – Please describe “other” capital expenditures in the *Comments/Notes* box.

**Line F.** Add lines A through E to arrive at the Total Capital Expenditures.

## Section IV – Projected Assets & Liabilities

**Lines A through C.** Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line D.** Add lines A, B, C to arrive at the Total Current Assets.

**Lines E through G.** Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

**Line H.** Ad lines E through G to arrive at the total current liabilities.

**Lines I through K.** Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line L.** Ad lines I through K to arrive at the total long-term assets.

**Line M.** Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

## Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

**Line A.** Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line B.** Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

**Lines C through F.** Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line G.** Add lines A through F to arrive at the projected net cash flow for line H.

## **Section VI – Sources of Funds**

**Lines A & B.** Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

**Line C.** Add lines A and B to arrive at the total sources of funds for line C.

## **General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.**

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

## **General Comments – Regarding how the Applicant Plans to Fund Operations**

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

## **General Comments – Regarding Contingencies**

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

**TLD Applicant – Financial Projections : Sample**

In local currency (unless noted otherwise)

Sec.	Reference / Formula	Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
<b>I) Projected Cash Inflows and Outflows</b>					
A) Forecasted registration volume		-	62,000	80,600	104,780
B) Registration fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05
C) Registration cash inflows	A * B	-	310,000	443,300	633,919
D) Other cash inflows		-	35,000	48,000	62,000
E) Total Cash Inflows		-	345,000	491,300	695,919
<b>Projected Operating Cash Outflows</b>					
F) Labor:					
i) Marketing Labor		25,000	66,000	72,000	81,000
ii) Customer Support Labor		5,000	68,000	71,000	74,000
iii) Technical Labor		32,000	45,000	47,000	49,000
G) Marketing		40,000	44,000	26,400	31,680
H) Facilities		7,000	10,000	12,000	14,400
I) General & Administrative		14,000	112,000	122,500	136,000
J) Interest and Taxes		27,500	29,000	29,800	30,760
<b>K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):</b>					
i) Hot site maintenance		5,000	7,500	7,500	7,500
ii) Critical Registry Functions		32,000	37,500	41,000	43,000
iii) (list type of activities being outsourced)		-	-	-	-
iv) (list type of activities being outsourced)		-	-	-	-
v) (list type of activities being outsourced)		-	-	-	-
vi) (list type of activities being outsourced)		-	-	-	-
L) Other Operating Costs		12,200	18,000	21,600	25,920
M) Total Operating Cash Outflows		199,700	437,000	450,800	493,260
N) Projected Net Operating Cash flow	E - M	(199,700)	(92,000)	40,500	202,659
<b>IIa) Break out of Fixed and Variable Operating Cash Outflows</b>					
A) Total Variable Operating Costs		72,067	163,417	154,464	200,683
B) Total Fixed Operating Costs		127,633	273,583	296,336	292,577
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199,700	437,000	450,800	493,260
<b>IIb) Break out of Critical Registry Function Operating Cash Outflows</b>					
A) Operation of SRS		5,000	5,500	6,050	
B) Provision of Whois		6,000	6,600	7,260	
C) DNS Resolution for Registered Domain Names		7,000	7,700	8,470	
D) Registry Data Escrow		8,000	8,800	9,680	
E) Maintenance of Zone in accordance with DNSSEC		9,000	9,900	10,890	
G) Total Critical Function Cash Outflows		-	35,000	38,500	42,350
H) 3-year Total		115,850			
<b>III) Projected Capital Expenditures</b>					
A) Hardware		98,000	21,000	16,000	58,000
B) Software		32,000	18,000	24,000	11,000
C) Furniture & Other Equipment		43,000	22,000	14,000	16,000
<b>D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures):</b>					
i)		-	-	-	-
ii)		-	-	-	-
iii)		-	-	-	-
iv)		-	-	-	-
v)		-	-	-	-
vi)		-	-	-	-
EB) Other Capital Expenditures		-	-	-	-
F) Total Capital Expenditures		173,000	61,000	54,000	85,000
<b>IV) Projected Assets &amp; Liabilities</b>					
A) Cash		705,300	556,300	578,600	784,600
B) Accounts receivable		70,000	106,000	106,000	160,000
C) Other current assets		40,000	40,000	60,000	80,000
D) Total Current Assets		705,300	666,300	744,600	1,024,600
E) Accounts payable		41,000	110,000	113,000	125,300
F) Short-term Debt		-	-	-	-
G) Other Current Liabilities		-	-	-	-
H) Total Current Liabilities		41,000	110,000	113,000	125,300
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Years + Cur Yr	173,000	234,000	288,000	373,000
J) 3-year Reserve	= IIb) H)	115,850	115,850	115,850	115,850
K) Other Long-term Assets		288,850	349,850	403,850	488,850
L) Total Long-term Assets		288,850	349,850	403,850	488,850
M) Total Long-term Debt		1,000,000	1,000,000	1,000,000	1,000,000
<b>V) Projected Cash flow (excl. 3-year Reserve)</b>					
A) Net operating cash flows	= Sec. I) N	(199,700)	(92,000)	40,500	202,659
B) Capital expenditures	= Sec. III) FE	(173,000)	(61,000)	(54,000)	(85,000)
C) Change in Non Cash Current Assets	= Sec. IV) (B+C): Prior Yr - Cur Yr	n/a	(110,000)	(56,000)	(74,000)
D) Change in Total Current Liabilities	= Sec. IV) H: Cur Yr - Prior Yr	41,000	69,000	3,000	12,300
E) Debt Adjustments	= Sec IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-
F) Other Adjustments		-	-	-	-
G) Projected Net Cash flow		(331,700)	(194,000)	(66,500)	55,959
<b>VI) Sources of funds</b>					
A) Debt:					
i) On-hand at time of application		1,000,000	-	-	-
ii) Contingent and/or committed but not yet on-hand		-	-	-	-
B) Equity:					
i) On-hand at time of application		-	-	-	-
ii) Contingent and/or committed but not yet on-hand		-	-	-	-
C) Total Sources of funds		1,000,000	-	-	-

**Comments / Notes**

Provide name of local currency used.

Registration was forecasted based on recent market surveys which we have attached and discussed below.

We do not anticipate significant increases in Registration Fees subsequent to year 3.

Other cash inflows represent advertising monies expected from display ads on our website.

Costs are further detailed and explained in response to question 47.

Provide a list and associated cost for each outsourced function.

Outsourcing hot site to ABC Company, cost based on number of servers hosted and customer support. Outsourced critical registry and other functions to ABC registry. Costs are based on expected domains and queries.

Provide a description of the outsourced activities and how costs were determined.

Provide a description of the outsourced activities and how costs were determined.

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Provide a description of the outsourced activities and how costs were determined.

Variable Costs:  
Start Up equals all labor plus 75% of marketing.  
Years 1 through 3 equal 75% of all labor plus 50% of Marketing, and 30% of G&A and Other costs

Fixed Costs: equals Total Costs less Variable Costs

Check that II) C equals I) N.

Note: ICANN is working on cost model that will be provided at a later date.

Commensurate with Question 24

Commensurate with Question 26

Commensurate with Question 35

Commensurate with Question 38

Commensurate with Question 43

-Hardware & Software have a useful life of 3 years

-Furniture & other equipment have a useful life of 5 years

List and describe each identifiable type of outsourcing.

Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec I) J.

The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year.

See below for comments on funding. Revenues are further detailed and explained in response to question 48.

**General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):**

We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods. Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached

**Comments regarding how the Applicant plans to fund operations:**

We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e., revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

**General Comments regarding contingencies:**

Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown. are adequate to fund our Worst Case Scenario.

**Template 1 - Financial Projections: Most Likely**

**Comments / Notes**

In local currency (unless noted otherwise)		Reference / Formula	Live / Operational				Provide name of local currency used.
Sec.			Start-up Costs	Year 1	Year 2	Year 3	
<b>I) Projected Cash inflows and outflows</b>							
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
<b>Projected Operating Cash Outflows</b>							
<b>F) Labor:</b>							
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
<b>IIa) Break out of Fixed and Variable Operating Cash Outflows</b>							
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
<b>IIb) Break out of Critical Function Operating Cash Outflows</b>							
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
<b>III) Projected Capital Expenditures</b>							
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
<b>IV) Projected Assets &amp; Liabilities</b>							
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
<b>V) Projected Cash flow (excl. 3-year Reserve)</b>							
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets		n/a				
	D) Change in Total Current Liabilities						
	E) Debt Adjustments		n/a				
	F) Other Adjustments						
	G) Other Adjustments						
	H) Projected Net Cash flow						
<b>VI) Sources of funds</b>							
<b>A) Debt:</b>							
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
<b>B) Equity:</b>							
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
<b>General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):</b>							
<b>Comments regarding how the Applicant plans to Fund operations:</b>							
<b>General Comments regarding contingencies:</b>							

Template 2 - Financial Projections: Worst Case						Comments / Notes	
In local currency (unless noted otherwise)			Live / Operational				Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3		
I)	Projected Cash inflows and outflows						
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
	Projected Operating Cash Outflows						
	F) Labor:						
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
IIa)	Break out of Fixed and Variable Operating Cash Outflows						
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
IIb)	Break out of Critical Function Operating Cash Outflows						
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
III)	Projected Capital Expenditures						
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
IV)	Projected Assets & Liabilities						
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
V)	Projected Cash flow (excl. 3-year Reserve)						
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets	n/a					
	D) Change in Total Current Liabilities						
	E) Debt Adjustments	n/a					
	F) Other Adjustments						
	G) Projected Net Cash flow						
VI)	Sources of funds						
	A) Debt:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	B) Equity:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):							
Comments regarding how the Applicant plans to Fund operations:							
General Comments regarding contingencies:							



# gTLD Applicant Guidebook

(v. 2011-09-19)

**Module 3**

19 September 2011

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# Module 3

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## Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

### 3.1 GAC Advice on New gTLDs

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The GAC has expressed the intention to develop a standard vocabulary and set of rules for use in providing its advice in this program. These will be published and, as a result, this section might be updated to reflect the terms established by the GAC.

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take several forms, among them:

- I. The GAC advises ICANN that it is the consensus<sup>1</sup> of the GAC that a particular application should not proceed. This will create a strong presumption for ICANN that the application should not be approved. In the event that the ICANN Board determines to approve an application despite the consensus advice of the GAC, pursuant to the ICANN Bylaws, the GAC and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. In the event the Board determines not to accept the GAC Advice, the Board will provide a rationale for its decision.
- II. The GAC provides advice that indicates that some governments are concerned about a particular application. Such advice will be passed on to the applicant but will not create the presumption that the application should be denied, and such advice would not require the Board to undertake the process for attempting to find a mutually acceptable solution with the GAC should the application be approved. Note that in any case, that the Board will take seriously any other advice that GAC might provide and will consider entering into dialogue with the GAC to understand the scope of the concerns expressed.
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should

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<sup>1</sup> The GAC will clarify the basis on which consensus advice is developed.

not proceed. If there is a remediation method available in the Guidebook (such as securing government approval), that action may be taken. However, material amendments to applications are generally prohibited and if there is no remediation method available, the application will not go forward and the applicant can re-apply in the second round.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

### ***3.2 Public Objection and Dispute Resolution Process***

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The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to

the grounds for objection enumerated in the public objection and dispute resolution process.

### 3.2.1 *Grounds for Objection*

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A formal objection may be filed on any one of the following four grounds:

**String Confusion Objection** – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

**Legal Rights Objection** – The applied-for gTLD string infringes the existing legal rights of the objector.

**Limited Public Interest Objection** – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

**Community Objection** – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

### 3.2.2 *Standing to Object*

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Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	Rightsholders
Limited public interest	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections

Objection ground	Who may object
Community	Established institution associated with a clearly delineated community

### 3.2.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

### 3.2.2.2 *Legal Rights Objection*

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name<sup>2</sup>:

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<sup>2</sup> See also <http://www.iana.org/domains/int/policy/>.

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

### 3.2.2.3 *Limited Public Interest Objection*

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a “quick look” procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.<sup>3</sup>

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<sup>3</sup> The jurisprudence of the European Court of Human Rights offers specific examples of how the term “manifestly ill-founded” has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: “The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.” The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court’s website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

#### 3.2.2.4 *Community Objection*

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

***It is an established institution*** – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

***It has an ongoing relationship with a clearly delineated community*** – Factors that may be considered in making this determination include, but are not limited to:

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The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Düringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

### *3.2.3 Dispute Resolution Service Providers*

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To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed in principle to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed in principle to administer disputes brought pursuant to legal rights objections.
- The International Center of Expertise of the International Chamber of Commerce has agreed in principle to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest<sup>4</sup> followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit

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<sup>4</sup> See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

panelists who will engender the respect of the parties to the dispute.

### **3.2.4 Options in the Event of Objection**

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Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

### **3.2.5 Independent Objector**

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A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

**Mandate and Scope** - The IO may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

**Selection** – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

**Budget and Funding** – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the

fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

### 3.3 Filing Procedures

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The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure (“Procedure”) included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed.

- For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN’s New gTLD Program. These rules are available in draft form and have been posted along with this module.
- For a Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution. These rules are available in draft form and have been posted along with this module.
- For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC)<sup>5</sup>, as supplemented by the ICC as needed.
- For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC)<sup>6</sup>, as supplemented by the ICC as needed.

#### 3.3.1 Objection Filing Procedures

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The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an

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<sup>5</sup> See <http://www.iccwbo.org/court/expertise/id4379/index.html>

<sup>6</sup> *Ibid.*

application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date. Objections will not be accepted by the DRSPs after this date.
- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.
- A description of the basis for the objection, including:
  - A statement giving the specific ground upon which the objection is being filed.
  - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

### 3.3.2 *Objection Filing Fees*

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At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

### 3.3.3 *Response Filing Procedures*

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Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.

- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.
- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

### ***3.3.4 Response Filing Fees***

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At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

## ***3.4 Objection Processing Overview***

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The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

### ***3.4.1 Administrative Review***

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Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

### ***3.4.2 Consolidation of Objections***

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Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

### ***3.4.3 Mediation***

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The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

#### *3.4.4 Selection of Expert Panels*

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A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

#### *3.4.5 Adjudication*

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The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

### 3.4.6 Expert Determination

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The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;
- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

### 3.4.7 Dispute Resolution Costs

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Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) business days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

### ***3.5 Dispute Resolution Principles (Standards)***

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Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

#### ***3.5.1 String Confusion Objection***

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A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

#### ***3.5.2 Legal Rights Objection***

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In interpreting and giving meaning to GNSO Recommendation 3 ("Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law"), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector's registered or unregistered trademark or service mark ("mark") or IGO name or acronym (as

identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector's mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector's mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.

8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
  - a. Level of global recognition of both entities;
  - b. Length of time the entities have been in existence;
  - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6<sup>ter</sup> of the Paris Convention for the Protection of Industrial Property.
3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

### 3.5.3 Limited Public Interest Objection

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An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;

- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of discrimination that violate generally accepted legal norms recognized under principles of international law;
- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

#### **3.5.4 Community Objection**

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The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

**Community** – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;

- The level of formal boundaries around the community and what persons or entities are considered to form the community;
- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

**Substantial Opposition** – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
  - Regional
  - Subsectors of community
  - Leadership of community
  - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

**Targeting** – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

**Detriment** – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

Factors that could be used by a panel in making this determination include but are not limited to:

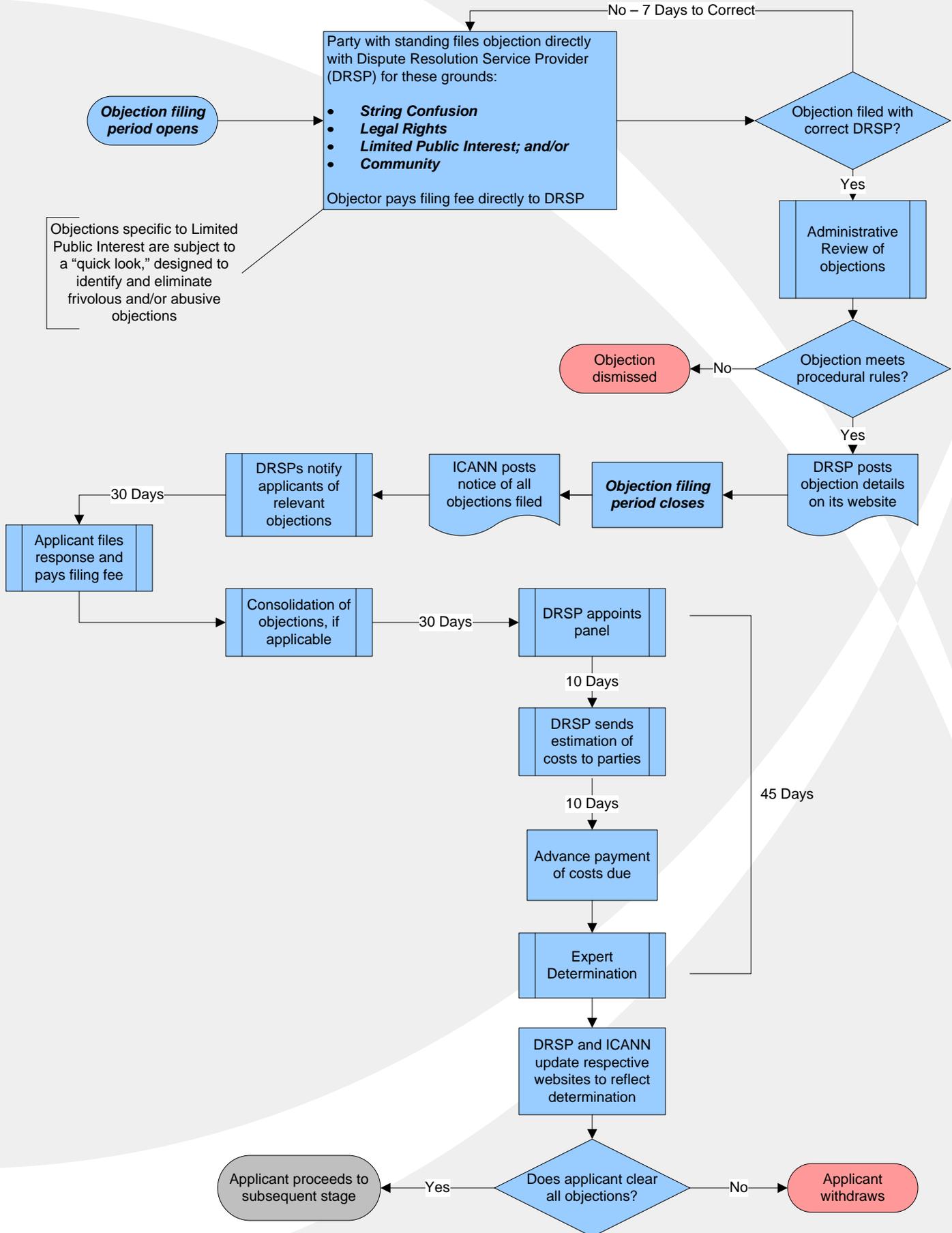
- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and

- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

# DRAFT - New gTLD Program – Objection and Dispute Resolution



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# *Attachment to Module 3*

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## *New gTLD Dispute Resolution Procedure*

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

## NEW gTLD DISPUTE RESOLUTION PROCEDURE

### Article 1. ICANN's New gTLD Program

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

### Article 2. Definitions

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
  - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
  - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) "Limited Public Interest Objection" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
- (iv) "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

### **Article 3. Dispute Resolution Service Providers**

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

### **Article 4. Applicable Rules**

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
  - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program.
  - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
  - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
  - (iv) For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

#### **Article 5. Language**

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

#### **Article 6. Communications and Time Limits**

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

#### **Article 7. Filing of the Objection**

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
  - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
  - (iii) A Limited Public Interest Objection must be filed at: [●].
  - (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
  - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

## **Article 8. Content of the Objection**

- (a) The Objection shall contain, *inter alia*, the following information:
- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
  - (ii) A statement of the Objector's basis for standing; and
  - (iii) A description of the basis for the Objection, including:
    - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
    - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

## **Article 9. Administrative Review of the Objection**

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

## **Article 10. ICANN's Dispute Announcement**

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

## **Article 11. Response to the Objection**

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
  - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
  - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

## **Article 12. Consolidation of Objections**

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

### **Article 13. The Panel**

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
  - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
  - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
  - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
  - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

### **Article 14. Costs**

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
  - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

### **Article 15. Representation and Assistance**

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

### **Article 16. Negotiation and Mediation**

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

### **Article 17. Additional Written Submissions**

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

## **Article 18. Evidence**

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

## **Article 19. Hearings**

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
  - (i) The Panel shall decide how and where the hearing shall be conducted.
  - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
  - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
  - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

## **Article 20. Standards**

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

## **Article 21. The Expert Determination**

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

## **Article 22. Exclusion of Liability**

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

## **Article 23. Modification of the Procedure**

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.

International Centre for Dispute Resolution (ICDR)

Fees & Costs Schedule for String Confusion Objections  
(Fee Schedule)

May 20, 2010

Administrative Filing Fees (non-refundable)

- US \$2750 Filing Fee; per party; per objection.  
This amount is due on all objections filed.
- US \$1250<sup>1</sup> Case Service Fee; per party; per objection.  
This additional amount only becomes due if any type of hearing is conducted in accordance with Article 19 of the gTLD Dispute Resolution Procedures.

Neutral Panel Compensation (limited to one arbitrator)

- US \$6000<sup>2</sup> per objector/applicant.  
This is collected for all cases to be heard on documents only and includes all arbitrator expenses.
- US \$3000<sup>3</sup> per party.  
This is billed if any type of hearing is conducted.
  - Same amount billed for each additional day of hearing beyond one day.
  - Includes all travel time of the neutral.
  - Does not include travel expenses which will be billed separately

<sup>1</sup>See Article 19 of the gTLD Dispute Resolution Procedures.

<sup>2</sup>See Article 14(b) of the gTLD Dispute Resolution Procedures.

<sup>3</sup>See Article 14(c) of the gTLD Dispute Resolution Procedures.

International Centre for Dispute Resolution (ICDR)

Supplementary Procedures for String Confusion Objections  
(DRSP Rules)

May 20, 2010

**Impartiality and Independence of Experts**

**Article 1**

1. Arbitrators, who shall be referred to as "Experts", acting under the **gTLD DISPUTE RESOLUTION PROCEDURES** and these Rules shall be impartial and independent. Prior to accepting appointment, a prospective Expert shall disclose to the DRSP any circumstance likely to give rise to justifiable doubts as to the Expert's impartiality or independence. If, at any stage during the proceedings, new circumstances arise that may give rise to such doubts, an Expert shall promptly disclose such circumstances to the parties and to the DRSP. Upon receipt of such information from an Expert or a party, the DRSP shall communicate it to the other parties and to the panel.
2. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any Expert.

**Challenge of Experts**

**Article 2**

1. A party may challenge any Expert whenever circumstances exist that give rise to justifiable doubts as to the Expert's impartiality or independence. A party wishing to challenge an Expert shall send notice of the challenge to the DRSP within 10 days after being notified of the appointment of the Expert or within 10 days after the circumstances giving rise to the challenge become known to that party.
2. The challenge shall state in writing the reasons for the challenge.
3. Upon receipt of such a challenge, the DRSP shall notify the other parties of the challenge. Upon review of the challenge the DRSP in its sole discretion shall make the decision on the challenge and advise the parties of its decision. The challenged arbitrator may also withdraw from office upon notice of the challenge.

## **Replacement of an Expert**

### **Article 3**

If an Expert withdraws after a challenge, or the DRSP sustains the challenge, or the DRSP determines that there are sufficient reasons to accept the resignation of an Expert, or an Expert dies, a substitute Expert shall be appointed pursuant to the provisions of Article 13 of the **gTLD Dispute Resolution Procedures**.

## **Waiver of Rules**

### **Article 4**

A party who knows that any provision of the Rules or requirement under the Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, shall be deemed to have waived the right to object.

## **Confidentiality**

### **Article 5**

Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by an Expert or by the DRSP.

## **Interpretation of Rules**

### **Article 6**

The tribunal shall interpret and apply these Rules insofar as they relate to its powers and duties.

## **Exclusion of Liability**

### **Article 7**

1. Neither the International Centre for Dispute Resolution (ICDR), the American Arbitration Association (AAA), nor any Expert in a proceeding under the gTLD Dispute Resolution Procedures and/or these Rules is a necessary or proper party in judicial proceedings relating to the Objection proceeding.
2. Parties to an Objection proceeding under the gTLD Dispute Resolution Procedures and/or these Rules shall be deemed to have consented that neither the ICDR, the AAA, nor any Expert shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any Objection proceeding under the gTLD Dispute Resolution Procedures and/or these Rules.

DRAFT

**World Intellectual Property Organization Schedule of Fees and Costs:  
New gTLD Pre-Delegation Legal Rights Objection Procedure**

(All amounts are in United States dollars)

*(This Schedule of Fees and Costs may be amended by WIPO in accordance with the WIPO Rules for New gTLD Dispute Resolution.)*

**DRSP Fee <sup>1</sup>**

	DRSP Fee
Single-Expert Panel	2,000
Three-Expert Panel	3,000

**Panel Fee <sup>2</sup>**

*Base Panel Fee for Single Objection to Single Application Dispute*

Single-Expert Panel	8,000
Three-Expert Panel	20,000 (Presiding Expert: 10,000; Co-Expert: 5,000)

*Panel Fee for Multiple Objections to Single Application: <sup>3</sup>  
60% of Regular Base Fee (to be paid per Objection filed)*

Single-Expert Panel	4,800
Three-Expert Panel	12,000 (Presiding Expert: 6,000; Co-Expert: 3,000)

*Panel Fee for Multiple Objections filed by Same Objector to Multiple Applications:  
80% of Regular Base Fee (to be paid per Objection filed)<sup>3</sup>*

Single-Expert Panel	6,400
Three-Expert Panel	16,000 (Presiding Expert: 8,000; Co-Expert: 4,000)

<sup>1</sup> See Articles 8(c) and 11(f) of the New gTLD Dispute Resolution Procedure.

<sup>2</sup> See Article 14 of the New gTLD Dispute Resolution Procedure.

<sup>3</sup> See Article 12 of the New gTLD Dispute Resolution Procedure.

World Intellectual Property Organization Schedule of Fees and Costs:  
New gTLD Pre-Delegation Legal Rights Objection Procedure

*All Other Scenarios*<sup>3</sup>

In all other scenarios, the DRSP shall determine the applicable fees in consultation with the Panel, taking into account the base fees stipulated above and the circumstances of the consolidated objections and applications.

**Additional Advance Payments**

Depending on the circumstances of the case, additional advance payments may be required to be made. In determining whether additional advance payments shall be required, the DRSP, in consultation with the Panel, may consider the following non-exclusive factors: the number of Applications and/or Objections to the TLD, the number of parties, the complexity of the dispute, the anticipated time required for rendering an Expert Determination, and the possible need for hearings, phone or video conferences, or additional pleading rounds.

**World Intellectual Property Organization  
Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections  
("WIPO Rules for New gTLD Dispute Resolution")**

*(In effect as of June 20, 2011)*

**1. Scope of WIPO Rules for New gTLD Dispute Resolution in Relation to Procedure**

(a) Set out below are the applicable WIPO Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections as referred to in Article 4 of the New gTLD Dispute Resolution Procedure ("Procedure") as approved by the Internet Corporation for Assigned Names and Numbers ("ICANN") on June 20, 2011. The WIPO Rules for New gTLD Dispute Resolution are to be read and used in connection with the Procedure which provides the basic framework for the four categories of objections (as referred to in Articles 2 and 4 of the Procedure) arising from Applications under ICANN's New gTLD Program.

(b) The version of the WIPO Rules for New gTLD Dispute Resolution applicable to a proceeding conducted under the Procedure is the version in effect on the day when the relevant Application for a new gTLD is submitted (as referred to in Article 23(b) of the Procedure).

**2. Definitions**

Terms defined in the Procedure shall have the same meaning in the WIPO Rules for New gTLD Dispute Resolution. Words used in the singular shall include the plural and *vice versa* as the context may require.

**3. Communications**

(a) Subject to Article 6 of the Procedure, except where otherwise agreed beforehand with the WIPO Arbitration and Mediation Center ("Center"), and subject to the discretion of any appointed Panel, any submission to the Center or to the Panel shall be made by electronic mail (email) using [arbiter.mail@wipo.int](mailto:arbiter.mail@wipo.int).

(b) In the event a party wishes to submit a hard copy or other non-electronic submission prior to Panel appointment, it shall first request leave to do so from the Center; the Center shall, in its sole discretion, then determine whether to accept the non-electronic submission. After Panel appointment, parties are referred to Article 6(a) of the Procedure.

#### **4. Submission of Objection and Response**

(a) In accordance with Articles 7 and 8 of the Procedure, the Objector shall transmit its Objection using the Objection Model Form set out in Annex A hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex B hereto and posted on the Center's website.

(b) In accordance with Article 11 of the Procedure, the Applicant shall transmit its Response using the Response Model Form set out in Annex C hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex B hereto and posted on the Center's website.

#### **5. Center Review of Objections**

(a) In accordance with Article 9 of the Procedure if an Objection is dismissed due to the Objector's failure to remedy an administrative deficiency, there shall be no refund of any DRSP Fee paid by the Objector pursuant to Article 14 of the Procedure and Paragraph 10 of the WIPO Rules for New gTLD Dispute Resolution.

(b) If an Objector submits a new Objection within ten (10) calendar days of closure of a proceeding as provided in Article 9(d) of the Procedure and Paragraph 5(a) of the WIPO Rules for New gTLD Dispute Resolution to remedy an administratively deficient Objection, such new Objection may be accompanied by a request for a DRSP Fee waiver, in whole or in part, for the Center's consideration in its sole discretion.

#### **6. Appointment of Case Manager**

(a) The Center shall advise the parties of the name and contact details of the Case Manager who shall be responsible for all administrative matters relating to the dispute and communications to the Panel.

(b) The Case Manager may provide administrative assistance to the parties or Panel, but shall have no authority to decide matters of a substantive nature concerning the dispute.

#### **7. Consolidation**

(a) In accordance with Article 12 of the Procedure, the Center may, where possible and practicable, and in its sole discretion, decide to consolidate Objections by appointing the same Panel to decide multiple Objections sharing certain commonalities. In the event of consolidation, the Panel shall render individual Expert Determinations for each Objection.

(b) A party may submit a consolidation request pursuant to Article 12(b) of the Procedure, or may oppose any consolidation request submitted. Any such opposition to a consolidation request shall be provided within seven (7) calendar days of the consolidation request. Any consolidation request or opposition thereto shall be limited to 1,500 words in length.

(c) In the case of consolidated Objections, the applicable reduced Panel fees are specified in Annex D hereto and posted on the Center's website.

(d) Pursuant to Article 12 of the Procedure, in weighing the benefits that may result from consolidation against the possible prejudice or inconvenience that consolidation may cause, the Center in reaching its decision concerning consolidation, may take into account, *inter alia*, the following non-exclusive factors:

- (i) Whether the Objections concern the same or similar TLD(s);
- (ii) Whether the same Objector files Objections concerning multiple TLD applications;
- (iii) Whether in any consolidation request, or opposition thereto, the Objector or Applicant relies on single or multiple mark(s);
- (iv) The scope of evidence relied on by an Objector or Applicant in any Objection or application;
- (v) Any other arguments raised in any consolidation request, or opposition thereto;
- (vi) Expert availability to accept appointment.

(e) The Center's decision on any consolidation of multiple Objections for Expert Determination by the same Panel is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

## **8. Panel Appointment Procedures**

(a) The Center will maintain and publish on its website a publicly-available List of Experts.

(b) Pursuant to Article 13(b)(ii) of the Procedure, there shall be a Single-Expert Panel unless all the Parties agree to the appointment of a Three-Expert Panel.

(c) In the event of a Single-Expert Panel, the Center shall in its sole discretion appoint an Expert from its List of Experts.

(d) In the event all the Parties agree to the appointment of a Three-Expert Panel, any such agreement shall be communicated to the Center within five (5) calendar days of the Center's receipt of the Response filed in accordance with Article 11 of the Procedure and Paragraph 4(b) of the WIPO Rules for New gTLD Dispute Resolution.

- (i) If Objections are not consolidated, and if the parties have communicated their agreement on the appointment of a Three-Expert Panel, within five (5) days of such communication each party shall separately submit to the Center (notwithstanding Article 6(b) of the Procedure) the names of three (3) candidates from the Center's List of Experts, in the order of their respective preference, for appointment by the Center as a Co-Expert. In the event none of a party's three (3) candidates is available for appointment as a Co-Expert, the Center shall appoint the Co-Expert in its sole discretion.

- (ii) In the event of consolidation in accordance with Paragraph 7 of the WIPO Rules for New gTLD Dispute Resolution, the Objectors or Applicants shall, as the case may be, jointly submit the names of the three (3) candidates from the Center's List of Experts in order of preference (i.e., one list on behalf of all Objector(s) and one list on behalf of all Applicant(s)). If the Objectors or Applicants as the case may be do not jointly agree on and submit the names of three (3) candidates within five (5) calendar days of the parties' communication to the Center on their agreement to the appointment of a Three-Expert Panel, the Center shall in its sole discretion appoint the Co-Experts.
- (iii) The third Expert, who shall be the Presiding Expert, shall absent exceptional circumstances be appointed by the Center from a list of five (5) candidates submitted by the Center to the parties. The Center's selection of a Presiding Expert shall be made in a manner that seeks to reasonably balance the preferences of each party as communicated to the Center within five (5) calendar days of the Center's communication of the list of candidates to the parties.
- (iv) Where any party fails to indicate its order of preference for the Presiding Expert to the Center, the Center shall nevertheless proceed to appoint the Presiding Expert in its sole discretion, taking into account any preferences of any other party.

## 9. Expert Impartiality and Independence

(a) In accordance with Article 13(c) of the Procedure, any prospective Expert shall, before accepting appointment, disclose to the Center and parties any circumstance that might give rise to justifiable doubt as to the Expert's impartiality or independence, or confirm in writing that no such circumstance exist by submitting to the Center a *Declaration of Impartiality and Independence* using the form set out in Annex E hereto and posted on the Center's website.

(b) If at any stage during a proceeding conducted under the Procedure, circumstances arise that might give rise to justifiable doubt as to an Expert's impartiality or independence, the Expert shall promptly disclose such circumstances to the parties and the Center.

(c) A party may challenge an Expert if circumstances exist which give rise to justifiable doubt as to the Expert's impartiality or independence. A party may challenge an Expert whom it has appointed or in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

- (i) A party challenging an Expert shall send notice to the Center and the other party, stating the reasons for the challenge, within five (5) calendar days after being notified of that Expert's appointment or becoming aware of circumstances that it considers give rise to justifiable doubt as to that Expert's impartiality or independence.
- (ii) The decision on the challenge shall be made by the Center in its sole discretion. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision. In the event of an Expert's removal, the Center shall appoint a new Expert in accordance with the Procedure and these WIPO Rules for New gTLD Dispute Resolution.

## 10. Fees

(a) The applicable fees for the Procedure for Existing Legal Rights Objections are specified in Annex D hereto and posted on the Center's website.

(b) After the Expert Determination has been rendered or a proceeding conducted under the Procedure has been terminated, the Center shall provide an accounting to the parties of the payments received and, in consultation with any Panel, return any unexpended balance of the Panel Fee to the parties.

## 11. Confidentiality

(a) A party invoking the confidentiality of any information it wishes or is required to submit in any Existing Legal Rights Objection proceeding conducted under the Procedure, shall submit the request for confidentiality to the Center for the Panel's consideration, stating the reasons for which it considers the information to be confidential. If the Panel decides that the information is to be treated as confidential, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(b) Further to Article 6(b) of the Procedure, except in exceptional circumstances as decided by the Panel and in consultation with the parties and the Center, no party or anyone acting on its behalf shall have any *ex parte* communication with the Panel.

## 12. Mediation

Further to Article 16 of the Procedure, prior to the Panel rendering its Expert Determination in a proceeding conducted under the Procedure, the parties may inform the Center that they wish to participate in mediation to attempt to resolve the dispute and may request the Center to administer the mediation. In such event, unless both parties agree otherwise, the WIPO Mediation Rules shall apply *mutatis mutandis*. On request from the parties, and absent exceptional circumstances, the Center's mediation administration fee shall be waived.

## 13. Effect of Court Proceedings

(a) The Objector and Applicant shall include in any Objection or Response relevant information regarding any other legal proceedings concerning the TLD. In the event that a party initiates any legal proceedings during the pendency of a proceeding conducted under the Procedure, it shall promptly notify the Center.

(b) In the event of any legal proceedings initiated prior to or during a proceeding conducted under the Procedure, the Panel shall have the discretion to decide whether to suspend or terminate such proceeding under the Procedure, or to proceed to an Expert Determination.

#### **14. Termination**

(a) If, before the Panel renders an Expert Determination, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Panel may in its discretion terminate the proceeding.

(b) If, prior to Panel appointment, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Center in consultation with the parties and ICANN, may in its discretion terminate the proceeding.

#### **15. Amendments**

Subject to the Procedure, the Center may amend these WIPO Rules for New gTLD Dispute Resolution in its sole discretion.

#### **16. Exclusion of Liability**

Except in respect of deliberate wrongdoing, an Expert, the World Intellectual Property Organization, and the Center shall not be liable to any party or ICANN for any act or omission in connection with any proceeding conducted under the Procedure and the WIPO Rules for New gTLD Dispute Resolution.



# gTLD Applicant Guidebook

(v. 2011-09-19)

**Module 4**

19 September 2011

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# Module 4

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## *String Contention Procedures*

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

### *4.1 String Contention*

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String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

(In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

#### *4.1.1 Identification of Contention Sets*

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Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

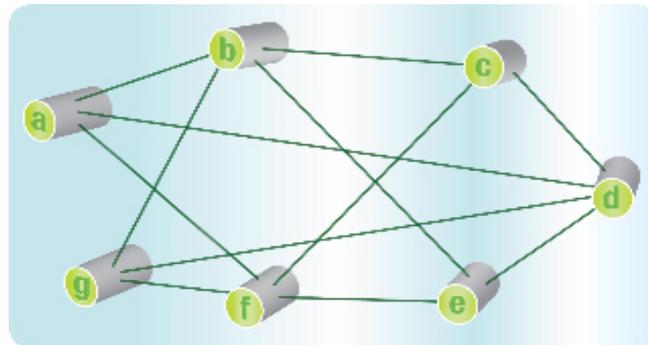
Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.



**Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.**

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

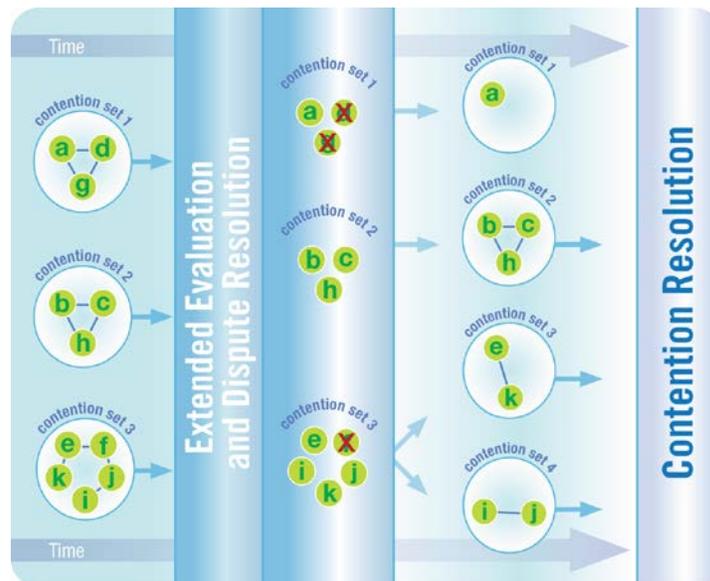


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

#### 4.1.2 *Impact of String Confusion Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

#### *4.1.3 Self-Resolution of String Contention*

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Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

#### *4.1.4 Possible Contention Resolution Outcomes*

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An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

## ***4.2 Community Priority Evaluation***

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Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

### ***4.2.1 Eligibility for Community Priority Evaluation***

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As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

#### ***4.2.2 Community Priority Evaluation Procedure***

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Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

### ***4.2.3 Community Priority Evaluation Criteria***

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The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

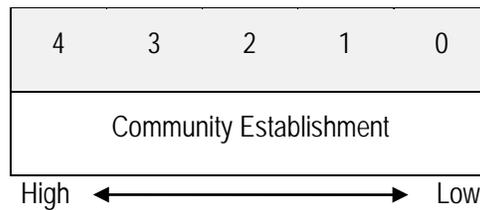
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

**Criterion #1: Community Establishment (0-4 points)**

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application.

(The implicit reach of the applied-for string is not considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

**Criterion 1 Definitions**

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some

examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

**Criterion 1 Guidelines**

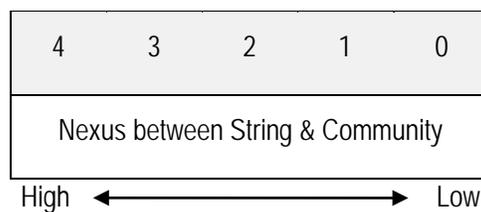
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

**Criterion #2: Nexus between Proposed String and Community (0-4 points)**

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

3	2	0
The string matches the name of the community or	String identifies the community, but does not qualify for a	String nexus does not fulfill the requirements for

3	2	0
is a well known short-form or abbreviation of the community name.	score of 3.	a score of 2.

B. Uniqueness (1)

1	0
String has no other significant meaning beyond identifying the community described in the application.	String does not fulfill the requirement for a score of 1.

This section evaluates the relevance of the string to the specific community that it claims to represent.

**Criterion 2 Definitions**

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

**Criterion 2 Guidelines**

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for

example, a globally well-known but local tennis club applying for “.TENNIS”) then it would not qualify for a 2.

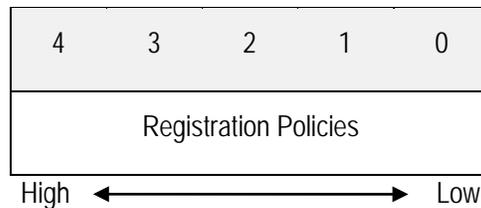
With respect to “Uniqueness,” “significant meaning” relates to the public in general, with consideration of the community language context added.

“Uniqueness” will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing “...beyond identifying the community” in the score of 1 for “uniqueness” implies a requirement that the string does identify the community, i.e. scores 2 or 3 for “Nexus,” in order to be eligible for a score of 1 for “Uniqueness.”

It should be noted that “Uniqueness” is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be “unique” in the sense of “alone.”

**Criterion #3: Registration Policies (0-4 points)**

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)

1	0
Eligibility restricted to community members.	Largely unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective

registrants, i.e. those desiring to register second-level domain names under the registry.

### **Criterion 3 Definitions**

- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

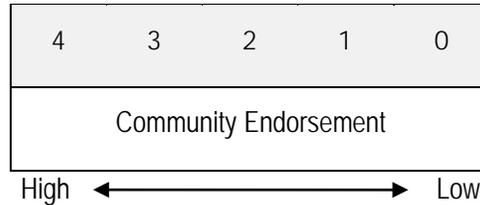
### **Criterion 3 Guidelines**

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and

demonstrate continuing accountability to the community named in the application.

**Criterion #4: Community Endorsement (0-4 points)**



As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

#### **Criterion 4 Definitions**

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community.
- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

#### **Criterion 4 Guidelines**

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support.

Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for "Opposition." To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

### ***4.3 Auction: Mechanism of Last Resort***

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It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.<sup>1</sup>

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<sup>1</sup> The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of

### 4.3.1 Auction Procedures

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An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based

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funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants (“bidders”) will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.

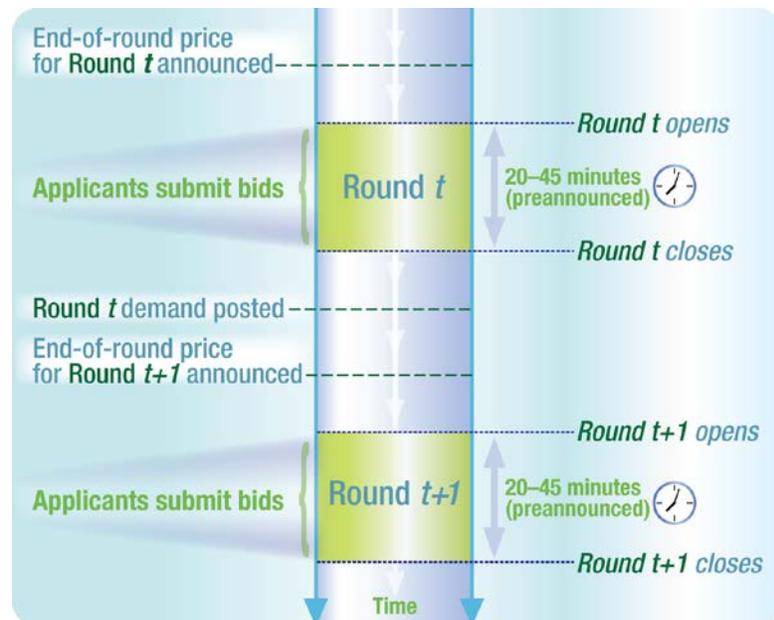


Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.
4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
  - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
  - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
  - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the

bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.

- To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.
  - No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
  - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

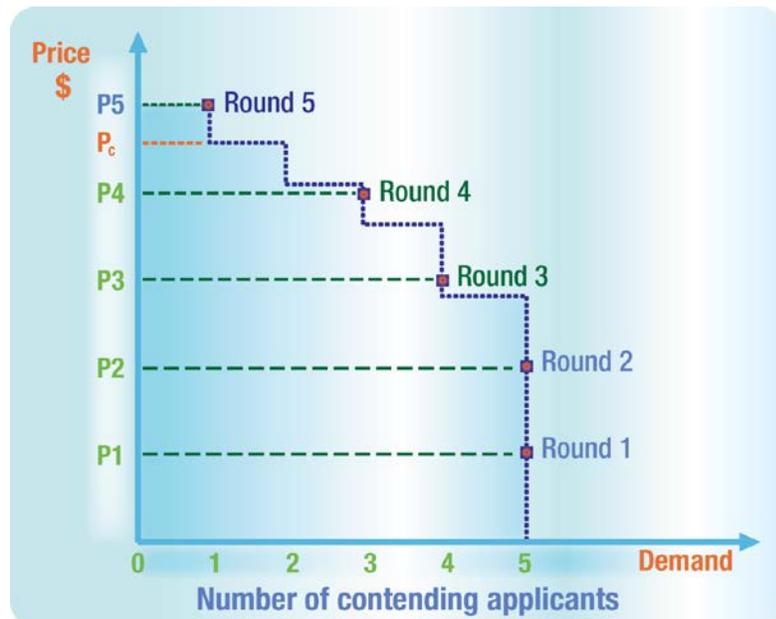


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price  $P_1$ .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_1$ . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at  $P_1$  and announces the end-of-round price  $P_2$ .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_2$ . The auctioneer discloses that five contending applications remained at  $P_2$  and announces the end-of-round price  $P_3$ .
- During Auction round 3, one of the bidders submits an exit bid at slightly below  $P_3$ , while the other four bidders submit bids of at least  $P_3$ . The auctioneer discloses that four contending applications remained at  $P_3$  and announces the end-of-round price  $P_4$ .

- During Auction round 4, one of the bidders submits an exit bid midway between  $P_3$  and  $P_4$ , while the other three remaining bidders submit bids of at least  $P_4$ . The auctioneer discloses that three contending applications remained at  $P_4$  and announces the end-of-auction round price  $P_5$ .
- During Auction round 5, one of the bidders submits an exit bid at slightly above  $P_4$ , and one of the bidders submits an exit bid at  $P_c$  midway between  $P_4$  and  $P_5$ . The final bidder submits a bid greater than  $P_c$ . Since the aggregate demand at  $P_5$  does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is  $P_c$ , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

#### 4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

#### 4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from nondefaulting losing bidders will be returned following the close of the auction.

### *4.3.2 Winning Bid Payments*

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Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

### 4.3.3 Post-Default Procedures

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Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.<sup>2</sup> Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

## 4.4 Contention Resolution and Contract Execution

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An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD

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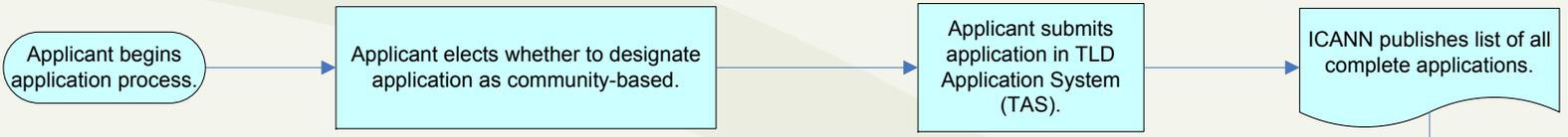
<sup>2</sup> If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.

string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

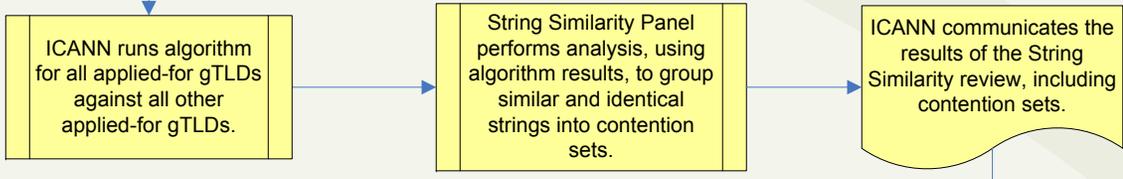
# DRAFT - New gTLD Program - String Contention



Application/  
Admin Check



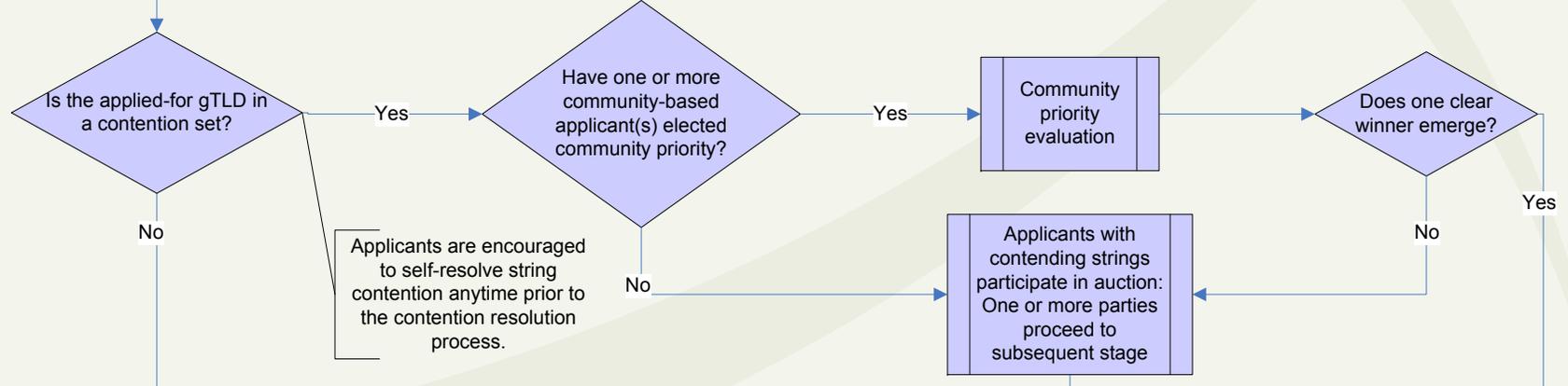
Initial Evaluation (IE)  
String Review



IE + EE  
+ Dispute Res

IE, Extended Evaluation (EE), and Dispute Resolution continue. Some applications may not pass certain elements of the review process, **which may alter the contention sets.**

String Contention



Transition to  
Delegation

Applicant enters  
Transition to  
Delegation phase



# gTLD Applicant Guidebook

(v. 2011-09-19)

Module 5

19 September 2011

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# Module 5

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## *Transition to Delegation*

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

### *5.1 Registry Agreement*

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All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request

and negotiate terms by exception; however, this extends the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

## *5.2 Pre-Delegation Testing*

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Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

### *5.2.1 Testing Procedures*

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The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and

accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

### 5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

**UDP Support** -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

**TCP support** -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform

TCP reachability and transaction capability tests across a randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

**DNSSEC support** -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

### 5.2.3 Test Elements: Registry Systems

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As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

**System performance** -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

**Whois support** -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

**EPP Support** -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to

the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

**IPv6 support** -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

**DNSSEC support** -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

**IDN support** -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in <http://iana.org/procedures/idn-repository.html>.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

**Escrow deposit** -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from

escrowed data. ICANN may elect to test the data release process with the escrow agent.

### 5.3 Delegation Process

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Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at <http://iana.org/domains/root/>.

### 5.4 Ongoing Operations

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An applicant that is successfully delegated a gTLD will become a “Registry Operator.” In being delegated the role of operating part of the Internet’s domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

#### 5.4.1 What is Expected of a Registry Operator

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The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator’s obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

**Operate the TLD in a stable and secure manner.** The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591<sup>1</sup>:

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<sup>1</sup> See <http://www.rfc-editor.org/rfc/rfc1591.txt>

“The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping the central IR<sup>2</sup> (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

**Comply with consensus policies and temporary policies.**

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)<sup>3</sup> following the process in Annex A of the ICANN Bylaws.<sup>4</sup> The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

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<sup>2</sup> IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

<sup>3</sup> <http://gns0.icann.org>

<sup>4</sup> <http://www.icann.org/en/general/bylaws.htm#AnnexA>

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

**Implement start-up rights protection measures.** The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

**Implement post-launch rights protection measures.** The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry

operators may introduce additional rights protection measures relevant to the particular gTLD.

**Implement measures for protection of country and territory names in the new gTLD.** All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

**Pay recurring fees to ICANN.** In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

**Regularly deposit data into escrow.** This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

**Deliver monthly reports in a timely manner.** A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

**Provide Whois service.** A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

**Maintain partnerships with ICANN-accredited registrars.** A registry operator creates a Registry-Registrar Agreement

(RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

**Maintain an abuse point of contact.** A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

**Cooperate with contractual compliance audits.** To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

**Maintain a Continued Operations Instrument.** A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

**Maintain community-based policies and procedures.** If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its

application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

**Have continuity and transition plans in place.** This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

**Make TLD zone files available via a standardized process.** This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

**Implement DNSSEC.** The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

#### **5.4.2 What is Expected of ICANN**

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ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See

<http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

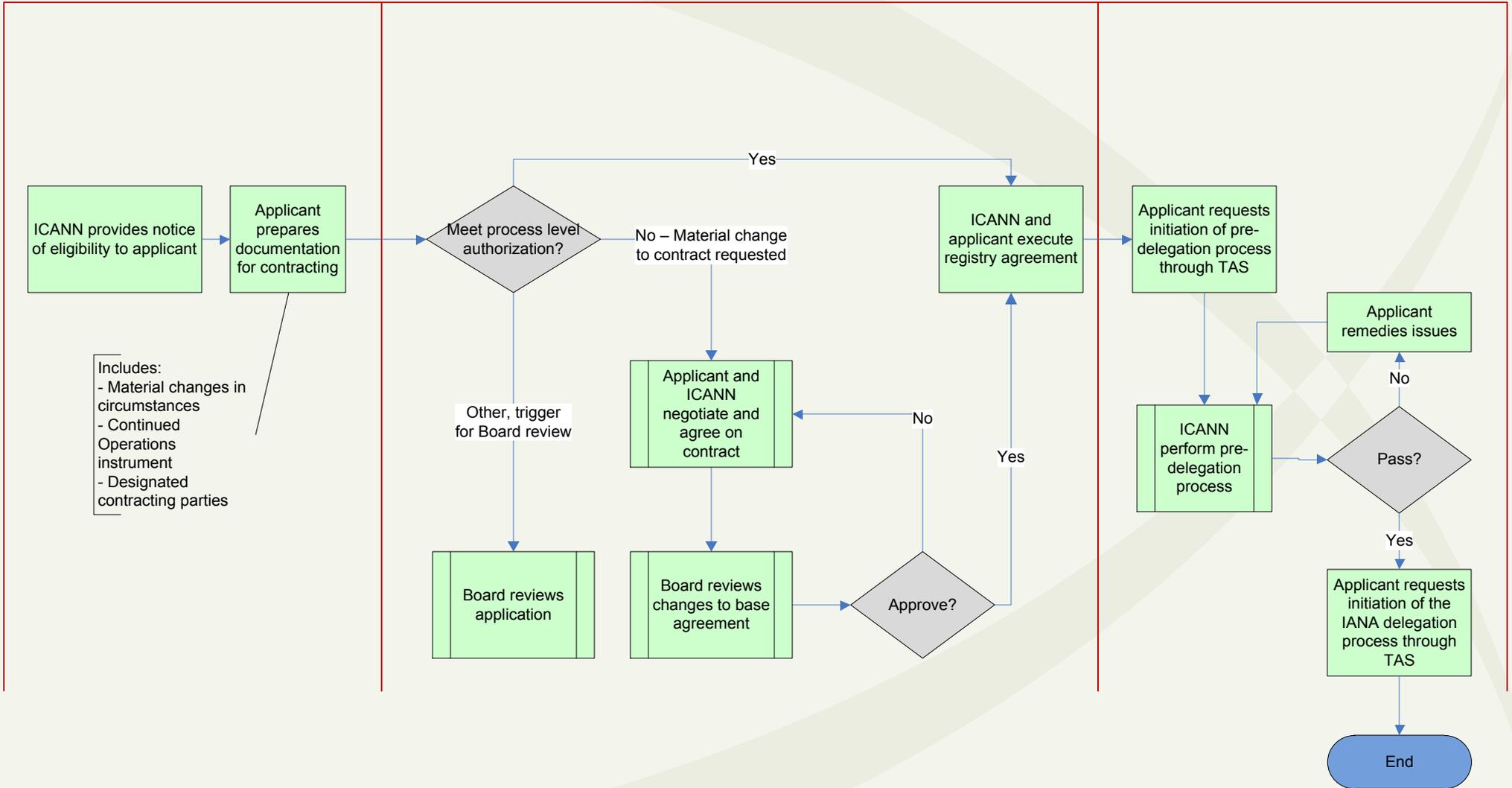
# Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

## Applicant Doc Prep 1 Month

## Contracting – 1 day to 9 months

## Pre-Delegation Testing – 1 to 12 months



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# *New gTLD Agreement*

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This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

## REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and \_\_\_\_\_, a \_\_\_\_\_ (“Registry Operator”).

### ARTICLE 1.

#### DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

**1.1 Domain and Designation.** The Top-Level Domain to which this Agreement applies is \_\_\_\_\_ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

**1.2 Technical Feasibility of String.** While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

#### **1.3 Representations and Warranties.**

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

## ARTICLE 2.

### COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

**2.1 Approved Services; Additional Services.** Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

**2.2 Compliance with Consensus Policies and Temporary Policies.** Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]\* (“Specification 1”).

**2.3 Data Escrow.** Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]\*.

**2.4 Monthly Reporting.** Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]\*.

**2.5 Publication of Registration Data.** Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]\* (“Specification 4”).

**2.6 Reserved Names.** Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]\* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

**2.7 Registry Interoperability and Continuity.** Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

**2.8 Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]\* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

**2.9 Registrars.**

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

**2.10 Pricing for Registry Services.**

(a) With respect to initial domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

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duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

## **2.11 Contractual and Operational Compliance Audits.**

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

**2.12 Continued Operations Instrument.** Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

**2.13 Emergency Transition.** Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at \_\_\_\_\_) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

**2.14 Registry Code of Conduct.** In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

**2.15 Cooperation with Economic Studies.** If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

**2.16 Registry Performance Specifications.** Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]\*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

**2.17 Personal Data.** Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

**2.18 [*Note: For Community-Based TLDs Only*] Obligations of Registry Operator to TLD Community.** Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

### ARTICLE 3.

#### COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

**3.1 Open and Transparent.** Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

**3.2 Equitable Treatment.** ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

**3.3 TLD Nameservers.** ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

**3.4 Root-zone Information Publication.** ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

**3.5 Authoritative Root Database.** To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

### ARTICLE 4.

#### TERM AND TERMINATION

**4.1 Term.** The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

**4.2 Renewal.**

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

#### **4.3 Termination by ICANN.**

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*  
ICANN may terminate this Agreement pursuant to Section 7.14.

#### **4.4 Termination by Registry Operator.**

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

**4.5 Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

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escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

*[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:*

**“Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

**4.6 Effect of Termination.** Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

## ARTICLE 5.

### DISPUTE RESOLUTION

**5.1 Cooperative Engagement.** Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

**5.2 Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

**“Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."}]

**5.3 Limitation of Liability.** ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

**5.4 Specific Performance.** Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

## ARTICLE 6.

### FEES

**6.1 Registry-Level Fees.** Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

**6.2 Cost Recovery for RSTEP.** Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

**6.3 Variable Registry-Level Fee.**

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

**6.4 Adjustments to Fees.** Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

**6.5 Additional Fee on Late Payments.** For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

## ARTICLE 7.

### MISCELLANEOUS

#### 7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

**7.2 Indemnification Procedures.** If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

**7.3 Defined Terms.** For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

**7.4 No Offset.** All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

**7.5 Change in Control; Assignment and Subcontracting.** Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

**7.6 Amendments and Waivers.**

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

**7.7 No Third-Party Beneficiaries.** This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

**7.8 General Notices.** Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:  
Internet Corporation for Assigned Names and Numbers  
4676 Admiralty Way, Suite 330  
Marina Del Rey, California 90292  
Telephone: 1-310-823-9358  
Facsimile: 1-310-823-8649  
Attention: President and CEO

With a Required Copy to: General Counsel  
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[  
]  
[  
]  
[  
]

Telephone:  
Facsimile:  
Attention:

With a Required Copy to:  
Email: (As specified from time to time.)

**7.9 Entire Agreement.** This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

**7.10 English Language Controls.** Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

**7.11 Ownership Rights.** Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

**7.12 Severability.** This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

**7.13 Court Orders.** ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

*[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]*

**7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.**

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the “Applicable Laws”). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator’s compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, “ICANN Requirements”), may conflict with or violate Applicable Law (hereinafter, a “Potential Conflict”), Registry Operator shall provide detailed notice (a “Notice”) of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an “ICANN Determination”). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN’s complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator’s compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

\* \* \* \* \*



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_  
[ ]  
President and CEO  
Date:

**[Registry Operator]**

By: \_\_\_\_\_  
[ ]  
[ ]  
Date:

**EXHIBIT A**

**Approved Services**

# SPECIFICATION 1

## CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

### 1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
  - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
  - 1.2.2. functional and performance specifications for the provision of Registry Services;
  - 1.2.3. Security and Stability of the registry database for the TLD;
  - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
  - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
  - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
  - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
  - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
  - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
  - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
  - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
  - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
  - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
  - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
    - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
    - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

## SPECIFICATION 2

### DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

#### PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
  - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday. Pending transactions at that time (i.e., transactions that have not been committed) will not be reflected in the Full Deposit.
  - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).
  
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
  - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
  - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
  
3. **Escrow Format Specification.**
  - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.
  
  - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section

3.1. ICANN and the respective Registry shall work together to agree on such new objects' data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
  - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
  - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
  - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
  - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
  - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}\_{YYYY-MM-DD}\_{type}\_S{#}\_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
  - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
  - 5.3 {type} is replaced by:
    - (1) "full", if the data represents a Full Deposit;
    - (2) "diff", if the data represents a Differential Deposit;
    - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
  - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
  - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0":

- 5.6 {ext} is replaced by “sig” if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by “ryde”.
6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
- (1) The signature file of each processed file is validated.
  - (2) If processed files are pieces of a bigger file, the latter is put together.
  - (3) Each file obtained in the previous step is then decrypted and uncompressed.
  - (4) Each data file contained in the previous step is then validated against the format defined in [1].
  - (5) If [1] includes a verification process, that will be applied at this step.  
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
- [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
- [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
- [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

**PART B – LEGAL REQUIREMENTS**

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
- 6.1 the Registry Agreement has expired without renewal, or been terminated; or
  - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
  - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
  - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
  - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
  - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
- 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
  - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

## SPECIFICATION 3

### FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to \_\_\_\_\_ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

**1. Per-Registrar Transactions Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	<a href="http://www.iana.org/assignments/registrar-ids">http://www.iana.org/assignments/registrar-ids</a>
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-noddecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

**2. Registry Functions Activity Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

## SPECIFICATION 4

### SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

#### 1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

Domain Name: EXAMPLE.TLD  
Domain ID: D1234567-TLD  
WHOIS Server: whois.example.tld  
Referral URL: http://www.example.tld  
Updated Date: 2009-05-29T20:13:00Z  
Creation Date: 2000-10-08T00:45:00Z  
Registry Expiry Date: 2010-10-08T00:44:59Z  
Sponsoring Registrar: EXAMPLE REGISTRAR LLC  
Sponsoring Registrar IANA ID: 5555555  
Domain Status: clientDeleteProhibited  
Domain Status: clientRenewProhibited  
Domain Status: clientTransferProhibited  
Domain Status: serverUpdateProhibited  
Registrant ID: 5372808-ERL  
Registrant Name: EXAMPLE REGISTRANT  
Registrant Organization: EXAMPLE ORGANIZATION  
Registrant Street: 123 EXAMPLE STREET  
Registrant City: ANYTOWN  
Registrant State/Province: AP  
Registrant Postal Code: A1A1A1  
Registrant Country: EX

Registrant Phone: +1.5555551212  
Registrant Phone Ext: 1234  
Registrant Fax: +1.5555551213  
Registrant Fax Ext: 4321  
Registrant Email: EMAIL@EXAMPLE.TLD  
Admin ID: 5372809-ERL  
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE  
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION  
Admin Street: 123 EXAMPLE STREET  
Admin City: ANYTOWN  
Admin State/Province: AP  
Admin Postal Code: A1A1A1  
Admin Country: EX  
Admin Phone: +1.5555551212  
Admin Phone Ext: 1234  
Admin Fax: +1.5555551213  
Admin Fax Ext:  
Admin Email: EMAIL@EXAMPLE.TLD  
Tech ID: 5372811-ERL  
Tech Name: EXAMPLE REGISTRAR TECHNICAL  
Tech Organization: EXAMPLE REGISTRAR LLC  
Tech Street: 123 EXAMPLE STREET  
Tech City: ANYTOWN  
Tech State/Province: AP  
Tech Postal Code: A1A1A1  
Tech Country: EX  
Tech Phone: +1.1235551234  
Tech Phone Ext: 1234  
Tech Fax: +1.5555551213  
Tech Fax Ext: 93  
Tech Email: EMAIL@EXAMPLE.TLD  
Name Server: NS01.EXAMPLEREGISTRAR.TLD  
Name Server: NS02.EXAMPLEREGISTRAR.TLD  
DNSSEC: signedDelegation  
DNSSEC: unsigned  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

## 1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.  
Street: 1234 Admiralty Way  
City: Marina del Rey  
State/Province: CA  
Postal Code: 90292  
Country: US  
Phone Number: +1.3105551212  
Fax Number: +1.3105551213

Email: registrar@example.tld  
WHOIS Server: whois.example-registrar.tld  
Referral URL: http://www.example-registrar.tld  
Admin Contact: Joe Registrar  
Phone Number: +1.3105551213  
Fax Number: +1.3105551213  
Email: joeregistrar@example-registrar.tld  
Admin Contact: Jane Registrar  
Phone Number: +1.3105551214  
Fax Number: +1.3105551213  
Email: janeregistrar@example-registrar.tld  
Technical Contact: John Geek  
Phone Number: +1.3105551215  
Fax Number: +1.3105551216  
Email: johngeek@example-registrar.tld  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

#### 1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD  
IP Address: 192.0.2.123  
IP Address: 2001:0DB8::1  
Registrar: Example Registrar, Inc.  
WHOIS Server: whois.example-registrar.tld  
Referral URL: http://www.example-registrar.tld  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

## 2. Zone File Access

### 2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard.** Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. **Use of Data by User.** Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. **Term of Use.** Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7. **No Fee for Access.** Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

## 2.2 Co-operation

2.2.1. **Assistance.** Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

**2.3 ICANN Access.** Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

**2.4 Emergency Operator Access.** Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

### 3. Bulk Registration Data Access to ICANN

**3.1. Periodic Access to Thin Registration Data.** In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

**3.1.1. Contents.** Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

**3.1.2. Format.** The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

**3.1.3. Access.** Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

**3.2. Exceptional Access to Thick Registration Data.** In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

## SPECIFICATION 5

### SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
  - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union  
<[http://www.iso.org/iso/support/country\\_codes/iso\\_3166\\_code\\_lists/iso-3166-1\\_decoding\\_table.htm#EU](http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU)>;
  - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
  - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

## SPECIFICATION 6

### REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

#### 1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <<http://www.icann.org/en/topics/idn/implementation-guidelines.htm>>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

## 2. Registry Services

2.1. **Registry Services.** “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

## 3. Registry Continuity

3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

## 4. Abuse Mitigation

4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

4. **Supported Initial and Renewal Registration Periods**

4.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

4.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

## SPECIFICATION 7

### MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

## SPECIFICATION 8

### CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [ ] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6<sup>th</sup>) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [ ] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

## SPECIFICATION 9

### Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a "Registry Related Party"), to:
  - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
  - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
  - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
  - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
  - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days

- following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.
4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
  5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
  6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

## SPECIFICATION 10

### REGISTRY PERFORMANCE SPECIFICATIONS

#### 1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

#### 2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
<b>DNS</b>	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
<b>RDDS</b>	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
<b>EPP</b>	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

### 3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

- 3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.
- 3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

#### 4. **RDDS**

- 4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.
- 4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.
- 4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.
- 4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.
- 4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

## 5. **EPP**

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

- 5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**“ of the EPP servers of the TLD being monitored and make an “**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.
- 5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

<b>Critical Function</b>	<b>Emergency Threshold</b>
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitored.

### 7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations department prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

### 7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

## 8. Covenants of Performance Measurement

- 8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).
- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

**TRADEMARK CLEARINGHOUSE**  
**19 SEPTEMBER 2011**

**1. PURPOSE OF CLEARINGHOUSE**

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

**2. SERVICE PROVIDERS**

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

- 2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.
  - 2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.
  - 2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).
- 2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.
- 2.4 Contractual Relationship.
  - 2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.
  - 2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.
  - 2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.
  - 2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
  - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
  - 2.5.2 employ systems that are technically reliable and secure (database administrator);
  - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
  - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
  - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
  - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
  - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
  - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

### **3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE**

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
  - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
  - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
  - 3.2.4 Other marks that constitute intellectual property.
  - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

#### **4. USE OF CLEARINGHOUSE DATA**

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

## **5. DATA AUTHENTICATION AND VALIDATION GUIDELINES**

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
  - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
  - 5.1.3 Electronic contact information is provided and accurate;
  - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

## **6. MANDATORY RIGHTS PROTECTION MECHANISMS**

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
  - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

## 6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and incorporate a Sunrise Dispute Resolution Policy (SDRP).
- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

## 7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii)

specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.

- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

## **8. COSTS OF CLEARINGHOUSE**

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

## TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

***Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]***

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

***If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.***

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below. The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

\*\*\*\*\* [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)  
19 SEPTEMBER 2011**

**DRAFT PROCEDURE**

**1. Complaint**

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

## **2. Fees**

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

## **3. Administrative Review**

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

## **4. Notice and Locking of Domain**

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

## **5. The Response**

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
  - 5.4.1 Confirmation of Registrant data.
  - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
  - 5.4.3 Any defense which contradicts the Complainant's claims.
  - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
  - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
  - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
  - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
  - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
  - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
  - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

## **6. Default**

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

## **7. Examiners**

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

## **8. Examination Standards and Burden of Proof**

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

## **9. Determination**

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

## **10. Remedy**

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

## **11. Abusive Complaints**

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
  - 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
  - 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

## **12. Appeal**

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

## **13. Other Available Remedies**

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

**14. Review of URS**

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

**TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)**  
**19 SEPTEMBER 2011**

**1. Parties to the Dispute**

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

**2. Applicable Rules**

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

**3. Language**

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

**4. Communications and Time Limits**

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

## 5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

## 6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

### 6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

*(a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or*

*(b) impairing the distinctive character or the reputation of the complainant's mark; or*

*(c) creating a likelihood of confusion with the complainant's mark.*

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

### 6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

*(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and*

*(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:*

*(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or*

*(ii) impairs the distinctive character or the reputation of the complainant's mark, or*

*(iii) creates a likelihood of confusion with the complainant's mark.*

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

## **7. Complaint**

### **7.1 Filing:**

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

### **7.2 Content:**

**7.2.1** The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
  - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
  - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
  - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
  - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
  - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
  - (g) A statement that the proceedings are not being brought for any improper purpose.
  - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

## **8. Administrative Review of the Complaint**

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

## **9. Threshold Review**

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
  - 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
    - 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
    - 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
  - 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
  - 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein  
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

- 9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.
- 9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.
- 9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.
- 9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.
- 9.6 Provider shall electronically serve the Threshold Determination on all parties.
- 9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.
- 9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

## **10. Response to the Complaint**

- 10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.
- 10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.
- 10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

## **11. Reply**

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

## **12. Default**

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

## **13. Expert Panel**

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider appoint a one-person Expert Panel, unless any party requests a three-member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

**14. Costs**

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the “Complaint” section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant’s share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator’s share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

**15. Discovery**

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel’s own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

**16. Hearings**

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

**17. Burden of Proof**

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

**18. Remedies**

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
  - 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
  - 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
    - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
      - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
      - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
    - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
  - 18.5.1 Temporary bans from filing Complaints;
  - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
  - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

## **19. The Expert Panel Determination**

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

## **20. Appeal of Expert Determination**

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

## **21. Challenge of a Remedy**

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

**22. Availability of Court or Other Administrative Proceedings**

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

**REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)<sup>1</sup>**  
**19 SEPTEMBER 2011**

**1. Parties to the Dispute**

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

**2. Applicable Rules**

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

**3. Language**

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

**4. Communications and Time Limits**

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

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<sup>1</sup> Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

## **5. Standing**

5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.

5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.

5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.

5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

## **6. Standards**

6.1 For a claim to be successful, the claims must prove that:

6.1.1 The community invoked by the objector is a defined community;

6.1.2 There is a strong association between the community invoked and the gTLD label or string;

6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;

6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

## **7. Complaint**

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
  - 7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and
  - 7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.
- 7.2.4 A statement that the proceedings are not being brought for any improper purpose.
- 7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.
- 7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

## **8. Administrative Review of the Complaint**

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

## **9. Response to the Complaint**

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

## **10 Reply**

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

## **11. Default**

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

## **12. Expert Panel**

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

## **13. Costs**

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

#### **14. Discovery/Evidence**

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

#### **15. Hearings**

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

#### **16. Burden of Proof**

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

## **17. Recommended Remedies**

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
  - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

## **18. The Expert Determination**

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

## **19. Appeal of Expert Determination**

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

## **20. Breach**

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

**21. Availability of Court or Other Administrative Proceedings**

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



# gTLD Applicant Guidebook

(v. 2011-09-19)

**Module 6**

19 September 2011

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# Module 6

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## *Top-Level Domain Application - Terms and Conditions*

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval or rejection of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.
  
7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other materials prepared in connection with the

evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:

- a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
  - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.
12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and

evaluation of its application to represent ICANN adverse to Applicant in the matter.

14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

**EXHIBIT JJN-48**

# gTLD Applicant Guidebook

Version 2012-01-11



11 January 2012

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# Preamble

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## *New gTLD Program Background*

New gTLDs have been in the forefront of ICANN's agenda since its creation. The new gTLD program will open up the top level of the Internet's namespace to foster diversity, encourage competition, and enhance the utility of the DNS.

Currently the namespace consists of 22 gTLDs and over 250 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in that TLD. The gTLDs are served by over 900 registrars, who interact with registrants to perform domain name registration and other related services. The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market. When the program launches its first application round, ICANN expects a diverse set of applications for new gTLDs, including IDNs, creating significant potential for new uses and benefit to Internet users across the globe.

The program has its origins in carefully deliberated policy development work by the ICANN community. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from a wide variety of stakeholder groups—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008. A thorough brief to the policy process and outcomes can be found at <http://gnso.icann.org/issues/new-gtlds>.

ICANN's work next focused on implementation: creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval. This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook. In parallel, ICANN has established the resources needed to successfully launch and operate the program. This process concluded with the decision by the ICANN Board of Directors in June 2011 to launch the New gTLD Program.

For current information, timelines and activities related to the New gTLD Program, please go to <http://www.icann.org/en/topics/new-gtld-program.htm>.



# gTLD Applicant Guidebook

(v. 2012-01-11)

Module 1

11 January 2012

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# Module 1

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## *Introduction to the gTLD Application Process*

This module gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required, and when and how to submit them.

This module also describes the conditions associated with particular types of applications, and the stages of the application life cycle.

Prospective applicants are encouraged to read and become familiar with the contents of this entire module, as well as the others, before starting the application process to make sure they understand what is required of them and what they can expect at each stage of the application evaluation process.

For the complete set of the supporting documentation and more about the origins, history and details of the policy development background to the New gTLD Program, please see <http://gnso.icann.org/issues/new-gtlds/>.

This Applicant Guidebook is the implementation of Board-approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.

### *1.1 Application Life Cycle and Timelines*

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This section provides a description of the stages that an application passes through once it is submitted. Some stages will occur for all applications submitted; others will only occur in specific circumstances. Applicants should be aware of the stages and steps involved in processing applications received.

#### *1.1.1 Application Submission Dates*

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The user registration and application submission periods open at **00:01 UTC 12 January 2012**.

The user registration period closes at **23:59 UTC 29 March 2012**. New users to TAS will not be accepted beyond this

time. Users already registered will be able to complete the application submission process.

Applicants should be aware that, due to required processing steps (i.e., online user registration, application submission, fee submission, and fee reconciliation) and security measures built into the online application system, it might take substantial time to perform all of the necessary steps to submit a complete application. Accordingly, applicants are encouraged to submit their completed applications and fees as soon as practicable after the Application Submission Period opens. Waiting until the end of this period to begin the process may not provide sufficient time to submit a complete application before the period closes. Accordingly, new user registrations will not be accepted after the date indicated above.

The application submission period closes at **23:59 UTC 12 April 2012**.

To receive consideration, all applications must be submitted electronically through the online application system by the close of the application submission period.

An application will not be considered, in the absence of exceptional circumstances, if:

- It is received after the close of the application submission period.
- The application form is incomplete (either the questions have not been fully answered or required supporting documents are missing). Applicants will not ordinarily be permitted to supplement their applications after submission.
- The evaluation fee has not been paid by the deadline. Refer to Section 1.5 for fee information.

ICANN has gone to significant lengths to ensure that the online application system will be available for the duration of the application submission period. In the event that the system is not available, ICANN will provide alternative instructions for submitting applications on its website.

### ***1.1.2 Application Processing Stages***

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This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be

applicable in any given case are also shown. A brief description of each stage follows.

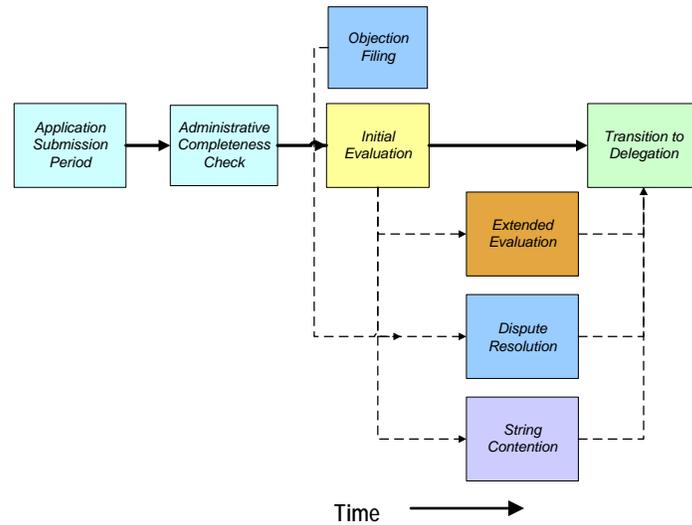


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

### 1.1.2.1 Application Submission Period

At the time the application submission period opens, those wishing to submit new gTLD applications can become registered users of the TLD Application System (TAS).

After completing the user registration, applicants will supply a deposit for each requested application slot (see section 1.4), after which they will receive access to the full application form. To complete the application, users will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.2 of this module must also be submitted through the online application system as instructed in the relevant questions.

Applicants must also submit their evaluation fees during this period. Refer to Section 1.5 of this module for additional information about fees and payments.

Each application slot is for one gTLD. An applicant may submit as many applications as desired; however, there is no means to apply for more than one gTLD in a single application.

Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

### *1.1.2.2 Administrative Completeness Check*

Immediately following the close of the application submission period, ICANN will begin checking all applications for completeness. This check ensures that:

- All mandatory questions are answered;
- Required supporting documents are provided in the proper format(s); and
- The evaluation fees have been received.

ICANN will post the public portions of all applications considered complete and ready for evaluation within two weeks of the close of the application submission period. Certain questions relate to internal processes or information: applicant responses to these questions will not be posted. Each question is labeled in the application form as to whether the information will be posted. See posting designations for the full set of questions in the attachment to Module 2.

The administrative completeness check is expected to be completed for all applications in a period of approximately 8 weeks, subject to extension depending on volume. In the event that all applications cannot be processed within this period, ICANN will post updated process information and an estimated timeline.

### *1.1.2.3 Comment Period*

Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of global Internet communities, and developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

ICANN will open a comment period (the Application Comment period) at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2). This period will allow time for the community to review and submit comments on posted application materials

(referred to as “application comments.”) The comment forum will require commenters to associate comments with specific applications and the relevant panel. Application comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated comment forum within the stated time period.**

Evaluators will perform due diligence on the application comments (i.e., determine their relevance to the evaluation, verify the accuracy of claims, analyze meaningfulness of references cited) and take the information provided in these comments into consideration. In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant. Statements concerning consideration of application comments that have impacted the evaluation decision will be reflected in the evaluators’ summary reports, which will be published at the end of Extended Evaluation.

Comments received after the 60-day period will be stored and available (along with comments received during the comment period) for other considerations, such as the dispute resolution process, as described below.

In the new gTLD application process, all applicants should be aware that that comment fora are a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications. Anyone may submit a comment in a public comment forum.

**Comments and the Formal Objection Process:** A distinction should be made between application comments, which may be relevant to ICANN’s task of determining whether applications meet the established criteria, and formal objections that concern matters outside those evaluation criteria. The formal objection process was created to allow a full and fair consideration of objections based on certain limited grounds outside ICANN’s evaluation of applications on their merits (see subsection 3.2).

Public comments will not be considered as formal objections. Comments on matters associated with formal objections will not be considered by panels during Initial Evaluation. These comments will be available to and may

be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.9). However, in general, application comments have a very limited role in the dispute resolution process.

**String Contention:** Comments designated for the Community Priority Panel, as relevant to the criteria in Module 4, may be taken into account during a Community Priority Evaluation.

**Government Notifications:** Governments may provide a notification using the application comment forum to communicate concerns relating to national laws. However, a government's notification of concern will not in itself be deemed to be a formal objection. A notification by a government does not constitute grounds for rejection of a gTLD application. A government may elect to use this comment mechanism to provide such a notification, in addition to or as an alternative to the GAC Early Warning procedure described in subsection 1.1.2.4 below.

Governments may also communicate directly to applicants using the contact information posted in the application, e.g., to send a notification that an applied-for gTLD string might be contrary to a national law, and to try to address any concerns with the applicant.

**General Comments:** A general public comment forum will remain open through all stages of the evaluation process, to provide a means for the public to bring forward any other relevant information or issues.

#### **1.1.2.4 GAC Early Warning**

Concurrent with the 60-day comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs (see subsection 1.1.2.7) or of a formal objection (see subsection 1.1.2.6) at a later stage in the process.

A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.<sup>1</sup> The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC. The GAC Early Warning notice may include a nominated point of contact for further information.

GAC consensus is not required for a GAC Early Warning to be issued. Minimally, the GAC Early Warning must be provided in writing to the ICANN Board, and be clearly labeled as a GAC Early Warning. This may take the form of an email from the GAC Chair to the ICANN Board. For GAC Early Warnings to be most effective, they should include the reason for the warning and identify the objecting countries.

Upon receipt of a GAC Early Warning, the applicant may elect to withdraw the application for a partial refund (see subsection 1.5.1), or may elect to continue with the application (this may include meeting with representatives from the relevant government(s) to try to address the concern). To qualify for the refund described in subsection 1.5.1, the applicant must provide notification to ICANN of its election to withdraw the application within 21 calendar days of the date of GAC Early Warning delivery to the applicant.

To reduce the possibility of a GAC Early Warning, all applicants are encouraged to identify potential sensitivities in advance of application submission, and to work with the relevant parties (including governments) beforehand to mitigate concerns related to the application.

#### **1.1.2.5 Initial Evaluation**

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation. At the beginning of this period, background screening on the applying entity and the individuals named in the application will be conducted. Applications

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<sup>1</sup> While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."

must pass this step in conjunction with the Initial Evaluation reviews.

There are two main elements of the Initial Evaluation:

1. String reviews (concerning the applied-for gTLD string). String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS, including problems caused by similarity to existing TLDs or reserved names.
2. Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services). Applicant reviews include a determination of whether the applicant has the requisite technical, operational, and financial capabilities to operate a registry.

By the conclusion of the Initial Evaluation period, ICANN will post notice of all Initial Evaluation results. Depending on the volume of applications received, such notices may be posted in batches over the course of the Initial Evaluation period.

The Initial Evaluation is expected to be completed for all applications in a period of approximately 5 months. If the volume of applications received significantly exceeds 500, applications will be processed in batches and the 5-month timeline will not be met. The first batch will be limited to 500 applications and subsequent batches will be limited to 400 to account for capacity limitations due to managing extended evaluation, string contention, and other processes associated with each previous batch.

If batching is required, a secondary time-stamp process will be employed to establish the batches. (Batching priority will not be given to an application based on the time at which the application was submitted to ICANN, nor will batching priority be established based on a random selection method.)

The secondary time-stamp process will require applicants to obtain a time-stamp through a designated process which will occur after the close of the application submission period. The secondary time stamp process will occur, if required, according to the details to be published on ICANN's website. (Upon the Board's approval of a final designation of the operational details of the "secondary timestamp" batching process, the final plan will be added as a process within the Applicant Guidebook.)

If batching is required, the String Similarity review will be completed on all applications prior to the establishment of evaluation priority batches. For applications identified as part of a contention set, the entire contention set will be kept together in the same batch.

If batches are established, ICANN will post updated process information and an estimated timeline.

Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate will not exceed 1,000 per year in any case, no matter how many applications are received.<sup>2</sup>

#### 1.1.2.6 *Objection Filing*

Formal objections to applications can be filed on any of four enumerated grounds, by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in subsection 1.1.2.2, and will last for approximately 7 months.

Objectors must file such formal objections directly with dispute resolution service providers (DRSPs), not with ICANN. The objection filing period will close following the end of the Initial Evaluation period (refer to subsection 1.1.2.5), with a two-week window of time between the posting of the Initial Evaluation results and the close of the objection filing period. Objections that have been filed during the objection filing period will be addressed in the dispute resolution stage, which is outlined in subsection 1.1.2.9 and discussed in detail in Module 3.

All applicants should be aware that third parties have the opportunity to file objections to any application during the objection filing period. Applicants whose applications are the subject of a formal objection will have an opportunity to file a response according to the dispute resolution service provider's rules and procedures. An applicant wishing to file a formal objection to another application that has been submitted would do so within the objection filing period, following the objection filing procedures in Module 3.

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where

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<sup>2</sup> See "Delegation Rate Scenarios for New gTLDs" at <http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf> for additional discussion.

possible, consult with interested parties to mitigate any concerns in advance.

#### *1.1.2.7 Receipt of GAC Advice on New gTLDs*

The GAC may provide public policy advice directly to the ICANN Board on any application. The procedure for GAC Advice on New gTLDs described in Module 3 indicates that, to be considered by the Board during the evaluation process, the GAC Advice on New gTLDs must be submitted by the close of the objection filing period. A GAC Early Warning is not a prerequisite to use of the GAC Advice process.

If the Board receives GAC Advice on New gTLDs stating that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved. If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.

See Module 3 for additional detail on the procedures concerning GAC Advice on New gTLDs.

#### *1.1.2.8 Extended Evaluation*

*Extended Evaluation is available only to certain applicants that do not pass Initial Evaluation.*

Applicants failing certain elements of the Initial Evaluation can request an Extended Evaluation. If the applicant does not pass Initial Evaluation and does not expressly request an Extended Evaluation, the application will proceed no further. The Extended Evaluation period allows for an additional exchange of information between the applicant and evaluators to clarify information contained in the application. The reviews performed in Extended Evaluation do not introduce additional evaluation criteria.

An application may be required to enter an Extended Evaluation if one or more proposed registry services raise technical issues that might adversely affect the security or stability of the DNS. The Extended Evaluation period provides a time frame for these issues to be investigated. Applicants will be informed if such a review is required by the end of the Initial Evaluation period.

Evaluators and any applicable experts consulted will communicate the conclusions resulting from the additional review by the end of the Extended Evaluation period.

At the conclusion of the Extended Evaluation period, ICANN will post summary reports, by panel, from the Initial and Extended Evaluation periods.

If an application passes the Extended Evaluation, it can then proceed to the next relevant stage. If the application does not pass the Extended Evaluation, it will proceed no further.

The Extended Evaluation is expected to be completed for all applications in a period of approximately 5 months, though this timeframe could be increased based on volume. In this event, ICANN will post updated process information and an estimated timeline.

#### **1.1.2.9 Dispute Resolution**

*Dispute resolution applies only to applicants whose applications are the subject of a formal objection.*

Where formal objections are filed and filing fees paid during the objection filing period, independent dispute resolution service providers (DRSPs) will initiate and conclude proceedings based on the objections received. The formal objection procedure exists to provide a path for those who wish to object to an application that has been submitted to ICANN. Dispute resolution service providers serve as the fora to adjudicate the proceedings based on the subject matter and the needed expertise. Consolidation of objections filed will occur where appropriate, at the discretion of the DRSP.

As a result of a dispute resolution proceeding, either the applicant will prevail (in which case the application can proceed to the next relevant stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure). In the event of multiple objections, an applicant must prevail in all dispute resolution proceedings concerning the application to proceed to the next relevant stage. Applicants will be notified by the DRSP(s) of the results of dispute resolution proceedings.

Dispute resolution proceedings, where applicable, are expected to be completed for all applications within approximately a 5-month time frame. In the event that volume is such that this timeframe cannot be accommodated, ICANN will work with the dispute resolution service providers to create processing procedures and post updated timeline information.

### 1.1.2.10 String Contention

*String contention applies only when there is more than one qualified application for the same or similar gTLD strings.*

String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings. In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

Applicants are encouraged to resolve string contention cases among themselves prior to the string contention resolution stage. In the absence of resolution by the contending applicants, string contention cases are resolved either through a community priority evaluation (if a community-based applicant elects it) or through an auction.

In the event of contention between applied-for gTLD strings that represent geographic names, the parties may be required to follow a different process to resolve the contention. See subsection 2.2.1.4 of Module 2 for more information.

Groups of applied-for strings that are either identical or similar are called contention sets. All applicants should be aware that if an application is identified as being part of a contention set, string contention resolution procedures will not begin until all applications in the contention set have completed all aspects of evaluation, including dispute resolution, if applicable.

To illustrate, as shown in Figure 1-2, Applicants A, B, and C all apply for .EXAMPLE and are identified as a contention set. Applicants A and C pass Initial Evaluation, but Applicant B does not. Applicant B requests Extended Evaluation. A third party files an objection to Applicant C’s application, and Applicant C enters the dispute resolution process. Applicant A must wait to see whether Applicants B and C successfully complete the Extended Evaluation and dispute resolution phases, respectively, before it can proceed to the string contention resolution stage. In this example, Applicant B passes the Extended Evaluation, but Applicant C does not prevail in the dispute resolution proceeding. String contention resolution then proceeds between Applicants A and B.

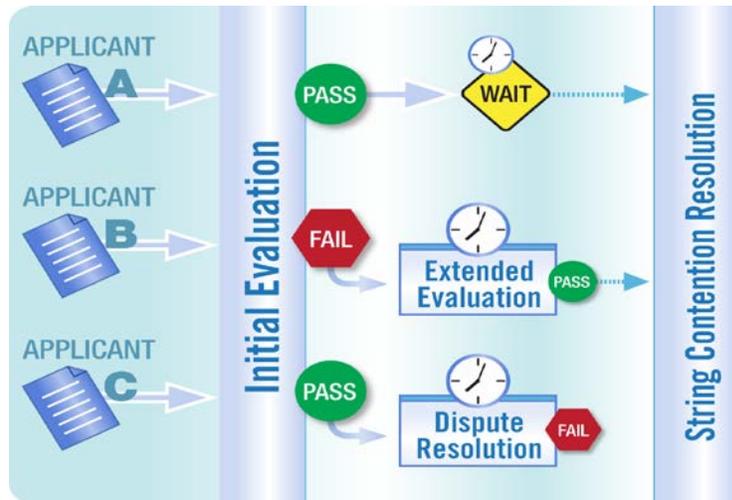


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

Applicants prevailing in a string contention resolution procedure will proceed toward delegation of the applied-for gTLDs.

String contention resolution for a contention set is estimated to take from 2.5 to 6 months to complete. The time required will vary per case because some contention cases may be resolved in either a community priority evaluation or an auction, while others may require both processes.

#### 1.1.2.11 Transition to Delegation

Applicants successfully completing all the relevant stages outlined in this subsection 1.1.2 are required to carry out a series of concluding steps before delegation of the applied-for gTLD into the root zone. These steps include execution of a registry agreement with ICANN and completion of a pre-delegation technical test to validate information provided in the application.

Following execution of a registry agreement, the prospective registry operator must complete technical set-up and show satisfactory performance on a set of technical tests before delegation of the gTLD into the root zone may be initiated. If the pre-delegation testing requirements are not satisfied so that the gTLD can be delegated into the root zone within the time frame specified in the registry agreement, ICANN may in its sole and absolute discretion elect to terminate the registry agreement.

Once all of these steps have been successfully completed, the applicant is eligible for delegation of its applied-for gTLD into the DNS root zone.

It is expected that the transition to delegation steps can be completed in approximately 2 months, though this could take more time depending on the applicant's level of preparedness for the pre-delegation testing and the volume of applications undergoing these steps concurrently.

### 1.1.3 Lifecycle Timelines

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Based on the estimates for each stage described in this section, the lifecycle for a straightforward application could be approximately 9 months, as follows:

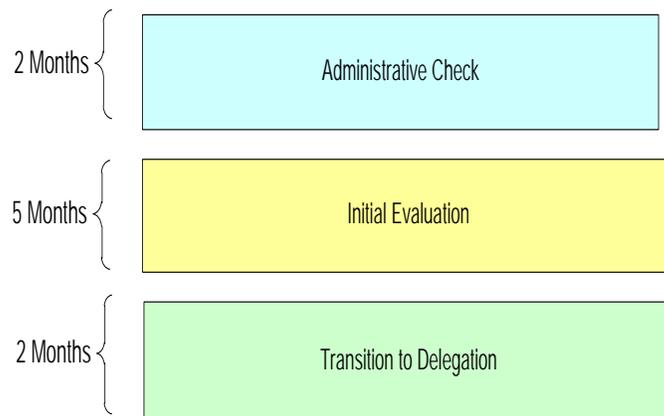


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

The lifecycle for a highly complex application could be much longer, such as 20 months in the example below:

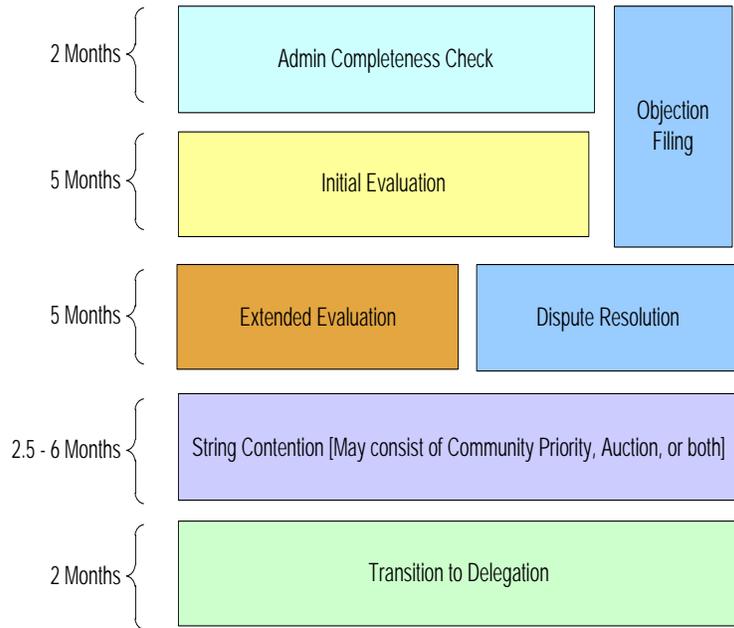


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

### 1.1.4 Posting Periods

The results of application reviews will be made available to the public at various stages in the process, as shown below.

Period	Posting Content
During Administrative Completeness Check	Public portions of all applications (posted within 2 weeks of the start of the Administrative Completeness Check).
End of Administrative Completeness Check	Results of Administrative Completeness Check.
GAC Early Warning Period	GAC Early Warnings received.
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review.  Contention sets resulting from String Similarity review.

Period	Posting Content
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	GAC Advice received.
End of Extended Evaluation	Application status updates with all Extended Evaluation results.  Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection Filing/Dispute Resolution	Information on filed objections and status updates available via Dispute Resolution Service Provider websites.  Notice of all objections posted by ICANN after close of objection filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed.  Pre-delegation testing status updated.

### ***1.1.5 Sample Application Scenarios***

The following scenarios briefly show a variety of ways in which an application may proceed through the evaluation process. The table that follows exemplifies various processes and outcomes. This is not intended to be an exhaustive list of possibilities. There are other possible combinations of paths an application could follow.

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number

of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond nine months, it is expected that most applications will complete the process within the nine-month timeframe.

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
1	Pass	N/A	None	No	Yes	9 months
2	Fail	Pass	None	No	Yes	14 months
3	Pass	N/A	None	Yes	Yes	11.5 – 15 months
4	Pass	N/A	Applicant prevails	No	Yes	14 months
5	Pass	N/A	Objector prevails	N/A	No	12 months
6	Fail	Quit	N/A	N/A	No	7 months
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

**Scenario 1 – Pass Initial Evaluation, No Objection, No Contention** – In the most straightforward case, the application passes Initial Evaluation and there is no need for an Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the applied-for gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD. Most applications are expected to complete the process within this timeframe.

**Scenario 2 – Extended Evaluation, No Objection, No Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed

during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

**Scenario 3 – Pass Initial Evaluation, No Objection, Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the application prevails in the contention resolution, so the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

**Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

**Scenario 5 – Pass Initial Evaluation, Lose Objection** – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection period, multiple objections are filed by one or more objectors with standing for one or more of the four enumerated objection grounds. Each objection is heard by a dispute resolution service provider panel. In this case, the panels find in favor of the applicant for most of the objections, but one finds in favor of the objector. As one of the objections has been upheld, the application does not proceed.

**Scenario 6 – Fail Initial Evaluation, Applicant Withdraws** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant decides to withdraw the application rather than continuing with Extended Evaluation. The application does not proceed.

**Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation** -- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the

application fails Extended Evaluation also. The application does not proceed.

**Scenario 8 – Extended Evaluation, Win Objection, Pass Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the applicant prevails over other applications in the contention resolution procedure, the applicant can enter into a registry agreement, and the application can proceed toward delegation of the applied-for gTLD.

**Scenario 9 – Extended Evaluation, Objection, Fail Contention** – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, another applicant prevails in the contention resolution procedure, and the application does not proceed.

**Transition to Delegation** – After an application has successfully completed Initial Evaluation, and other stages as applicable, the applicant is required to complete a set of steps leading to delegation of the gTLD, including execution of a registry agreement with ICANN, and completion of pre-delegation testing. Refer to Module 5 for a description of the steps required in this stage.

### **1.1.6 Subsequent Application Rounds**

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ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

ICANN has committed to reviewing the effects of the New gTLD Program on the operations of the root zone system after the first application round, and will defer the delegations in a second application round until it is determined that the delegations resulting from the first round did not jeopardize root zone system security or stability.

It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term.

## ***1.2 Information for All Applicants***

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### ***1.2.1 Eligibility***

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Established corporations, organizations, or institutions in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered. Applications from or on behalf of yet-to-be-formed legal entities, or applications presupposing the future formation of a legal entity (for example, a pending Joint Venture) will not be considered.

ICANN has designed the New gTLD Program with multiple stakeholder protection mechanisms. Background screening, features of the gTLD Registry Agreement, data and financial escrow mechanisms are all intended to provide registrant and user protections.

The application form requires applicants to provide information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders of that entity. The names and positions of individuals included in the application will be published as part of the application; other information collected about the individuals will not be published.

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section. If requested by ICANN, all applicants will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct background screening activities.

ICANN will perform background screening in only two areas: (1) General business diligence and criminal history; and (2) History of cybersquatting behavior. The criteria used for criminal history are aligned with the “crimes of trust” standard sometimes used in the banking and finance industry.

**In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program.**

- a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;
- b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;
- c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;
- e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
- f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;
- g. has ever been convicted of any violent or sexual offense victimizing children, the

elderly, or individuals with disabilities;

- h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988<sup>3</sup>;
- i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)<sup>4,5</sup>;
- j. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes above (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents), within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;
- m. has been involved in a pattern of adverse, final decisions indicating that the applicant

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<sup>3</sup> <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

<sup>4</sup> <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

<sup>5</sup> It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.

- n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;
- o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application based on any information identified during the background screening process. For example, a final and legally binding decision obtained by a national law enforcement or consumer protection authority finding that the applicant was engaged in fraudulent and deceptive commercial practices as defined in the Organization for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders<sup>6</sup> may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

All applicants are required to provide complete and detailed explanations regarding any of the above events as part of the application. Background screening information will not be made publicly available by ICANN.

**Registrar Cross-Ownership** -- ICANN-accredited registrars are eligible to apply for a gTLD. However, all gTLD registries

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<sup>6</sup> [http://www.oecd.org/document/56/0,3746,en\\_2649\\_34267\\_2515000\\_1\\_1\\_1\\_1.00.html](http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1.00.html)

are required to abide by a Code of Conduct addressing, *inter alia*, non-discriminatory access for all authorized registrars. ICANN reserves the right to refer any application to the appropriate competition authority relative to any cross-ownership issues.

**Legal Compliance** -- ICANN must comply with all U.S. laws, rules, and regulations. One such set of regulations is the economic and trade sanctions program administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. These sanctions have been imposed on certain countries, as well as individuals and entities that appear on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List). ICANN is prohibited from providing most goods or services to residents of sanctioned countries or their governmental entities or to SDNs without an applicable U.S. government authorization or exemption. ICANN generally will not seek a license to provide goods or services to an individual or entity on the SDN List. In the past, when ICANN has been requested to provide services to individuals or entities that are not SDNs, but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license.

### 1.2.2 Required Documents

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All applicants should be prepared to submit the following documents, which are required to accompany each application:

1. **Proof of legal establishment** – Documentation of the applicant's establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.
2. **Financial statements** – Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.

As indicated in the relevant questions, supporting documentation should be submitted in the original language. English translations are not required.

All documents must be valid at the time of submission. Refer to the Evaluation Criteria, attached to Module 2, for additional details on the requirements for these documents.

Some types of supporting documentation are required only in certain cases:

1. **Community endorsement** – If an applicant has designated its application as community-based (see section 1.2.3), it will be asked to submit a written endorsement of its application by one or more established institutions representing the community it has named. An applicant may submit written endorsements from multiple institutions. If applicable, this will be submitted in the section of the application concerning the community-based designation.

At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement of support for the application, and supply the contact information of the entity providing the endorsement.

Written endorsements from individuals need not be submitted with the application, but may be submitted in the application comment forum.

2. **Government support or non-objection** – If an applicant has applied for a gTLD string that is a geographic name (as defined in this Guidebook), the applicant is required to submit documentation of support for or non-objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.
3. **Documentation of third-party funding commitments** – If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

### **1.2.3 Community-Based Designation**

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All applicants are required to designate whether their application is **community-based**.

#### **1.2.3.1 Definitions**

For purposes of this Applicant Guidebook, a **community-based gTLD** is a gTLD that is operated for the benefit of a clearly delineated community. Designation or non-

designation of an application as community-based is entirely at the discretion of the applicant. Any applicant may designate its application as community-based; however, each applicant making this designation is asked to substantiate its status as representative of the community it names in the application by submission of written endorsements in support of the application. Additional information may be requested in the event of a community priority evaluation (refer to section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a clearly delineated community.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD, including appropriate security verification procedures, commensurate with the community-based purpose it has named.
4. Have its application endorsed in writing by one or more established institutions representing the community it has named.

For purposes of differentiation, an application that has not been designated as community-based will be referred to hereinafter in this document as a **standard application**. A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based.

### *1.2.3.2 Implications of Application Designation*

Applicants should understand how their designation as community-based or standard will affect application processing at particular stages, and, if the application is successful, execution of the registry agreement and subsequent obligations as a gTLD registry operator, as described in the following paragraphs.

**Objection / Dispute Resolution** – All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or

declared the gTLD to be aimed at a particular community. Refer to Module 3, Objection Procedures.

**String Contention** – Resolution of string contention may include one or more components, depending on the composition of the contention set and the elections made by community-based applicants.

- A **settlement between the parties** can occur at any time after contention is identified. The parties will be encouraged to meet with an objective to settle the contention. Applicants in contention always have the opportunity to resolve the contention voluntarily, resulting in the withdrawal of one or more applications, before reaching the contention resolution stage.
- A **community priority evaluation** will take place only if a community-based applicant in a contention set elects this option. All community-based applicants in a contention set will be offered this option in the event that there is contention remaining after the applications have successfully completed all previous evaluation stages.
- An **auction** will result for cases of contention not resolved by community priority evaluation or agreement between the parties. Auction occurs as a contention resolution means of last resort. If a community priority evaluation occurs but does not produce a clear winner, an auction will take place to resolve the contention.

Refer to Module 4, String Contention Procedures, for detailed discussions of contention resolution procedures.

**Contract Execution and Post-Delegation** – A community-based applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation. Material changes to the contract, including changes to the community-based nature of the gTLD and any associated provisions, may only be made with ICANN's approval. The determination of whether to approve changes requested by the applicant will be at ICANN's discretion. Proposed criteria for approving such changes are the subject of policy discussions.

Community-based applications are intended to be a narrow category, for applications where there are

unambiguous associations among the applicant, the community served, and the applied-for gTLD string. Evaluation of an applicant's designation as community-based will occur only in the event of a contention situation that results in a community priority evaluation. However, any applicant designating its application as community-based will, if the application is approved, be bound by the registry agreement to implement the community-based restrictions it has specified in the application. This is true even if there are no contending applicants.

### *1.2.3.3 Changes to Application Designation*

An applicant may not change its designation as standard or community-based once it has submitted a gTLD application for processing.

### *1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs*

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All applicants should be aware that approval of an application and entry into a registry agreement with ICANN do not guarantee that a new gTLD will immediately function throughout the Internet. Past experience indicates that network operators may not immediately fully support new top-level domains, even when these domains have been delegated in the DNS root zone, since third-party software modification may be required and may not happen immediately.

Similarly, software applications sometimes attempt to validate domain names and may not recognize new or unknown top-level domains. ICANN has no authority or ability to require that software accept new top-level domains, although it does prominently publicize which top-level domains are valid and has developed a basic tool to assist application providers in the use of current root-zone data.

ICANN encourages applicants to familiarize themselves with these issues and account for them in their startup and launch plans. Successful applicants may find themselves expending considerable efforts working with providers to achieve acceptance of their new top-level domains.

Applicants should review <http://www.icann.org/en/topics/TLD-acceptance/> for background. IDN applicants should also review the material concerning experiences with IDN test strings in the root zone (see <http://idn.icann.org/>).

### ***1.2.5 Notice concerning TLD Delegations***

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ICANN is only able to create TLDs as delegations in the DNS root zone, expressed using NS records with any corresponding DS records and glue records. There is no policy enabling ICANN to place TLDs as other DNS record types (such as A, MX, or DNAME records) in the root zone.

### ***1.2.6 Terms and Conditions***

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All applicants must agree to a standard set of Terms and Conditions for the application process. The Terms and Conditions are available in Module 6 of this guidebook.

### ***1.2.7 Notice of Changes to Information***

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If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

### ***1.2.8 Voluntary Designation for High Security Zones***

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An ICANN stakeholder group has considered development of a possible special designation for "High Security Zone Top Level Domains" ("HSTLDs"). The group's Final Report can be found at <http://www.icann.org/en/topics/new-gtlds/hstld-final-report-11mar11-en.pdf>.

The Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

### ***1.2.9 Security and Stability***

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*Root Zone Stability:* There has been significant study, analysis, and consultation in preparation for launch of the

New gTLD Program, indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

It is estimated that 200-300 TLDs will be delegated annually, and determined that in no case will more than 1000 new gTLDs be added to the root zone in a year. The delegation rate analysis, consultations with the technical community, and anticipated normal operational upgrade cycles all lead to the conclusion that the new gTLD delegations will have no significant impact on the stability of the root system. Modeling and reporting will continue during, and after, the first application round so that root-scaling discussions can continue and the delegation rates can be managed as the program goes forward.

All applicants should be aware that delegation of any new gTLDs is conditional on the continued absence of significant negative impact on the security or stability of the DNS and the root zone system (including the process for delegating TLDs in the root zone). In the event that there is a reported impact in this regard and processing of applications is delayed, the applicants will be notified in an orderly and timely manner.

#### *1.2.10 Resources for Applicant Assistance*

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A variety of support resources are available to gTLD applicants. Financial assistance will be available to a limited number of eligible applicants. To request financial assistance, applicants must submit a separate financial assistance application in addition to the gTLD application form.

To be eligible for consideration, all financial assistance applications must be received by **23:59 UTC 12 April 2012**. Financial assistance applications will be evaluated and scored against pre-established criteria.

In addition, ICANN maintains a webpage as an informational resource for applicants seeking assistance, and organizations offering support.

See <http://newgtlds.icann.org/applicants/candidate-support> for details on these resources.

#### *1.2.11 Updates to the Applicant Guidebook*

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As approved by the ICANN Board of Directors, this Guidebook forms the basis of the New gTLD Program. ICANN reserves the right to make reasonable updates and

changes to the Applicant Guidebook at any time, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process. Any such updates or revisions will be posted on ICANN's website.

### 1.3 Information for Internationalized Domain Name Applicants

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Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs). IDNs are domain names including characters used in the local representation of languages not written with the basic Latin alphabet (a - z), European-Arabic digits (0 - 9), and the hyphen (-). As described below, IDNs require the insertion of A-labels into the DNS root zone.

#### 1.3.1 IDN-Specific Requirements

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An applicant for an IDN string must provide information indicating compliance with the IDNA protocol and other technical requirements. The IDNA protocol and its documentation can be found at <http://icann.org/en/topics/idn/rfcs.htm>.

Applicants must provide applied-for gTLD strings in the form of both a **U-label** (the IDN TLD in local characters) and an **A-label**.

An A-label is the ASCII form of an IDN label. Every IDN A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm, making a maximum of 63 total ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123, and elsewhere.

A U-label is the Unicode form of an IDN label, which a user expects to see displayed in applications.

For example, using the current IDN test string in Cyrillic script, the U-label is <испытание> and the A-label is <xn--80akhbyknj4f>. An A-label must be capable of being produced by conversion from a U-label and a U-label must be capable of being produced by conversion from an A-label.

Applicants for IDN gTLDs will also be required to provide the following at the time of the application:

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for gTLD string, both according to the ISO codes for the representation of names of languages, and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).<sup>7</sup>

If an applicant is applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications. While it is not possible to ensure that all rendering problems are avoided, it is important that as many as possible are identified early and that the potential registry operator is aware of these issues. Applicants can become familiar with these issues by understanding the IDNA protocol (see <http://www.icann.org/en/topics/idn/rfcs.htm>), and by active participation in the IDN wiki (see <http://idn.icann.org/>) where some rendering problems are demonstrated.

6. **[Optional]** - Representation of label in phonetic alphabet. The applicant may choose to provide its applied-for gTLD string notated according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>). Note that this information will not be evaluated or scored. The information, if provided, will be used as a guide to ICANN in responding to inquiries or speaking of the application in public presentations.

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<sup>7</sup> See examples at <http://stupid.domain.name/node/683>

### 1.3.2 IDN Tables

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An IDN table provides the list of characters eligible for registration in domain names according to the registry's policy. It identifies any multiple characters that are considered equivalent for domain name registration purposes ("variant characters"). Variant characters occur where two or more characters can be used interchangeably.

Examples of IDN tables can be found in the Internet Assigned Numbers Authority (IANA) IDN Repository at <http://www.iana.org/procedures/idn-repository.html>.

In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string (the "top level tables"). IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second or lower levels.

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines<sup>8</sup> and any updates thereto, including:

- Complying with IDN technical standards.
- Employing an inclusion-based approach (i.e., code points not explicitly permitted by the registry are prohibited).
- Defining variant characters.
- Excluding code points not permissible under the guidelines, e.g., line-drawing symbols, pictographic dingbats, structural punctuation marks.
- Developing tables and registration policies in collaboration with relevant stakeholders to address common issues.
- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

An applicant's IDN tables should help guard against user confusion in the deployment of IDN gTLDs. Applicants are strongly urged to consider specific linguistic and writing system issues that may cause problems when characters are used in domain names, as part of their work of defining variant characters.

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<sup>8</sup> See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>

To avoid user confusion due to differing practices across TLD registries, it is recommended that applicants cooperate with TLD operators that offer domain name registration with the same or visually similar characters.

As an example, languages or scripts are often shared across geographic boundaries. In some cases, this can cause confusion among the users of the corresponding language or script communities. Visual confusion can also exist in some instances between different scripts (for example, Greek, Cyrillic and Latin).

Applicants will be asked to describe the process used in developing the IDN tables submitted. ICANN may compare an applicant's IDN table with IDN tables for the same languages or scripts that already exist in the IANA repository or have been otherwise submitted to ICANN. If there are inconsistencies that have not been explained in the application, ICANN may ask the applicant to detail the rationale for differences. For applicants that wish to conduct and review such comparisons prior to submitting a table to ICANN, a table comparison tool will be available.

ICANN will accept the applicant's IDN tables based on the factors above.

Once the applied-for string has been delegated as a TLD in the root zone, the applicant is required to submit IDN tables for lodging in the IANA Repository of IDN Practices. For additional information, see existing tables at <http://iana.org/domains/idn-tables/>, and submission guidelines at <http://iana.org/procedures/idn-repository.html>.

### 1.3.3 IDN Variant TLDs

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A variant TLD string results from the substitution of one or more characters in the applied-for gTLD string with variant characters based on the applicant's top level tables.

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.<sup>9</sup> Declaring variant strings is informative only and will not imply any right or claim to the declared variant strings.

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<sup>9</sup> The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5>.

When a variant delegation process is established, applicants may be required to submit additional information such as implementation details for the variant TLD management mechanism, and may need to participate in a subsequent evaluation process, which could contain additional fees and review steps.

The following scenarios are possible during the gTLD evaluation process:

- a. Applicant declares variant strings to the applied-for gTLD string in its application. If the application is successful, the applied-for gTLD string will be delegated to the applicant. The declared variant strings are noted for future reference. These declared variant strings will not be delegated to the applicant along with the applied-for gTLD string, nor will the applicant have any right or claim to the declared variant strings.

Variant strings listed in successful gTLD applications will be tagged to the specific application and added to a "Declared Variants List" that will be available on ICANN's website. A list of pending (i.e., declared) variant strings from the IDN ccTLD Fast Track is available at <http://icann.org/en/topics/idn/fast-track/string-evaluation-completion-en.htm>.

ICANN may perform independent analysis on the declared variant strings, and will not necessarily include all strings listed by the applicant on the Declared Variants List.

- b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.
- c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

Each variant string declared in the application must also conform to the string requirements in section 2.2.1.3.2.

Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be

based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

Declaration of variant strings in an application does not provide the applicant any right or reservation to a particular string. Variant strings on the Declared Variants List may be subject to subsequent additional review per a process and criteria to be defined.

It should be noted that while variants for second and lower-level registrations are defined freely by the local communities without any ICANN validation, there may be specific rules and validation criteria specified for variant strings to be allowed at the top level. It is expected that the variant information provided by applicants in the first application round will contribute to a better understanding of the issues and assist in determining appropriate review steps and fee levels going forward.

## ***1.4 Submitting an Application***

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Applicants may complete the application form and submit supporting documents using ICANN's TLD Application System (TAS). To access the system, each applicant must first register as a TAS user.

As TAS users, applicants will be able to provide responses in open text boxes and submit required supporting documents as attachments. Restrictions on the size of attachments as well as the file formats are included in the instructions on the TAS site.

Except where expressly provided within the question, all application materials must be submitted in English.

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in accordance with specific instructions from ICANN to applicants.

### ***1.4.1 Accessing the TLD Application System***

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The TAS site will be accessible from the New gTLD webpage (<http://www.icann.org/en/topics/new-gtld-program.htm>), and will be highlighted in communications regarding the opening of the application submission period. Users of TAS will be expected to agree to a standard set of terms of use

including user rights, obligations, and restrictions in relation to the use of the system.

#### 1.4.1.1 User Registration

TAS user registration (creating a TAS user profile) requires submission of preliminary information, which will be used to validate the identity of the parties involved in the application. An overview of the information collected in the user registration process is below:

No.	Questions
1	Full legal name of Applicant
2	Principal business address
3	Phone number of Applicant
4	Fax number of Applicant
5	Website or URL, if applicable
6	Primary Contact: Name, Title, Address, Phone, Fax, Email
7	Secondary Contact: Name, Title, Address, Phone, Fax, Email
8	Proof of legal establishment
9	Trading, subsidiary, or joint venture information
10	Business ID, Tax ID, VAT registration number, or equivalent of Applicant
11	Applicant background: previous convictions, cybersquatting activities
12	Deposit payment confirmation and payer information

A subset of identifying information will be collected from the entity performing the user registration, in addition to the applicant information listed above. The registered user could be, for example, an agent, representative, or

employee who would be completing the application on behalf of the applicant.

The registration process will require the user to request the desired number of application slots. For example, a user intending to submit five gTLD applications would complete five application slot requests, and the system would assign the user a unique ID number for each of the five applications.

Users will also be required to submit a deposit of USD 5,000 per application slot. This deposit amount will be credited against the evaluation fee for each application. The deposit requirement is in place to help reduce the risk of frivolous access to the online application system.

After completing the registration, TAS users will receive access enabling them to enter the rest of the application information into the system. Application slots will be populated with the registration information provided by the applicant, which may not ordinarily be changed once slots have been assigned.

No new user registrations will be accepted after **23:59 UTC 29 March 2012**.

ICANN will take commercially reasonable steps to protect all applicant data submitted from unauthorized access, but cannot warrant against the malicious acts of third parties who may, through system corruption or other means, gain unauthorized access to such data.

#### *1.4.1.2 Application Form*

Having obtained the requested application slots, the applicant will complete the remaining application questions. An overview of the areas and questions contained in the form is shown here:

No.	Application and String Information
12	Payment confirmation for remaining evaluation fee amount
13	Applied-for gTLD string
14	IDN string information, if applicable
15	IDN tables, if applicable

16	Mitigation of IDN operational or rendering problems, if applicable
17	Representation of string in International Phonetic Alphabet (Optional)
18	Mission/purpose of the TLD
19	Is the application for a community-based TLD?
20	If community based, describe elements of community and proposed policies
21	Is the application for a geographic name? If geographic, documents of support required
22	Measures for protection of geographic names at second level
23	Registry Services: name and full description of all registry services to be provided
	<b>Technical and Operational Questions (External)</b>
24	Shared registration system (SRS) performance
25	EPP
26	Whois
27	Registration life cycle
28	Abuse prevention & mitigation
29	Rights protection mechanisms
30(a)	Security
	<b>Technical and Operational Questions (Internal)</b>
30(b)	Security
31	Technical overview of proposed registry
32	Architecture

33	Database capabilities
34	Geographic diversity
35	DNS service compliance
36	IPv6 reachability
37	Data backup policies and procedures
38	Escrow
39	Registry continuity
40	Registry transition
41	Failover testing
42	Monitoring and fault escalation processes
43	DNSSEC
44	IDNs (Optional)
	<b>Financial Questions</b>
45	Financial statements
46	Projections template: costs and funding
47	Costs: setup and operating
48	Funding and revenue
49	Contingency planning: barriers, funds, volumes
50	Continuity: continued operations instrument

### *1.4.2 Customer Service during the Application Process*

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Assistance will be available to applicants throughout the application process via the Applicant Service Center (ASC). The ASC will be staffed with customer service agents

to answer questions relating to the New gTLD Program, the application process, and TAS.

### 1.4.3 Backup Application Process

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If the online application system is not available, ICANN will provide alternative instructions for submitting applications.

## 1.5 Fees and Payments

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This section describes the fees to be paid by the applicant. Payment instructions are also included here.

### 1.5.1 gTLD Evaluation Fee

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The gTLD evaluation fee is required from all applicants. This fee is in the amount of USD 185,000. The evaluation fee is payable in the form of a 5,000 deposit submitted at the time the user requests an application slot within TAS, and a payment of the remaining 180,000 submitted with the full application. ICANN will not begin its evaluation of an application unless it has received the full gTLD evaluation fee by **23:59 UTC 12 April 2012**.

The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.

The gTLD evaluation fee covers all required reviews in Initial Evaluation and, in most cases, any required reviews in Extended Evaluation. If an extended Registry Services review takes place, an additional fee will be incurred for this review (see section 1.5.2). There is no additional fee to the applicant for Extended Evaluation for geographic names, technical and operational, or financial reviews.

**Refunds** -- In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested, as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early	80%	USD 148,000

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Warning		
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial Evaluation results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has entered into a registry agreement with ICANN		None

Thus, any applicant that has not been successful is eligible for at least a 20% refund of the evaluation fee if it withdraws its application.

An applicant that wishes to withdraw an application must initiate the process through TAS. Withdrawal of an application is final and irrevocable. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN, or any unpaid evaluation fees, will be deducted from the amount paid. Any refund paid will be in full satisfaction of ICANN's obligations to the applicant. The applicant will have no entitlement to any additional amounts, including for interest or currency exchange rate changes.

**Note on 2000 proof-of-concept round applicants --** Participants in ICANN's proof-of-concept application process in 2000 may be eligible for a credit toward the evaluation fee. The credit is in the amount of USD 86,000 and is subject to:

- submission of documentary proof by the applicant that it is the same entity, a successor in interest to the same entity, or an affiliate of the same entity that applied previously;
- a confirmation that the applicant was not awarded any TLD string pursuant to the 2000 proof-of-concept application round and that the applicant has no legal claims arising from the 2000 proof-of-concept process; and
- submission of an application, which may be modified from the application originally submitted in 2000, for the same TLD string that such entity applied for in the 2000 proof-of-concept application round.

Each participant in the 2000 proof-of-concept application process is eligible for at most one credit. A maximum of one credit may be claimed for any new gTLD application submitted according to the process in this guidebook. Eligibility for this credit is determined by ICANN.

### 1.5.2 Fees Required in Some Cases

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Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees<sup>10</sup> include:

- **Registry Services Review Fee** – If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.

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<sup>10</sup> The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider’s payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Advance Payment of Costs** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in accordance with that provider’s procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider’s rules.

The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding. In cases where disputes are consolidated and there are more than two parties involved, the refund of fees will occur according to the dispute resolution service provider’s rules.

ICANN estimates that adjudication fees for a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please

refer to the appropriate provider for the relevant amounts or fee structures.

- **Community Priority Evaluation Fee** – In the event that the applicant participates in a community priority evaluation, this fee is payable as a deposit in an amount to cover the cost of the panel's review of that application (currently estimated at USD 10,000). The deposit is payable to the provider appointed to handle community priority evaluations. Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4 for circumstances in which a community priority evaluation may take place. An applicant who scores at or above the threshold for the community priority evaluation will have its deposit refunded.

ICANN will notify the applicants of due dates for payment in respect of additional fees (if applicable). This list does not include fees (annual registry fees) that will be payable to ICANN following execution of a registry agreement.

### *1.5.3 Payment Methods*

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Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.<sup>11</sup>

Payments to Dispute Resolution Service Providers should be submitted in accordance with the provider's instructions.

### *1.5.4 Requesting a Remittance Form*

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The TAS interface allows applicants to request issuance of a remittance form for any of the fees payable to ICANN. This service is for the convenience of applicants that require an invoice to process payments.

## *1.6 Questions about this Applicant Guidebook*

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For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate

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<sup>11</sup> Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

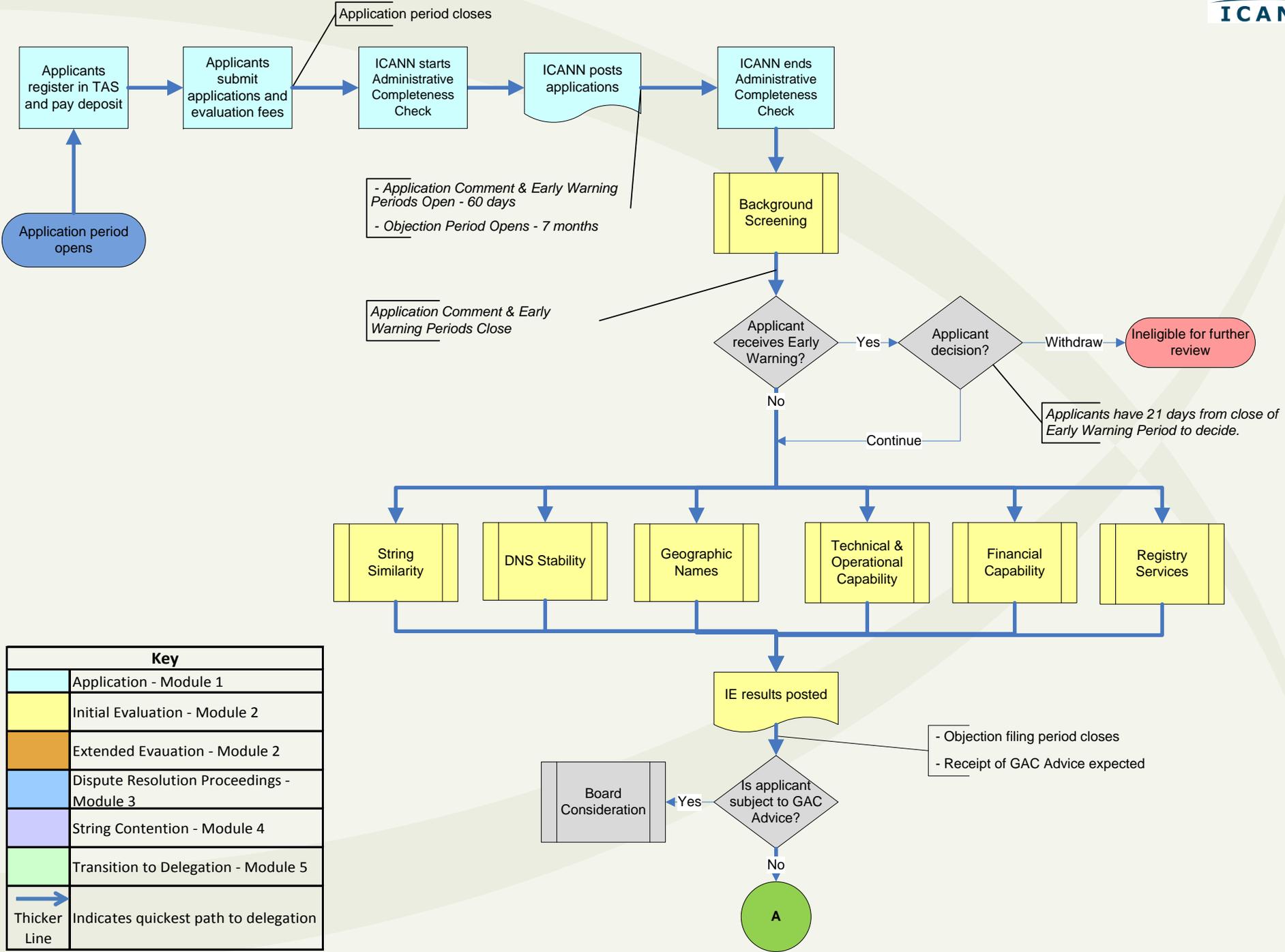
support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

Currently, questions may be submitted via <newgtld@icann.org>. To provide all applicants equitable access to information, ICANN will make all questions and answers publicly available.

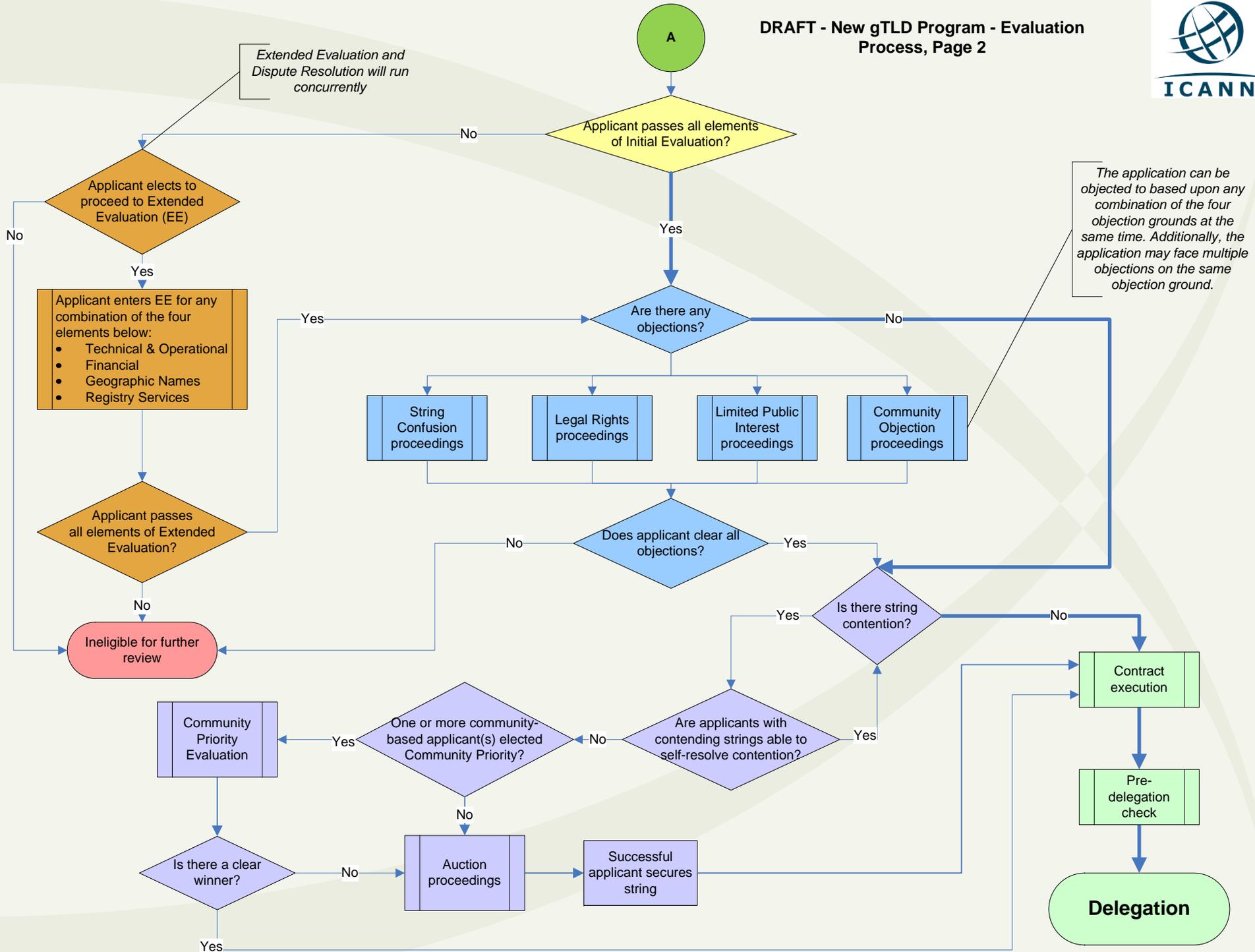
All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted to the ASC. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

Answers to inquiries will only provide clarification about the application forms and procedures. ICANN will not provide consulting, financial, or legal advice.

# DRAFT - New gTLD Program - Evaluation Process



Key	
<span style="background-color: #e0ffff; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Application - Module 1
<span style="background-color: #ffff00; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Initial Evaluation - Module 2
<span style="background-color: #ffa500; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Extended Evaluation - Module 2
<span style="background-color: #add8e6; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Dispute Resolution Proceedings - Module 3
<span style="background-color: #ccccff; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	String Contention - Module 4
<span style="background-color: #90ee90; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span>	Transition to Delegation - Module 5
<span style="border-bottom: 3px solid blue; display: inline-block; width: 15px;"></span>	Indicates quickest path to delegation
<span style="border-left: 3px solid blue; display: inline-block; width: 10px; height: 10px;"></span>	Thicker Line





# gTLD Applicant Guidebook

(v. 2012-01-11)

Module 2

11 January 2012

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# Module 2

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## *Evaluation Procedures*

This module describes the evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation. All applicants will undergo an Initial Evaluation and those that do not pass all elements may request Extended Evaluation.

The first, required evaluation is the **Initial Evaluation**, during which ICANN assesses an applied-for gTLD string, an applicant's qualifications, and its proposed registry services.

The following assessments are performed in the **Initial Evaluation**:

- String Reviews
  - String similarity
  - Reserved names
  - DNS stability
  - Geographic names
- Applicant Reviews
  - Demonstration of technical and operational capability
  - Demonstration of financial capability
  - Registry services reviews for DNS stability issues

An application must pass all these reviews to pass the Initial Evaluation. Failure to pass any one of these reviews will result in a failure to pass the Initial Evaluation.

**Extended Evaluation** may be applicable in cases in which an applicant does not pass the Initial Evaluation. See Section 2.3 below.

### *2.1 Background Screening*

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Background screening will be conducted in two areas:

- (a) General business diligence and criminal history; and
- (b) History of cybersquatting behavior.

The application must pass both background screening areas to be eligible to proceed. Background screening results are evaluated according to the criteria described in section 1.2.1. Due to the potential sensitive nature of the material, applicant background screening reports will not be published.

The following sections describe the process ICANN will use to perform background screening.

### *2.1.1 General business diligence and criminal history*

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Applying entities that are publicly traded corporations listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges) will be deemed to have passed the general business diligence and criminal history screening. The largest 25 will be based on the domestic market capitalization reported at the end of the most recent calendar year prior to launching each round.<sup>1</sup>

Before an entity is listed on an exchange, it must undergo significant due diligence including an investigation by the exchange, regulators, and investment banks. As a publicly listed corporation, an entity is subject to ongoing scrutiny from shareholders, analysts, regulators, and exchanges. All exchanges require monitoring and disclosure of material information about directors, officers, and other key personnel, including criminal behavior. In totality, these requirements meet or exceed the screening ICANN will perform.

For applicants not listed on one of these exchanges, ICANN will submit identifying information for the entity, officers, directors, and major shareholders to an international background screening service. The service provider(s) will use the criteria listed in section 1.2.1 and return results that match these criteria. Only publicly available information will be used in this inquiry.

ICANN is in discussions with INTERPOL to identify ways in which both organizations can collaborate in background screenings of individuals, entities and their identity documents consistent with both organizations' rules and regulations. Note that the applicant is expected to disclose potential problems in meeting the criteria in the application, and provide any clarification or explanation at the time of application submission. Results returned from

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<sup>1</sup> See <http://www.world-exchanges.org/statistics/annual/2010/equity-markets/domestic-market-capitalization>

the background screening process will be matched with the disclosures provided by the applicant and those cases will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

### *2.1.2 History of cybersquatting*

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ICANN will screen applicants against UDRP cases and legal databases as financially feasible for data that may indicate a pattern of cybersquatting behavior pursuant to the criteria listed in section 1.2.1.

The applicant is required to make specific declarations regarding these activities in the application. Results returned during the screening process will be matched with the disclosures provided by the applicant and those instances will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

## *2.2 Initial Evaluation*

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The Initial Evaluation consists of two types of review. Each type is composed of several elements.

String review: The first review focuses on the applied-for gTLD string to test:

- Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion;
- Whether the applied-for gTLD string might adversely affect DNS security or stability; and
- Whether evidence of requisite government approval is provided in the case of certain geographic names.

Applicant review: The second review focuses on the applicant to test:

- Whether the applicant has the requisite technical, operational, and financial capability to operate a registry; and
- Whether the registry services offered by the applicant might adversely affect DNS security or stability.

## 2.2.1 String Reviews

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In the Initial Evaluation, ICANN reviews every applied-for gTLD string. Those reviews are described in greater detail in the following subsections.

### 2.2.1.1 String Similarity Review

This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.

Note: In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.

This similarity review will be conducted by an independent String Similarity Panel.

#### 2.2.1.1.1 Reviews Performed

The String Similarity Panel’s task is to identify visual string similarities that would create a probability of user confusion.

The panel performs this task of assessing similarities that would lead to user confusion in four sets of circumstances, when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names;
- Applied-for gTLD strings against other applied-for gTLD strings;
- Applied-for gTLD strings against strings requested as IDN ccTLDs; and
- Applied-for 2-character IDN gTLD strings against:
  - Every other single character.
  - Any other 2-character ASCII string (to protect possible future ccTLD delegations).

**Similarity to Existing TLDs or Reserved Names** – This review involves cross-checking between each applied-for string and the lists of existing TLD strings and Reserved Names to determine whether two strings are so similar to one another that they create a probability of user confusion.

In the simple case in which an applied-for gTLD string is identical to an existing TLD or reserved name, the online application system will not allow the application to be submitted.

Testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. For example, protocols treat equivalent labels as alternative forms of the same label, just as “foo” and “Foo” are treated as alternative forms of the same label (RFC 3490).

All TLDs currently in the root zone can be found at <http://iana.org/domains/root/db/>.

IDN tables that have been submitted to ICANN are available at <http://www.iana.org/domains/idn-tables/>.

**Similarity to Other Applied-for gTLD Strings (String Contention Sets)** – All applied-for gTLD strings will be reviewed against one another to identify any similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation.

A contention set contains at least two applied-for strings identical or similar to one another. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution.

ICANN will notify applicants who are part of a contention set as soon as the String Similarity review is completed. (This provides a longer period for contending applicants to reach their own resolution before reaching the contention resolution stage.) These contention sets will also be published on ICANN’s website.

**Similarity to TLD strings requested as IDN ccTLDs** -- Applied-for gTLD strings will also be reviewed for similarity to TLD strings requested in the IDN ccTLD Fast Track process (see <http://www.icann.org/en/topics/idn/fast-track/>). Should a conflict with a prospective fast-track IDN ccTLD be identified, ICANN will take the following approach to resolving the conflict.

If one of the applications has completed its respective process before the other is lodged, that TLD will be delegated. A gTLD application that has successfully completed all relevant evaluation stages, including dispute resolution and string contention, if applicable, and is eligible for entry into a registry agreement will be considered complete, and therefore would not be disqualified by a newly-filed IDN ccTLD request. Similarly, an IDN ccTLD request that has completed evaluation (i.e., is validated) will be considered complete and therefore would not be disqualified by a newly-filed gTLD application.

In the case where neither application has completed its respective process, where the gTLD application does not have the required approval from the relevant government or public authority, a validated request for an IDN ccTLD will prevail and the gTLD application will not be approved. The term “validated” is defined in the IDN ccTLD Fast Track Process Implementation, which can be found at <http://www.icann.org/en/topics/idn>.

In the case where a gTLD applicant has obtained the support or non-objection of the relevant government or public authority, but is eliminated due to contention with a string requested in the IDN ccTLD Fast Track process, a full refund of the evaluation fee is available to the applicant if the gTLD application was submitted prior to the publication of the ccTLD request.

**Review of 2-character IDN strings** — In addition to the above reviews, an applied-for gTLD string that is a 2-character IDN string is reviewed by the String Similarity Panel for visual similarity to:

- a) Any one-character label (in any script), and
- b) Any possible two-character ASCII combination.

An applied-for gTLD string that is found to be too similar to a) or b) above will not pass this review.

#### **2.2.1.1.2 Review Methodology**

The String Similarity Panel is informed in part by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs and reserved names. The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability

that the application will not pass the String Similarity review. However, it should be noted that the score is only indicative and that the final determination of similarity is entirely up to the Panel's judgment.

The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes.<sup>2</sup> Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

The algorithm supports the common characters in Arabic, Chinese, Cyrillic, Devanagari, Greek, Japanese, Korean, and Latin scripts. It can also compare strings in different scripts to each other.

The panel will also take into account variant characters, as defined in any relevant language table, in its determinations. For example, strings that are not visually similar but are determined to be variant TLD strings based on an IDN table would be placed in a contention set. Variant TLD strings that are listed as part of the application will also be subject to the string similarity analysis.<sup>3</sup>

The panel will examine all the algorithm data and perform its own review of similarities between strings and whether they rise to the level of string confusion. In cases of strings in scripts not yet supported by the algorithm, the panel's assessment process is entirely manual.

The panel will use a common standard to test for whether string confusion exists, as follows:

**Standard for String Confusion** – String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

#### *2.2.1.1.3 Outcomes of the String Similarity Review*

An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation,

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<sup>2</sup> See <http://icann.sword-group.com/algorithm/>

<sup>3</sup> In the case where an applicant has listed Declared Variants in its application (see subsection 1.3.3), the panel will perform an analysis of the listed strings to confirm that the strings are variants according to the applicant's IDN table. This analysis may include comparison of applicant IDN tables with other existing tables for the same language or script, and forwarding any questions to the applicant.

and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.

An application that passes the String Similarity review is still subject to objection by an existing TLD operator or by another gTLD applicant in the current application round. That process requires that a string confusion objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity (including visual, aural, or similarity of meaning) may be claimed by an objector. Refer to Module 3, Dispute Resolution Procedures, for more information about the objection process.

An applicant may file a formal objection against another gTLD application on string confusion grounds. Such an objection may, if successful, change the configuration of the preliminary contention sets in that the two applied-for gTLD strings will be considered in direct contention with one another (see Module 4, String Contention Procedures). The objection process will not result in removal of an application from a contention set.

### 2.2.1.2 *Reserved Names and Other Unavailable Strings*

Certain names are not available as gTLD strings, as detailed in this section.

#### 2.2.1.2.1 *Reserved Names*

All applied-for gTLD strings are compared with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

**Top-Level Reserved Names List**

<i>AFRNIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>

<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.		

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the Reserved Name and will not allow the application to be submitted.

In addition, applied-for gTLD strings are reviewed during the String Similarity review to determine whether they are similar to a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass this review.

#### **2.2.1.2.2** *Declared Variants*

Names appearing on the Declared Variants List (see section 1.3.3) will be posted on ICANN's website and will be treated essentially the same as Reserved Names, until such time as variant management solutions are developed and variant TLDs are delegated. That is, an application for a gTLD string that is identical or similar to a string on the Declared Variants List will not pass this review.

#### **2.2.1.2.3** *Strings Ineligible for Delegation*

The following names are prohibited from delegation as gTLDs in the initial application round. Future application rounds may differ according to consideration of further policy advice.

These names are not being placed on the Top-Level Reserved Names List, and thus are not part of the string similarity review conducted for names on that list. Refer to subsection 2.2.1.1: where applied-for gTLD strings are reviewed for similarity to existing TLDs and reserved names, the strings listed in this section are not reserved names and accordingly are not incorporated into this review.

Applications for names appearing on the list included in this section will not be approved.

International Olympic Committee		
OLYMPIC	OLYMPIAD	OLYMPIQUE
OLYMPIADE	OLYMPISCH	OLÍMPICO
OLIMPÍADA	أولمبي	أولمبياد
奥林匹克	奥林匹亚	奥林匹克
奧林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림픽아드	Олимпийский
Олимпиада		
International Red Cross and Red Crescent Movement		
REDCROSS	REDCRESCENT	REDCRYSTAL
REDLIONANDSUN	MAGENDDAVIDADOM	REDSTAROFDAVID
CROIXROUGE	CROIX-ROUGE	CROISSANTROUGE
CROISSANT-ROUGE	CRISTALROUGE	CRISTAL-ROUGE
מגן דוד אדום	CRUZROJA	MEDIALUNAROJA
CRISTALROJO	Красный Крест	Красный Полумесяц
Красный Кристалл	رمح ألابي لصل	لاله ارمح ألابي
ءارمحل اقرولبل	الكريستلة الحمراء	紅十字
紅十字	紅新月	紅新月
紅水晶	紅水晶	

### 2.2.1.3 DNS Stability Review

This review determines whether an applied-for gTLD string might cause instability to the DNS. In all cases, this will involve a review for conformance with technical and other requirements for gTLD strings (labels). In some exceptional cases, an extended review may be necessary to investigate possible technical stability problems with the applied-for gTLD string.

Note: All applicants should recognize issues surrounding invalid TLD queries at the root level of the DNS.

Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries. For more information, see the Security and Stability Advisory Committee (SSAC)'s report on this topic at <http://www.icann.org/en/committees/security/sac045.pdf>. Some publicly available statistics are also available at <http://stats.l.root-servers.org/>.

ICANN will take steps to alert applicants of the issues raised in SAC045, and encourage the applicant to prepare to minimize the possibility of operational difficulties that would pose a stability or availability problem for its registrants and users. However, this notice is merely an advisory to applicants and is not part of the evaluation, unless the string raises significant security or stability issues as described in the following section.

#### ***2.2.1.3.1 DNS Stability: String Review Procedure***

New gTLD labels must not adversely affect the security or stability of the DNS. During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to:

- ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and
- determine whether any strings raise significant security or stability issues that may require further review.

There is a very low probability that extended analysis will be necessary for a string that fully complies with the string requirements in subsection 2.2.1.3.2 of this module. However, the string review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

In such a case, the DNS Stability Panel will perform an extended review of the applied-for gTLD string during the Initial Evaluation period. The panel will determine whether the string fails to comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will report on its findings.

If the panel determines that the string complies with relevant standards and does not create the conditions

described above, the application will pass the DNS Stability review.

If the panel determines that the string does not comply with relevant technical standards, or that it creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application will not pass the Initial Evaluation, and no further reviews are available. In the case where a string is determined likely to cause security or stability problems in the DNS, the applicant will be notified as soon as the DNS Stability review is completed.

#### 2.2.1.3.2 *String Requirements*

ICANN will review each applied-for gTLD string to ensure that it complies with the requirements outlined in the following paragraphs.

If an applied-for gTLD string is found to violate any of these rules, the application will not pass the DNS Stability review. No further reviews are available.

**Part I -- Technical Requirements for all Labels (Strings)** – The technical requirements for top-level domain labels follow.

- 1.1 The ASCII label (i.e., the label as transmitted on the wire) must be valid as specified in technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181) and any updates thereto. This includes the following:
  - 1.1.1 The label must have no more than 63 characters.
  - 1.1.2 Upper and lower case characters are treated as identical.
- 1.2 The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696), *Internationalized Domain Names in Applications (IDNA)*(RFCs 5890-5894), and any updates thereto. This includes the following:
  - 1.2.1 The ASCII label must consist entirely of letters (alphabetic characters a-z), or

- 1.2.2 The label must be a valid IDNA A-label (further restricted as described in Part II below).

**Part II -- Requirements for Internationalized Domain Names**

– These requirements apply only to prospective top-level domains that contain non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the Internet Engineering Task Force (IETF) IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:
  - 2.1.1 Must be a valid A-label according to IDNA.
  - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).<sup>4</sup>
  - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn, Mc).
  - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
  - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation>

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<sup>4</sup> It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

[n-guidelines.htm](#). This includes the following, non-exhaustive, list of limitations:

- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See <http://www.unicode.org/reports/tr24/>).
- 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

### **Part III - Policy Requirements for Generic Top-Level**

**Domains** – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

- 3.1 Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.
- 3.2 Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.<sup>5</sup> Note, however, that a two-character IDN string will not be approved if:
  - 3.2.1 It is visually similar to any one-character label (in any script); or
  - 3.2.2 It is visually similar to any possible two-character ASCII combination.

See the String Similarity review in subsection 2.2.1.1 for additional information on this requirement.

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<sup>5</sup> Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at <http://gns0.icann.org/drafts/jig-final-report-30mar11-en.pdf>. Implementation models for these recommendations are being developed for community discussion.

#### 2.2.1.4 Geographic Names Review

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

##### 2.2.1.4.1 Treatment of Country or Territory Names<sup>6</sup>

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or

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<sup>6</sup> Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

#### 2.2.1.4.2 *Geographic Names Requiring Government Support*

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.
2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

- (b) The applied-for string is a city name as listed on official city documents.<sup>7</sup>
3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
  4. An application for a string listed as a UNESCO region<sup>8</sup> or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.<sup>9</sup>

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

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<sup>7</sup> City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

<sup>8</sup> See <http://www.unesco.org/new/en/unesco/worldwide/>.

<sup>9</sup> See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- identify and consult with the relevant governments or public authorities; and
- identify which level of government support is required.

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

#### ***2.2.1.4.3 Documentation Requirements***

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

Governmental Advisory Committee (GAC) representative.<sup>10</sup>

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

#### *2.2.1.4.4 Review Procedure for Geographic Names*

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

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<sup>10</sup> See <https://gacweb.icann.org/display/gacweb/GAC+Members>

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

## *2.2.2 Applicant Reviews*

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Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

### *2.2.2.1 Technical/Operational Review*

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

### *2.2.2.2 Financial Review*

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

### *2.2.2.3 Evaluation Methodology*

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

### **2.2.3 Registry Services Review**

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Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

#### **2.2.3.1 Definitions**

**Registry services** are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;
2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at <http://www.icann.org/en/registries/rsep/>. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See <http://www.icann.org/en/registries/agreements.htm>.

A full definition of registry services can be found at <http://www.icann.org/en/registries/rsep/rsep.html>.

For purposes of this review, security and stability are defined as follows:

**Security** – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

resources on the Internet by systems operating in accordance with all applicable standards.

**Stability** – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator’s delegation information or provisioning services.

### 2.2.3.2 Customary Services

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)
- DNS Security Extensions

The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at [http://www.icann.org/en/registries/rsep/rrs\\_sample.html](http://www.icann.org/en/registries/rsep/rrs_sample.html).

### 2.2.3.3 TLD Zone Contents

ICANN receives a number of inquiries about use of various record types in a registry zone, as entities contemplate different business and technical models. Permissible zone contents for a TLD zone are:

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD’s DNS servers.

- NS records and in-balliwick glue for DNS servers of registered names in the TLD.
- DS records for registered names in the TLD.
- Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3).

An applicant wishing to place any other record types into its TLD zone should describe in detail its proposal in the registry services section of the application. This will be evaluated and could result in an extended evaluation to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Applicants should be aware that a service based on use of less-common DNS resource records in the TLD zone, even if approved in the registry services review, might not work as intended for all users due to lack of application support.

#### *2.2.3.4 Methodology*

Review of the applicant's proposed registry services will include a preliminary determination of whether any of the proposed registry services could raise significant security or stability issues and require additional consideration.

If the preliminary determination reveals that there may be significant security or stability issues (as defined in subsection 2.2.3.1) surrounding a proposed service, the application will be flagged for an extended review by the Registry Services Technical Evaluation Panel (RSTEP), see <http://www.icann.org/en/registries/rsep/rstep.html>. This review, if applicable, will occur during the Extended Evaluation period (refer to Section 2.3).

In the event that an application is flagged for extended review of one or more registry services, an additional fee to cover the cost of the extended review will be due from the applicant. Applicants will be advised of any additional fees due, which must be received before the additional review begins.

#### *2.2.4 Applicant's Withdrawal of an Application*

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An applicant who does not pass the Initial Evaluation may withdraw its application at this stage and request a partial refund (refer to subsection 1.5 of Module 1).

## 2.3 *Extended Evaluation*

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An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Geographic names (refer to subsection 2.2.1.4). There is no additional fee for an extended evaluation in this instance.
- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.
- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.
- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

An Extended Evaluation does not imply any change of the evaluation criteria. The same criteria used in the Initial Evaluation will be used to review the application in light of clarifications provided by the applicant.

From the time an applicant receives notice of failure to pass the Initial Evaluation, eligible applicants will have 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation. If the applicant does not explicitly request the Extended Evaluation (and pay an additional fee in the case of a Registry Services inquiry) the application will not proceed.

### 2.3.1 *Geographic Names Extended Evaluation*

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In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in

section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 calendar days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

### ***2.3.2 Technical/Operational or Financial Extended Evaluation***

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The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

### ***2.3.3 Registry Services Extended Evaluation***

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This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 calendar days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 calendar days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

## ***2.4 Parties Involved in Evaluation***

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A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

### 2.4.1 Panels and Roles

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The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

#### *2.4.2 Panel Selection Process*

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ICANN has selected qualified third-party providers to perform the various reviews, based on an extensive selection process.<sup>11</sup> In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.
- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.
- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.
- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

#### *2.4.3 Code of Conduct Guidelines for Panelists*

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The purpose of the New gTLD Program (“Program”) Code of Conduct (“Code”) is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist (“Panelist”).

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected

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<sup>11</sup> <http://newgtlds.icann.org/about/evaluation-panels-selection-process>

to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

**Bias** -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;
- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;
- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and
- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

**Compensation/Gifts** -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

**Conflicts of Interest** -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

**Confidentiality** -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source,

except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

**Affirmation** -- All Panelists shall read this Code prior to commencing evaluation services and shall certify in writing that they have done so and understand the Code.

#### **2.4.3.1 Conflict of Interest Guidelines for Panelists**

It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants.

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established detailed Conflict of Interest guidelines and procedures that will be followed by the Evaluation Panelists. To help ensure that the guidelines are appropriately followed ICANN will:

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.
- Require each Evaluation Panelist to disclose all business relationships engaged in at any time during the past six months.
- Where possible, identify and secure primary and backup providers for evaluation panels.
- In conjunction with the Evaluation Panelists, develop and implement a process to identify conflicts and re-assign applications as appropriate to secondary or contingent third party providers to perform the reviews.

**Compliance Period** -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the

final outcomes of all the applications from the Applicant in question.

**Guidelines** -- The following guidelines are the minimum standards with which all Evaluation Panelists must comply. It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluation Panelist should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest.

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
  - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
  - Promoter, underwriter, or voting trustee of the Applicant; or
  - Trustee for any pension or profit-sharing trust of the Applicant.

**Definitions--**

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes

any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist.

Professional Services: include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

#### ***2.4.3.2 Code of Conduct Violations***

Evaluation panelist breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Serious breaches of the Code may be cause for dismissal of the person, persons or provider committing the infraction.

In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists.

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

#### ***2.4.4 Communication Channels***

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Defined channels for technical support or exchanges of information with ICANN and with evaluation panels are available to applicants during the Initial Evaluation and Extended Evaluation periods. Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate. In the interests of fairness and equivalent treatment for all applicants, any such individual contacts will be referred to the appropriate communication channels.

# DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation



Application is confirmed as complete and ready for evaluation during Administrative Completeness Check

**Background Screening**  
Third-party provider reviews applicant's background.

**Initial Evaluation – String Review**

**Initial Evaluation – Applicant Review**

**String Similarity**  
String Similarity Panel reviews applied-for strings to ensure they are not too similar to existing TLDs or Reserved Names.

**DNS Stability**  
All strings reviewed and in extraordinary cases, DNS Stability Panel may perform extended review for possible technical stability issues.

**Geographic Names**  
Geographic Names Panel determines if applied-for string is geographic name requiring government support.

**Technical and Operational Capability**  
Technical and Operational panel reviews applicant's answers to questions and supporting documentation.

**Financial Capability**  
Financial panel reviews applicant's answers to questions and supporting documentation.

**Registry Services**  
Preliminary review of applicant's registry services and referral to RSTEP for further review during Extended Evaluation where necessary

Panel compares all applied-for strings and creates contention sets.

Panel confirms supporting documentation where required.

ICANN will seek to publish contention sets prior to publication of full IE results.

Does applicant pass all elements of Initial Evaluation?

Applicant elects to pursue **Extended Evaluation?**

Extended Evaluation process

Does applicant pass all elements of Extended Evaluation?

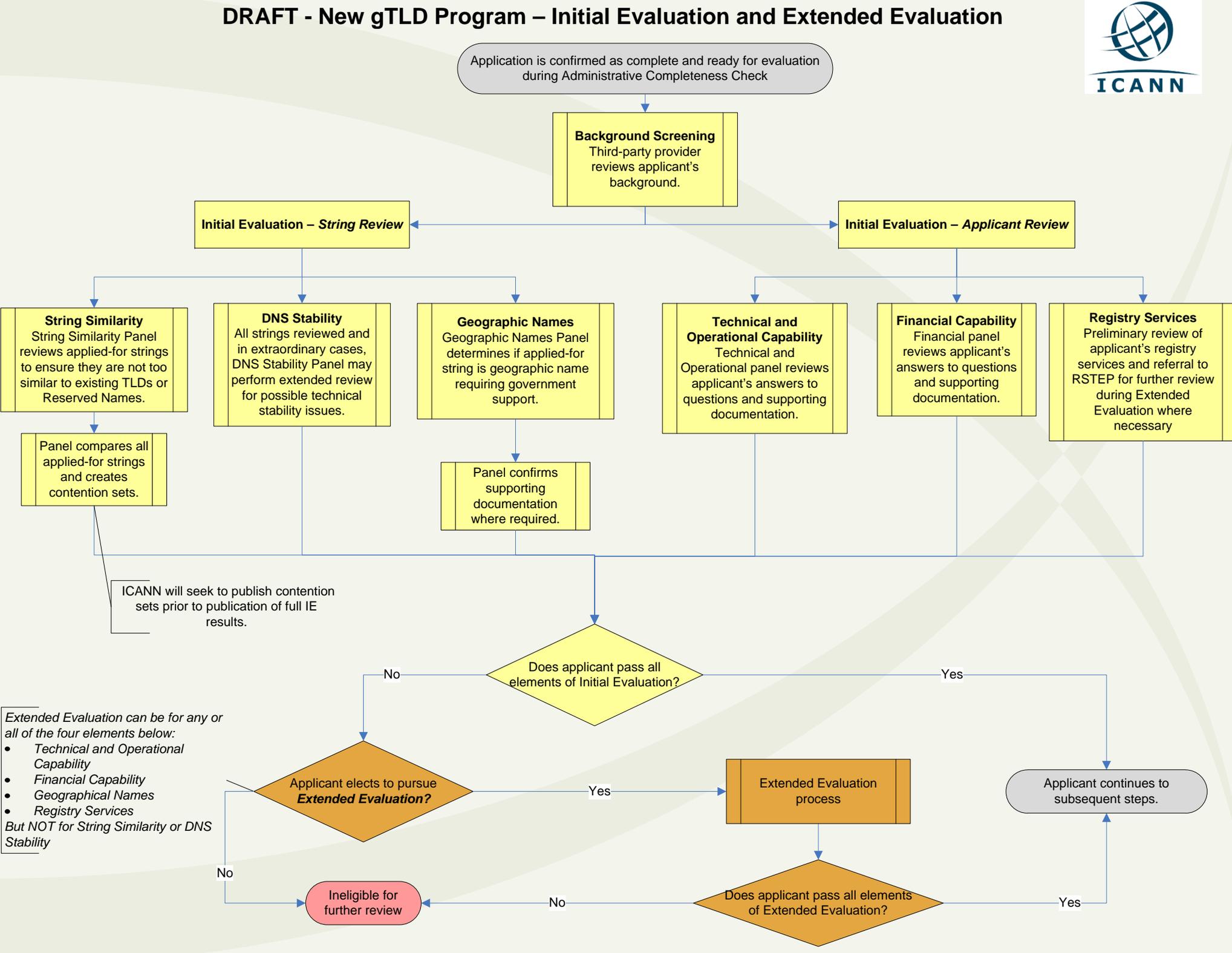
Applicant continues to subsequent steps.

Ineligible for further review

Extended Evaluation can be for any or all of the four elements below:

- Technical and Operational Capability
- Financial Capability
- Geographical Names
- Registry Services

But NOT for String Similarity or DNS Stability



## Annex: Separable Country Names List

gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an “English short name” field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Sint Eustatius and Saba	A	Bonaire
		A	Sint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	Trinidad Island
io	British Indian Ocean Territory	C	Chagos Archipelago
		C	Diego Garcia
bn	Brunei Darussalam	B1	Brunei
		C	Negara Brunei Darussalam
cv	Cape Verde	C	São Tiago
		C	São Vicente
ky	Cayman Islands	C	Grand Cayman
cl	Chile	C	Easter Island
		C	Juan Fernández Islands
		C	Sala y Gómez Island
		C	San Ambrosio Island
		C	San Félix Island
cc	Cocos (Keeling) Islands	A	Cocos Islands
		A	Keeling Islands
co	Colombia	C	Malpelo Island
		C	San Andrés Island
		C	Providencia Island
km	Comoros	C	Anjouan
		C	Grande Comore
		C	Mohéli
ck	Cook Islands	C	Rarotonga
cr	Costa Rica	C	Coco Island
ec	Ecuador	C	Galápagos Islands
gq	Equatorial Guinea	C	Annobón Island
		C	Bioko Island

		C	Rio Muni
fk	Falkland Islands (Malvinas)	B1	Falkland Islands
		B1	Malvinas
fo	Faroe Islands	A	Faroe
fj	Fiji	C	Vanua Levu
		C	Viti Levu
		C	Rotuma Island
pf	French Polynesia	C	Austral Islands
		C	Gambier Islands
		C	Marquesas Islands
		C	Society Archipelago
		C	Tahiti
		C	Tuamotu Islands
		C	Clipperton Island
tf	French Southern Territories	C	Amsterdam Islands
		C	Crozet Archipelago
		C	Kerguelen Islands
		C	Saint Paul Island
gr	Greece	C	Mount Athos
		B1	**
gd	Grenada	C	Southern Grenadine Islands
		C	Carriacou
gp	Guadeloupe	C	la Désirade
		C	Marie-Galante
		C	les Saintes
hm	Heard Island and McDonald Islands	A	Heard Island
		A	McDonald Islands
va	Holy See (Vatican City State)	A	Holy See
		A	Vatican
hn	Honduras	C	Swan Islands
in	India	C	Amindivi Islands
		C	Andaman Islands
		C	Laccadive Islands
		C	Minicoy Island
		C	Nicobar Islands
ir	Iran, Islamic Republic of	B1	Iran
ki	Kiribati	C	Gilbert Islands
		C	Tarawa
		C	Banaba
		C	Line Islands
		C	Kiritimati
		C	Phoenix Islands
		C	Abariringa
		C	Enderbury Island
kp	Korea, Democratic People's Republic of	C	North Korea
kr	Korea, Republic of	C	South Korea
la	Lao People's Democratic Republic	B1	Laos
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island
fm	Micronesia, Federated States of	B1	Micronesia

		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da Índia
		C	Europa Island
		C	Glorioso Island
		C	Juan de Nova Island
		C	Tromelin Island
ru	Russian Federation	B1	Russia
		C	Kaliningrad Region
sh	Saint Helena, Ascension, and Tristan de Cunha	A	Saint Helena
		A	Ascension
		A	Tristan de Cunha
		C	Gough Island
		C	Tristan de Cunha Archipelago
kn	Saint Kitts and Nevis	A	Saint Kitts
		A	Nevis
pm	Saint Pierre and Miquelon	A	Saint Pierre
		A	Miquelon
vc	Saint Vincent and the Grenadines	A	Saint Vincent
		A	The Grenadines
		C	Northern Grenadine Islands
		C	Bequia
		C	Saint Vincent Island
ws	Samoa	C	Savai'i
		C	Upolu
st	Sao Tome and Principe	A	Sao Tome
		A	Principe
sc	Seychelles	C	Mahé
		C	Aldabra Islands
		C	Amirante Islands
		C	Cosmoledo Islands
		C	Farquhar Islands
sb	Solomon Islands	C	Santa Cruz Islands
		C	Southern Solomon Islands
		C	Guadalcanal
za	South Africa	C	Marion Island
		C	Prince Edward Island
gs	South Georgia and the South Sandwich Islands	A	South Georgia
		A	South Sandwich Islands

sj	Svalbard and Jan Mayen	A	Svalbard
		A	Jan Mayen
		C	Bear Island
sy	Syrian Arab Republic	B1	Syria
tw	Taiwan, Province of China	B1	Taiwan
		C	Penghu Islands
		C	Pescadores
tz	Tanzania, United Republic of	B1	Tanzania
tl	Timor-Leste	C	Oecussi
to	Tonga	C	Tongatapu
tt	Trinidad and Tobago	A	Trinidad
		A	Tobago
tc	Turks and Caicos Islands	A	Turks Islands
		A	Caicos Islands
tv	Tuvalu	C	Fanafuti
ae	United Arab Emirates	B1	Emirates
us	United States	B2	America
um	United States Minor Outlying Islands	C	Baker Island
		C	Howland Island
		C	Jarvis Island
		C	Johnston Atoll
		C	Kingman Reef
		C	Midway Islands
		C	Palmyra Atoll
		C	Wake Island
		C	Navassa Island
vu	Vanuatu	C	Efate
		C	Santo
ve	Venezuela, Bolivarian Republic of	B1	Venezuela
		C	Bird Island
vg	Virgin Islands, British	B1	Virgin Islands
		C	Anegada
		C	Jost Van Dyke
		C	Tortola
		C	Virgin Gorda
vi	Virgin Islands, US	B1	Virgin Islands
		C	Saint Croix
		C	Saint John
		C	Saint Thomas
wf	Wallis and Futuna	A	Wallis
		A	Futuna
		C	Hoorn Islands
		C	Wallis Islands
		C	Uvea
ye	Yemen	C	Socotra Island

## Maintenance

A Separable Country Names Registry will be maintained and published by ICANN Staff.

Each time the ISO 3166-1 standard is updated with a new entry, this registry will be reappraised to identify if the changes to the standard warrant changes to the entries in this registry. Appraisal will be based on the criteria listing in the "Eligibility" section of this document.

Codes reserved by the ISO 3166 Maintenance Agency do not have any implication on this registry, only entries derived from normally assigned codes appearing in ISO 3166-1 are eligible.

If an ISO code is struck off the ISO 3166-1 standard, any entries in this registry deriving from that code must be struck.

## Eligibility

Each record in this registry is derived from the following possible properties:

- Class A:** The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."
- Class B:** The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."
- \*\* Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf>.
- Class C:** The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

In the first two cases, the registry listing must be directly derivative from the English Short Name by excising words and articles. These registry listings do not include vernacular or other non-official terms used to denote the country.

Eligibility is calculated in class order. For example, if a term can be derived both from Class A and Class C, it is only listed as Class A.

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# *Attachment to Module 2*

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## *Sample Letter of Government Support*

**[This letter should be provided on official letterhead]**

ICANN  
Suite 330, 4676 Admiralty Way  
Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

This letter is to confirm that [government entity] fully supports the application for [TLD] submitted to ICANN by [applicant] in the New gTLD Program. As the [Minister/Secretary/position] I confirm that I have the authority of the [x government/public authority] to be writing to you on this matter. [Explanation of government entity, relevant department, division, office, or agency, and what its functions and responsibilities are]

The gTLD will be used to [explain your understanding of how the name will be used by the applicant. This could include policies developed regarding who can register a name, pricing regime and management structures.] [Government/public authority/department] has worked closely with the applicant in the development of this proposal.

The [x government/public authority] supports this application, and in doing so, understands that in the event that the application is successful, [applicant] will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

[Government / public authority] further understands that, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

**[Optional]** This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

**[Optional]** I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

---

# *Attachment to Module 2*

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## *Evaluation Questions and Criteria*

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

### *I. Principles of the Technical and Financial New gTLD Evaluation Criteria*

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.
- The criteria and evaluation should be as objective as possible.
  - With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.
  - Therefore the criteria should be flexible: able to scale with the overall business approach, providing that the planned approach is consistent and coherent, and can withstand highs and lows.

- Criteria can be objective in areas of registrant protection, for example:
  - Providing for funds to continue operations in the event of a registry failure.
  - Adherence to data escrow, registry failover, and continuity planning requirements.
- The evaluation must strike the correct balance between establishing the business and technical competence of the applicant to operate a registry (to serve the interests of registrants), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.
- New registries must be added in a way that maintains DNS stability and security. Therefore, ICANN asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry. ICANN will ask the applicant to demonstrate actual operational technical compliance prior to delegation. This is in line with current prerequisites for the delegation of a TLD.
- Registrant protection is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:
  - Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,
  - Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,
  - Adhere to DNS stability and security requirements as described in the technical section, and
  - Provide access to the widest variety of services.

## *II. Aspects of the Questions Asked in the Application and Evaluation Criteria*

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?
- Demonstration of the ability to operate and fund the registry on an ongoing basis:
  - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
  - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
  - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.
- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
  - Funding adequately covers technical requirements,
  - Funding covers costs,
  - Risks are identified and addressed, in comparison to other aspects of the plan.

### *III. Scoring*

#### Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.
- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.
- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.
- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

#### Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.
- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.
- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:
  - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
  - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).
- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.
- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:
  - Scoring a 3 on the continuity criteria, or
  - Scoring a 2 on any two financial criteria.
- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
<b>Applicant Information</b>	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
<b>Primary Contact for this Application</b>	6	Name	Y	The primary contact is the individual designated with the primary responsibility for management of the application, including responding to tasks in the TLD Application System (TAS) during the various application phases. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
<b>Secondary Contact for this Application</b>	7	Name	Y	The secondary contact is listed in the event the primary contact is unavailable to continue with the application process.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution).	Y				
		(b) State the specific national or other jurisdiction that defines the type of entity identified in 8(a).	Y	In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further. Supporting documentation for proof of legal establishment should be submitted in the original language.			
	9	(a) If the applying entity is publicly traded, provide the exchange and symbol.	Y				
		(b) If the applying entity is a subsidiary, provide the parent company.	Y				
		(c) If the applying entity is a joint venture, list all joint venture partners.	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
Applicant Background	11	(a) Enter the full name, date and country of birth, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	Partial	<p>Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application.</p> <p>Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected.</p> <p>The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.</p>			
		(b) Enter the full name, date and country of birth, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president,	Partial				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.					
		(c) Enter the full name and contact information of all shareholders holding at least 15% of shares, and percentage held by each. For a shareholder entity, enter the principal place of business. For a shareholder individual, enter the date and country of birth and contact information (permanent residence).	Partial				
		(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, date and country of birth, contact information (permanent residence), and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
		(e) Indicate whether the applicant or any of the individuals named above: <ul style="list-style-type: none"> <li>i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these;</li> <li>ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others;</li> <li>iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;</li> <li>iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;</li> <li>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;</li> </ul>	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</p> <p>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
Evaluation Fee	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	<p>The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.</p> <p>The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation.</p> <p>Fedwire is the preferred wire mechanism; SWIFT is also acceptable. ACH is not recommended as these funds will take longer to clear and could affect timing of the application processing.</p>			
		(b) Payer name	N				
		(c) Payer address	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
Applied-for gTLD string	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes.  The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+006F.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> <li>1. the applied-for gTLD string relevant to the tables,</li> <li>2. the script or language designator (as defined in BCP 47),</li> <li>3. table version number,</li> <li>4. effective date (DD Month YYYY), and</li> <li>5. contact name, email address, and phone number.</li> </ol> <p>Submission of IDN tables in a standards-based format is encouraged.</p>	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level (see question 44).  IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	<b>OPTIONAL.</b> Provide a representation of the label according to the International Phonetic Alphabet ( <a href="http://www.langsci.ucl.ac.uk/ipa/">http://www.langsci.ucl.ac.uk/ipa/</a> ).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			
<b>Mission/Purpose</b>	18	(a) Describe the mission/purpose of your proposed gTLD.	Y	The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space.  For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.  The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</p> <p>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored.</p> <p>An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.</p>			
		(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> <li>i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation?</li> <li>ii. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation?</li> <li>iii. What goals does your proposed gTLD have in terms of user experience?</li> <li>iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above.</li> <li>v. Will your proposed gTLD impose any measures for protecting the privacy or confidential information of registrants or users? If so, please describe any such</li> </ul>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				measures. Describe whether and in what ways outreach and communications will help to achieve your projected benefits.			
	18	(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?	Y	Answers should address the following points: <ul style="list-style-type: none"> <li>i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis?</li> <li>ii. Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts).</li> <li>iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans.</li> </ul>			
Community-based Designation	19	Is the application for a community-based TLD?	Y	There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.  The applicant's designation as standard or community-based cannot be changed once the application is submitted.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> <li>• How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language.</li> <li>• How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required.</li> <li>• When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date.</li> <li>• The current estimated size of the community, both as to membership and geographic extent.</li> </ul>		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> <li>• Relations to any community organizations.</li> <li>• Relations to the community and its constituent parts/groups.</li> <li>• Accountability mechanisms of the applicant to the community.</li> </ul>			
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> <li>• Intended registrants in the TLD.</li> <li>• Intended end-users of the TLD.</li> <li>• Related activities the applicant has carried out or intends to carry out in service of this purpose.</li> <li>• Explanation of how the purpose is of a lasting nature.</li> </ul>			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> <li>• relationship to the established name, if any, of the community.</li> <li>• relationship to the identification of community members.</li> <li>• any connotations the string may have beyond the community.</li> </ul>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	<p>Descriptions should include proposed policies, if any, on the following:</p> <ul style="list-style-type: none"> <li>• Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined.</li> <li>• Name selection: what types of second-level names may be registered in the gTLD.</li> <li>• Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name.</li> <li>• Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants.</li> </ul>			
		(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	<p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.</p> <p>Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.</p> <p>Endorsements presented as supporting documentation for this question should be submitted in the original language.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Geographic Names	21	(a) Is the application for a geographic name?	Y	<p>An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	<p>See the documentation requirements in Module 2 of the Applicant Guidebook.</p> <p>Documentation presented in response to this question should be submitted in the original language.</p>			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	<p>Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at <a href="https://gacweb.icann.org/display/gacweb/New+gTLDs">https://gacweb.icann.org/display/gacweb/New+gTLDs</a>.</p> <p>For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See <a href="https://gacweb.icann.org/display/gacweb/New+gTLDs">https://gacweb.icann.org/display/gacweb/New+gTLDs</a>.</p> <p>Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level must be separately approved according to</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				Specification 5 of the Registry Agreement. That is, approval of a gTLD application does not constitute approval for release of any geographic names under the Registry Agreement. Such approval must be granted separately by ICANN.			
Registry Services	23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> <li>A. Receipt of data from registrars concerning registration of domain names and name servers.</li> <li>B. Dissemination of TLD zone files.</li> <li>C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois service).</li> <li>D. Internationalized Domain Names, where offered.</li> <li>E. DNS Security Extensions (DNSSEC).</li> </ul> <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at <a href="http://www.icann.org/en/registries/rsep/rsep.html">http://www.icann.org/en/registries/rsep/rsep.html</a>.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

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				Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.			
<b>Demonstration of Technical &amp; Operational Capability (External)</b>	24	<p>Shared Registration System (SRS) Performance: describe</p> <ul style="list-style-type: none"> <li>the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>A high-level SRS system description;</li> <li>Representative network diagram(s);</li> <li>Number of servers;</li> <li>Description of interconnectivity with other registry systems;</li> <li>Frequency of synchronization between servers; and</li> <li>Synchronization scheme (e.g., hot standby, cold standby).</li> </ul> <p>A complete answer is expected to be no more than</p>	Y	<p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</p> <p>Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	0-1	<p>Complete answer demonstrates:</p> <p>(1) a plan for operating a robust and reliable SRS, one of the five critical registry functions;</p> <p>(2) scalability and performance consistent with the overall business approach, and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a well-developed plan to operate a robust and reliable SRS;</p> <p>(3) SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement;</p> <p>(4) SRS is consistent with the technical, operational and financial approach described in the application; and</p> <p>(5) Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		5 pages. (As a guide, one page contains approximately 4000 characters).					
	25	<p>Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</p> <p>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</p> <p>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> <li>• how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement;</li> <li>• how the Applicant's Whois service will comply with RFC 3912; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer should include, but is not limited to:</p>	Y	The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.	0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p>	<p><b>2 – exceeds requirements:</b> Response meets all the attributes for a score of 1 and includes:</p> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the application demonstrates compliance with any applicable</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>• A high-level Whois system description;</li> <li>• Relevant network diagram(s);</li> <li>• IT and infrastructure resources (e.g., servers, switches, routers and other components);</li> <li>• Description of interconnectivity with other registry systems; and</li> <li>• Frequency of synchronization between servers.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>• Provision for Searchable Whois capabilities; and</li> <li>• A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions.</li> </ul> <p>A complete answer is expected to be no more than 5 pages.</p>				<p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p>privacy laws or policies.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> <li>• explain the various registration states as well as the criteria and procedures that are used to change state;</li> <li>• describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply;</li> <li>• clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and</li> <li>• describe resourcing plans for this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are already on hand or committed or readily available to carry out this function.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> <li>An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller;</li> <li>Policies for handling complaints regarding abuse;</li> <li>Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and</li> <li>Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as described below.</p> <ul style="list-style-type: none"> <li>Measures to promote Whois accuracy (can be undertaken by the registry directly</li> </ul>	Y	<p>Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at <a href="http://www.icann.org/en/committees/security/sac048.pdf">http://www.icann.org/en/committees/security/sac048.pdf</a>) when provided with evidence in written form that such records are present in connection with malicious conduct.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD;</li> <li>(2) Plans are adequately resourced in the planned costs detailed in the financial section;</li> <li>(3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and</li> <li>(4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements.</li> </ol>	<p><b>2 – exceeds requirements:</b> Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> <li>(1) Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and</li> <li>(2) Measures from at least one additional area to be eligible for 2 points as described in the question.</li> </ol> <p><b>1 - meets requirements</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) An adequate description of abuse prevention and mitigation policies and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>(2) Details of well-developed abuse policies and procedures;</li> <li>(3) Plans are sufficient to result in compliance with contractual requirements;</li> <li>(4) Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and</li> <li>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</li> </ol> <p><b>0 – fails requirements</b> Does not meet all the requirements to</p>

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		<p>or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means.</li> <li>○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and</li> <li>○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars.</li> </ul> <ul style="list-style-type: none"> <li>• A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners;</li> <li>• Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> <li>○ Requiring multi-factor authentication (i.e., strong</li> </ul> </li> </ul>					score 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests;</p> <ul style="list-style-type: none"> <li>○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and</li> <li>○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted.</li> </ul> <p>A complete answer is expected to be no more than 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> <li>• A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and</li> <li>• A description of resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also</p>	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <p>(1) prevent abusive registrations, and  (2) identify and address the abusive use of registered names on an ongoing basis.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <p>(1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and  (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement).</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;  (2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7;  (3) Plans that are sufficient to result in compliance with contractual requirements;  (4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and  (5) Demonstrates an adequate level of resources that are on hand,</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.  A complete answer is expected to be no more than 10 pages.					committed, or readily available to carry out this function. <b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> <li>• indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities;</li> <li>• description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided);</li> <li>• list of commitments made to registrants concerning security levels.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>• Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001).</li> </ul> <p>A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>	Y	Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.	0-2	Complete answer demonstrates: (1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them; (2) security capabilities are consistent with the overall business approach and planned size of the registry; (3) a technical plan adequately resourced in the planned costs detailed in the financial section; (4) security measures are consistent with any commitments made to registrants regarding security levels; and (5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> <li>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</li> <li>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included. An illustrative example of an independent standard is the proposed set of requirements described in <a href="http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf">http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf</a>.)</li> </ol> <p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>(2) A description of adequate security</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
							<p>capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed;</p> <p>(3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants;</p> <p>(4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and</p> <p>(5) Proposed security measures are commensurate with the nature of the applied-for gTLD string.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
Demonstration of Technical & Operational Capability (Internal)	30	<p>(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> <li>• system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up;</li> <li>• resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any;</li> <li>• independent assessment reports demonstrating security capabilities (submitted as attachments), if any;</li> <li>• provisioning and other measures that mitigate risks posed by denial of service attacks;</li> <li>• computer and network incident response policies, plans, and processes;</li> <li>• plans to minimize the risk of unauthorized access to its systems or tampering with registry data;</li> <li>• intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against</li> </ul>	N	<p>Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>those threats, and provision for periodic threat analysis updates;</p> <ul style="list-style-type: none"> <li>• details for auditing capability on all network access;</li> <li>• physical security approach;</li> <li>• identification of department or group responsible for the registry's security organization;</li> <li>• background checks conducted on security personnel;</li> <li>• description of the main security threats to the registry operation that have been identified; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul>					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p> <p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions. If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical</p>	N	To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) complete knowledge and understanding of technical aspects of registry requirements;</li> <li>(2) an adequate level of resiliency for the registry's technical operations;</li> <li>(3) consistency with planned or currently deployed technical/operational solutions;</li> <li>(4) consistency with the overall business approach and planned size of the registry;</li> <li>(5) adequate resourcing for technical plan in the planned costs detailed in the financial section; and</li> <li>(6) consistency with subsequent technical questions.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>(2) Technical plans consistent with the technical, operational, and financial approach as described in the application;</li> <li>(3) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical &amp; Operational components conform.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> <li>Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions;</li> <li>Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> <li>Anticipated TCP / IP addressing scheme,</li> <li>Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)),</li> <li>Operating system and versions, and</li> <li>Software and applications (with version information) necessary to support registry operations, management, and monitoring</li> </ul> </li> <li>General overview of capacity planning, including bandwidth allocation plans;</li> <li>List of providers / carriers; and</li> <li>Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>detailed and coherent network architecture;</li> <li>architecture providing resiliency for registry systems;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section.</li> </ol>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> <li>Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and</li> <li>Evidence of a highly available, robust, and secure infrastructure.</li> </ol> <p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</li> <li>Plans for network architecture describe all necessary elements;</li> <li>Descriptions demonstrate adequate network architecture providing robustness and security of the registry;</li> <li>Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</li> <li>Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b></p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					Does not meet all the requirements to score 1.
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> <li>• database software;</li> <li>• storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions);</li> <li>• maximum transaction throughput (in total and by type of transaction);</li> <li>• scalability;</li> <li>• procedures for object creation, editing, and deletion, and user and credential management;</li> <li>• high availability;</li> <li>• change management procedures;</li> <li>• reporting capabilities; and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also include evidence of database capabilities that greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
							level of resources that are on hand, or committed or readily available to carry out this function. <b>0 - fails requirements:</b> Does not meet all the requirements to score 1.
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and b. operations centers.</p> <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> <li>the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure;</li> <li>any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included;</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.</p> <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers; (2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and (2) A high level of availability, security, and bandwidth.</p> <p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence; (3) Geo-diversity plans are consistent with technical, operational, and financial approach as described in the application; and (4) Demonstrates adequate resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	35	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> <li>Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. Describe how your nameserver update methods will change at various scales. Describe how DNS performance will change at various scales.</li> <li>RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones.</li> <li>The resources used to implement the services - describe complete server hardware and software, including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> <li>Demonstrate how the system will function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</li> </ul> <p>Examples of evidence include:</p> <ul style="list-style-type: none"> <li>Server configuration standard (i.e., planned configuration).</li> <li>Network addressing and bandwidth for query load and update propagation.</li> </ul>	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: <a href="http://www.iana.org/procedures/nameserver-requirements.html">http://www.iana.org/procedures/nameserver-requirements.html</a>.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section;</li> <li>evidence of compliance with Specification 6 to the Registry Agreement; and</li> <li>evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix;</li> <li>Plans are consistent with technical, operational, and financial approach as described in the application; and</li> <li>Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>Headroom to meet surges.</li> </ul> <p>A complete answer is expected to be no more than 10 pages.</p>					
	36	<p>IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> <li>How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement.</li> <li>How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6.</li> <li>List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used.</li> <li>Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be no more than 5 pages.</p>	N	IANA nameserver requirements are available at <a href="http://www.iana.org/procedures/nameserver-requirements.html">http://www.iana.org/procedures/nameserver-requirements.html</a> .	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>evidence of compliance with Specification 6 to the Registry Agreement.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10;</li> <li>IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and</li> <li>Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	37	<p>Data Backup Policies &amp; Procedures: provide</p> <ul style="list-style-type: none"> <li>details of frequency and procedures for backup of data,</li> <li>hardware, and systems used for backup,</li> <li>data format,</li> <li>data backup features,</li> <li>backup testing procedures,</li> <li>procedures for retrieval of data/rebuild of database,</li> <li>storage controls and procedures, and</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel</li> </ul>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>detailed backup and retrieval processes deployed;</li> <li>backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section.</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element;</li> <li>A description of leading practices being or to be followed;</li> <li>Backup procedures consistent with the technical, operational, and financial approach as described in the application; and</li> <li>Demonstrates an adequate level of</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>resources that are on hand, or committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	38	<p>Data Escrow: describe</p> <ul style="list-style-type: none"> <li>• how the applicant will comply with the data escrow requirements documented in the Registry Data Escrow Specification (Specification 2 of the Registry Agreement); and</li> <li>• resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be no more than 5 pages</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) complete knowledge and understanding of data escrow, one of the five critical registry functions;</li> <li>(2) compliance with Specification 2 of the Registry Agreement;</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>(4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry.</li> </ol>	<p><b>1 – meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>(1) Adequate description of a Data Escrow process that substantially demonstrates the applicant’s capability and knowledge required to meet this element;</li> <li>(2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement);</li> <li>(3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and</li> <li>(4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</li> </ol> <p><b>0 – fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at <a href="http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf">http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf</a>.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>(1) detailed description showing plans for compliance with registry continuity obligations;</li> <li>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>(4) evidence of compliance with Specification 6 to the</li> </ol>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> <li>(1) Highly developed and detailed processes for maintaining registry continuity; and</li> <li>(2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site.</li> </ol> <p><b>1 - meets requirements:</b> Response includes:</p> <ol style="list-style-type: none"> <li>(1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element;</li> <li>(2) Continuity plans are sufficient to</li> </ol>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> <li>• Identification of risks and threats to compliance with registry continuity obligations;</li> <li>• Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology;</li> <li>• Definitions of Recovery Point Objectives and Recovery Time Objective; and</li> <li>• Descriptions of testing plans to promote compliance with relevant obligations.</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>• A highly detailed plan that provides for leading practice levels of availability; and</li> <li>• Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site.</li> </ul> <p>A complete answer is expected to be no more than 15 pages.</p>		<p>disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>		Registry Agreement.	<p>result in compliance with requirements (Specification 6);</p> <p>(3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Preparatory steps needed for the transition of critical registry functions;</li> <li>• Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and</li> <li>• Contingency plans in the event that any part of the registry transition is</li> </ul>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of the Registry Transition Processes; and</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) Adequate description of a registry transition plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>unable to move forward according to the plan.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> <li>a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> <li>Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing;</li> <li>How results are captured, what is done with the results, and with whom results are shared;</li> <li>How test plans are updated (e.g., what triggers an update, change management processes for making updates);</li> <li>Length of time to restore critical registry functions;</li> <li>Length of time to restore all operations, inclusive of critical registry functions; and</li> <li>Length of time to migrate from one site to another.</li> </ul> <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p><b>1 - meets requirements:</b> Response includes</p> <p>(1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results;</p> <p>(3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p><b>0 – fails requirements</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> <li>a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems.</li> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> <li>Meeting the fault tolerance / monitoring guidelines described</li> <li>Evidence of commitment to provide a 24x7 fault response team.</li> </ul> <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> <li>a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</li> <li>consistency with the commitments made to registrants and registrars regarding system maintenance.</li> </ol>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> <li>Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly;</li> <li>A high level of availability that allows for the ability to respond to faults through a 24x7 response team.</li> </ol> <p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed;</li> <li>Plans are consistent with the technical, operational, and financial approach described in the application; and</li> <li>Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> <li>The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material;</li> <li>Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to:</li> </ul>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> <li>complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions;</li> <li>a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</li> </ol>	<p><b>1 - meets requirements:</b> Response includes</p> <ol style="list-style-type: none"> <li>An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element;</li> <li>Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key</li> </ol>

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		<p>RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and</p> <ul style="list-style-type: none"> <li>resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be no more than 5 pages. Note, the DPS is required to be submitted as part of the application</p>				<p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) an ability to comply with relevant RFCs.</p>	<p>material from registrants through the SRS ;</p> <p>(3) An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage);</p> <p>(4) Technical plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>
	44	<p><b>OPTIONAL.</b> IDNs:</p> <ul style="list-style-type: none"> <li>State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP.</li> <li>Describe how the IDN implementation will comply with RFCs 5809-5893 as well as the ICANN IDN Guidelines at <a href="http://www.icann.org/en/topics/idn/implementation-guidelines.htm">http://www.icann.org/en/topics/idn/implementation-guidelines.htm</a>.</li> <li>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</li> </ul> <p>A complete answer is expected to be no more than 10 pages plus attachments.</p>	N	<p>IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.</p> <p>IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.</p>	0-1	<p>IDNs are an optional service. Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(3) consistency with the commitments made to registrants and the technical, operational, and financial approach described in the application;</p> <p>(4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and</p> <p>(5) ability to comply with relevant RFCs.</p>	<p><b>1 - meets requirements for this optional element:</b> Response includes</p> <p>(1) Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations;</p> <p>(3) Evidence of ability to resolve rendering and known IDN issues or spoofing attacks;</p> <p>(4) IDN plans are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Demonstration of Financial Capability	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> <li>• audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and</li> <li>• audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released.</li> </ul> <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> <li>• the latest available unaudited financial statements; and</li> <li>• an explanation as to why audited or independently certified financial statements are not available.</li> </ul> <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p> <p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> <li>• balance sheet;</li> <li>• income statement;</li> <li>• statement of shareholders equity/partner capital;</li> <li>• cash flow statement, and</li> <li>• letter of auditor or independent certification, if applicable.</li> </ul>	N	<p>The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.</p> <p>Supporting documentation for this question should be submitted in the original language.</p>	0-1	<p>Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history (less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.</p>	<p><b>1 - meets requirements:</b> Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	46	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be no more than 10 pages in addition to the template.</p>	N		0-1	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p><b>1 - meets requirements:</b></p> <ol style="list-style-type: none"> <li>(1) Financial projections adequately describe the cost, funding and risks for the application</li> <li>(2) Demonstrates resources and plan for sustainable operations; and</li> <li>(3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all of the requirements to score a 1.</p>
	47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> <li>• the expected operating costs and capital expenditures of setting up and operating the proposed registry;</li> <li>• any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing;</li> <li>• any significant variances between years in any category of expected costs; and</li> <li>• a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</li> </ul> <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical &amp; Operational Capability section. Costs should include both fixed and variable costs.</p>	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.</p> <p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Key components of capital expenditures;</li> <li>• Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and</li> </ul>	<p><b>2 - exceeds requirements:</b> Response meets all of the attributes for a score of 1 and:</p> <ol style="list-style-type: none"> <li>(1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant;</li> <li>(2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and</li> <li>(3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.</li> </ol> <p><b>1 - meets requirements:</b></p> <ol style="list-style-type: none"> <li>(1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant);</li> <li>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and</li> <li>(3) Projections are reasonably aligned with the historical financial statements provided in Question 45.</li> </ol> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<ul style="list-style-type: none"> <li>Costs of outsourcing, if any.</li> </ul>	
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>V) A description of the basis / key assumptions including rationale for the funding and revenue provided in the projections template. This may</p>	N	Supporting documentation for this question should be submitted in the original language.	0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described. Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> <li>Executed funding agreements;</li> <li>A letter of credit;</li> <li>A commitment letter; or</li> <li>A bank statement.</li> </ul> <p>Funding commitments may be conditional on the approval of the application.</p>	<p><b>2 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and</p> <ol style="list-style-type: none"> <li>Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ;</li> <li>If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and earmarked for this purpose only in an amount adequate for three years operation;</li> <li>If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and</li> <li>Cash flow models are prepared which link funding and revenue assumptions to projected actual business activity.</li> </ol> <p><b>1 - meets requirements:</b></p>

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		<p>include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate:</p> <p>I) A conservative estimate of funding and revenue; and</p> <p>II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> <li>• Key components of the funding plan and their key terms; and</li> <li>• Price and number of registrations.</li> </ul>	<p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> <li>• Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning;</li> <li>• Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and</li> <li>• Describe the measures to mitigate the</li> </ul>	N		0-2	<p>Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p><b>2 - exceeds requirements:</b> Response meets all attributes for a score of 1 and:</p> <p>(1) Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks);</p> <p>(2) Response gives consideration to probability and resource impact of</p>

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		<p>key risks as described in this question.</p> <p>A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario).</p> <p>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>contingencies identified; and</p> <p>(3) If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> <li>• how on-going technical requirements will be met; and</li> <li>• what alternative funding can be reasonably raised at a later time.</li> </ul> <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p> <p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be no more than 10 pages, in addition to the template.</p>	N				
		<p>(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	50	<p>(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical,</p>	N	Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the	0-3	Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to	<p><b>3 - exceeds requirements:</b> Response meets all the attributes for a score of 1 and:</p> <p>(1) Financial instrument is secured and</p>

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		<p>operational, and financial approach described in the application.</p> <p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</p> <p>(4) Registry data escrow deposits</p> <p>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry</p>		<p>registry fails. Registrant needs are best protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>Refer to guidelines at <a href="http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm">http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm</a> regarding estimation of costs. However, the applicant must provide its own estimates and explanation in response to this question.</p>		<p>fund on-going critical registry functions for registrants for a period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>in place to provide for on-going operations for at least three years in the event of failure.</p> <p><b>1 - meets requirements:</b></p> <p>(1) Costs are commensurate with technical, operational, and financial approach as described in the application; and</p> <p>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p><b>0 - fails requirements:</b> Does not meet all the requirements to score a 1.</p>

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		<p>database).</p> <p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be no more than 10 pages.</p>					
		<p>(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC)</u> issued by a reputable financial institution.</p> <ul style="list-style-type: none"> <li>The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions.</li> <li>The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions.</li> <li>The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date</li> </ul>	N	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p> <p>Financial Institution Ratings: The instrument must be issued or held by a financial institution with a rating beginning with "A" (or the equivalent) by any of the following rating agencies: A.M. Best, Dominion Bond Rating Service, Egan-Jones, Fitch Ratings, Kroll Bond Rating Agency, Moody's, Morningstar, Standard &amp; Poor's, and Japan Credit Rating Agency.</p> <p>If an applicant cannot access a financial institution with a rating beginning with "A," but a branch or subsidiary of such an institution exists in the jurisdiction of the applying entity, then the instrument may be issued by the branch or subsidiary or by a local financial institution with an equivalent or higher rating to the branch or subsidiary.</p>			

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		<p>occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument.</p> <ul style="list-style-type: none"> <li>• The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated).</li> <li>• The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li>• Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement.</li> <li>• The LOC must contain at least the following required elements: <ul style="list-style-type: none"> <li>○ Issuing bank and date of issue.</li> <li>○ Beneficiary: ICANN / 4676 Admiralty Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</li> <li>○ Applicant's complete name and address.</li> <li>○ LOC identifying number.</li> <li>○ Exact amount in USD.</li> <li>○ Expiry date.</li> <li>○ Address, procedure, and required forms whereby presentation for payment is to be made.</li> <li>○ Conditions: <ul style="list-style-type: none"> <li>▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit.</li> <li>▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number.</li> <li>▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument.</li> <li>▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent.</li> </ul> </li> </ul> </li> </ul>		<p>If an applicant cannot access any such financial institutions, the instrument may be issued by the highest-rated financial institution in the national jurisdiction of the applying entity, if accepted by ICANN.</p> <p>Execution by ICANN: For any financial instruments that contemplate ICANN being a party, upon the written request of the applicant, ICANN may (but is not obligated to) execute such agreement prior to submission of the applicant's application if the agreement is on terms acceptable to ICANN. ICANN encourages applicants to deliver a written copy of any such agreement (only if it requires ICANN's signature) to ICANN as soon as possible to facilitate ICANN's review. If the financial instrument requires ICANN's signature, then the applicant will receive 3 points for question 50 (for the instrument being "secured and in place") only if ICANN executes the agreement prior to submission of the application. ICANN will determine, in its sole discretion, whether to execute and become a party to a financial instrument.</p> <p>The financial instrument should be submitted in the original language.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>(ii) A <u>deposit into an irrevocable cash escrow account</u> held by a reputable financial institution.</p> <ul style="list-style-type: none"> <li>• The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years.</li> <li>• Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met.</li> <li>• The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated).</li> <li>• The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee.</li> <li>• The escrow agreement must have a term of five years from the delegation of the TLD.</li> <li>• The funds in the deposit escrow account are not considered to be an asset of ICANN.</li> <li>• Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow.</li> <li>• The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater.</li> <li>• The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application.</li> <li>• Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement.</li> </ul>					

## Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

## Section I – Projected Cash inflows and outflows

### Projected Cash Inflows

**Lines A and B.** Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

**Line C.** Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

**Line D.** Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line D, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line D as that is covered in Section VI.

**Line E.** Add lines C and D to arrive at the total cash inflow.

### Projected Operating Cash Outflows

**Start up costs** - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

**Line F.** Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L (Other Costs)* and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

**Line G.** *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F*).

**Lines H through K.** Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

**Line L.** Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

**Line M.** Add lines *F* through *L* to arrive at the total costs for line *M*.

**Line N.** Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

## **Section IIa – Breakout of Fixed and Variable Operating Cash Outflows**

**Line A.** Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

**Line B.** Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

**Line C –** Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

## **Section IIb – Breakout of Critical Registry Function Operating Cash Outflows**

**Lines A – E.** Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. These costs are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50.

**Line F.** If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box. This projected cash outflow may also be included in the 3-year reserve.

**Line G.** Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

## Section III – Projected Capital Expenditures

**Lines A through C.** Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line D.** Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

**Line E** – Please describe “other” capital expenditures in the *Comments/Notes* box.

**Line F.** Add lines A through E to arrive at the Total Capital Expenditures.

## Section IV – Projected Assets & Liabilities

**Lines A through C.** Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line D.** Add lines A, B, C to arrive at the Total Current Assets.

**Lines E through G.** Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

**Line H.** Ad lines E through G to arrive at the total current liabilities.

**Lines I through K.** Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line L.** Ad lines I through K to arrive at the total long-term assets.

**Line M.** Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

## Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

**Line A.** Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line B.** Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

**Lines C through F.** Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

**Line G.** Add lines A through F to arrive at the projected net cash flow for line H.

## **Section VI – Sources of Funds**

**Lines A & B.** Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

**Line C.** Add lines A and B to arrive at the total sources of funds for line C.

### **General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.**

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

### **General Comments – Regarding how the Applicant Plans to Fund Operations**

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

### **General Comments – Regarding Contingencies**

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

TLD Applicant -- Financial Projections : **Sample**

In local currency (unless noted otherwise)

**Comments / Notes**

Provide name of local currency used.

Sec.	Reference / Formula	Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
<b>I) Projected Cash Inflows and Outflows</b>					
<b>A) Forecasted registration volume</b>					
B) Registration Fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05
C) Registration cash inflows	A * B	-	310,000	448,800	636,339
D) Other cash inflows		-	35,000	48,000	62,000
<b>E) Total Cash Inflows</b>		-	<b>345,000</b>	<b>496,800</b>	<b>698,339</b>
<b>Projected Operating Cash Outflows</b>					
<b>F) Labor:</b>					
<b>i) Marketing Labor</b>					
		25,000	66,000	72,000	81,000
<b>ii) Customer Support Labor</b>					
		5,000	68,000	71,000	74,000
<b>iii) Technical Labor</b>					
		32,000	45,000	47,000	49,000
G) Marketing		40,000	44,000	26,400	31,680
H) Facilities		7,000	10,000	12,000	14,400
I) General & Administrative		14,000	112,000	122,500	136,000
J) Interest and Taxes		27,500	29,000	29,800	30,760
<b>K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):</b>					
<b>i) Hot site maintenance</b>					
		5,000	7,500	7,500	7,500
<b>ii) Partial Registry Functions</b>					
		32,000	37,500	41,000	43,000
<b>iii) (list type of activities being outsourced)</b>					
		-	-	-	-
<b>iv) (list type of activities being outsourced)</b>					
		-	-	-	-
<b>v) (list type of activities being outsourced)</b>					
		-	-	-	-
<b>vi) (list type of activities being outsourced)</b>					
		-	-	-	-
L) Other Operating Costs		12,200	18,000	21,600	25,920
<b>M) Total Operating Cash Outflows</b>		<b>199,700</b>	<b>437,000</b>	<b>450,800</b>	<b>493,260</b>
<b>N) Projected Net Operating Cash flow</b>	E - M	<b>(199,700)</b>	<b>(92,000)</b>	<b>46,000</b>	<b>205,079</b>
<b>Ia) Break out of Fixed and Variable Operating Cash Outflows</b>					
<b>A) Total Variable Operating Costs</b>					
		92,000	195,250	198,930	217,416
<b>B) Total Fixed Operating Costs</b>					
		107,700	241,750	251,870	275,844
<b>C) Total Operating Cash Outflows</b>	= Sec. I) M CHECK	<b>199,700</b>	<b>437,000</b>	<b>450,800</b>	<b>493,260</b>
<b>Ib) Break out of Critical Registry Function Operating Cash Outflows</b>					
<b>A) Operation of SRS</b>					
		-	5,000	5,500	6,050
<b>B) Provision of Whois</b>					
		-	6,000	6,600	7,260
<b>C) DNS Resolution for Registered Domain Names</b>					
		-	7,000	7,700	8,470
<b>D) Registry Data Escrow</b>					
		-	8,000	8,800	9,680
<b>E) Maintenance of Zone in accordance with DNSSEC</b>					
		-	9,000	9,900	10,890
<b>F) Other</b>					
		-	35,000	38,500	42,350
<b>G) Total Critical Function Cash Outflows</b>		-	<b>35,000</b>	<b>38,500</b>	<b>42,350</b>
<b>III) Projected Capital Expenditures</b>					
<b>A) Hardware</b>					
		98,000	21,000	16,000	58,000
<b>B) Software</b>					
		32,000	18,000	24,000	11,000
<b>C) Furniture &amp; Other Equipment</b>					
		43,000	22,000	14,000	16,000
<b>D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures):</b>					
<b>i)</b>					
		-	-	-	-
<b>ii)</b>					
		-	-	-	-
<b>iii)</b>					
		-	-	-	-
<b>iv)</b>					
		-	-	-	-
<b>v)</b>					
		-	-	-	-
<b>vi)</b>					
		-	-	-	-
E) Other Capital Expenditures		-	-	-	-
<b>F) Total Capital Expenditures</b>		<b>173,000</b>	<b>61,000</b>	<b>54,000</b>	<b>85,000</b>
<b>IV) Projected Assets &amp; Liabilities</b>					
<b>A) Cash</b>					
		668,300	474,300	413,300	471,679
<b>B) Accounts receivable</b>					
		-	70,000	106,000	160,000
<b>C) Other current assets</b>					
		-	40,000	60,000	80,000
<b>D) Total Current Assets</b>		<b>668,300</b>	<b>584,300</b>	<b>579,300</b>	<b>711,679</b>
<b>E) Accounts payable</b>					
		41,000	110,000	113,000	125,300
<b>F) Short-term Debt</b>					
		-	-	-	-
<b>G) Other Current Liabilities</b>					
		-	-	-	-
<b>H) Total Current Liabilities</b>		<b>41,000</b>	<b>110,000</b>	<b>113,000</b>	<b>125,300</b>
<b>I) Total Property, Plant &amp; Equipment (PP&amp;E)</b>	= Sec III) F: cumulative Prior Years + Cur Yr	<b>173,000</b>	<b>234,000</b>	<b>288,000</b>	<b>373,000</b>
<b>J) 3-year Reserve</b>		<b>186,000</b>	<b>186,000</b>	<b>186,000</b>	<b>186,000</b>
<b>K) Other Long-term Assets</b>					
		359,000	420,000	474,000	559,000
<b>L) Total Long-term Assets</b>		<b>359,000</b>	<b>420,000</b>	<b>474,000</b>	<b>559,000</b>
<b>M) Total Long-term Debt</b>		<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>	<b>1,000,000</b>
<b>V) Projected Cash flow (excl. 3-year Reserve)</b>					
<b>A) Net operating cash flows</b>					
	= Sec. I) N	(199,700)	(92,000)	46,000	205,079
<b>B) Capital expenditures</b>					
	= Sec. III) FE	(173,000)	(61,000)	(54,000)	(85,000)
<b>C) Change in Non Cash Current Assets</b>					
	= Sec. IV) (B+C): Prior Yr - Cur Yr	n/a	(110,000)	(56,000)	(74,000)
<b>D) Change in Total Current Liabilities</b>					
	= Sec. IV) H: Cur Yr - Prior Yr	41,000	69,000	3,000	12,300
<b>E) Debt Adjustments</b>					
	= Sec. IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-
<b>F) Other Adjustments</b>		-	-	-	-
<b>G) Projected Net Cash flow</b>		<b>(331,700)</b>	<b>(194,000)</b>	<b>(61,000)</b>	<b>58,379</b>
<b>VI) Sources of funds</b>					
<b>A) Debt:</b>					
<b>i) On-hand at time of application</b>					
		1,000,000	-	-	-
<b>ii) Contingent and/or committed but not yet on-hand</b>					
		-	-	-	-
<b>B) Equity:</b>					
<b>i) On-hand at time of application</b>					
		-	-	-	-
<b>ii) Contingent and/or committed but not yet on-hand</b>					
		-	-	-	-
<b>C) Total Sources of funds</b>		<b>1,000,000</b>	<b>-</b>	<b>-</b>	<b>-</b>

Registration was forecasted based on recent market surveys which we have attached and discussed below. We do not anticipate significant increases in Registration Fees subsequent to year 3.

Other cash inflows represent advertising monies expected from display ads on our website.

Costs are further detailed and explained in response to question 47.

Provide a list and associated cost for each outsourced function:  
Outsourcing hot site to ABC Company, cost based on number of servers hosted and customer support  
Outsourced certain registry and other functions to ABC registry (applicant should list outsourced functions). Costs for each year are based on expected domains under management

Variable Costs:  
-Start Up equals all labor plus 75% of marketing.  
-Years 1 through 3 equal 75% of all labor plus 50% of Marketing, and 30% of G&A and Other Operating Costs  
Fixed Costs: equals Total Costs less Variable Costs

Check that I) C equals I) N.

Note: these are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50

Commensurate with Question 24  
Commensurate with Question 26  
Commensurate with Question 35  
Commensurate with Question 38  
Commensurate with Question 43

-Hardware & Software have a useful life of 3 years  
-Furniture & other equipment have a useful life of 5 years

List and describe each identifiable type of outsourcing.

Should equal amount calculated for Question 50

Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec. I) J.

The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year.

See below for comments on funding. Revenues are further detailed and explained in response to question 48.

**General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):**

We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods. Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached support.

**Comments regarding how the Applicant plans to Fund operations:**

We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e., revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

**General Comments regarding contingencies:**

Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown, are adequate to fund our start-up phase.

**Template 1 - Financial Projections: Most Likely**

**Comments / Notes**

In local currency (unless noted otherwise)		Reference / Formula	Live / Operational				Provide name of local currency used.
Sec.			Start-up Costs	Year 1	Year 2	Year 3	
<b>I) Projected Cash inflows and outflows</b>							
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
<b>Projected Operating Cash Outflows</b>							
<b>F) Labor:</b>							
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
<b>IIa) Break out of Fixed and Variable Operating Cash Outflows</b>							
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
<b>IIb) Break out of Critical Function Operating Cash Outflows</b>							
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
<b>III) Projected Capital Expenditures</b>							
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
<b>IV) Projected Assets &amp; Liabilities</b>							
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
<b>V) Projected Cash flow (excl. 3-year Reserve)</b>							
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets		n/a				
	D) Change in Total Current Liabilities						
	E) Debt Adjustments		n/a				
	F) Other Adjustments						
	G) Other Adjustments						
	H) Projected Net Cash flow						
<b>VI) Sources of funds</b>							
<b>A) Debt:</b>							
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
<b>B) Equity:</b>							
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
<b>General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):</b>							
<b>Comments regarding how the Applicant plans to Fund operations:</b>							
<b>General Comments regarding contingencies:</b>							

Template 2 - Financial Projections: Worst Case						Comments / Notes	
In local currency (unless noted otherwise)			Live / Operational				Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3		
I)	Projected Cash inflows and outflows						
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
	Projected Operating Cash Outflows						
	F) Labor:						
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
IIa)	Break out of Fixed and Variable Operating Cash Outflows						
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
IIb)	Break out of Critical Function Operating Cash Outflows						
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
III)	Projected Capital Expenditures						
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
IV)	Projected Assets & Liabilities						
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
V)	Projected Cash flow (excl. 3-year Reserve)						
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets	n/a					
	D) Change in Total Current Liabilities						
	E) Debt Adjustments	n/a					
	F) Other Adjustments						
	G) Projected Net Cash flow						
VI)	Sources of funds						
	A) Debt:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	B) Equity:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):							
Comments regarding how the Applicant plans to Fund operations:							
General Comments regarding contingencies:							



# gTLD Applicant Guidebook

(v. 2012-01-11)

**Module 3**

11 January 2012

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# Module 3

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## Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

### 3.1 GAC Advice on New gTLDs

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ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved. The ICANN Board is also expected to provide a rationale for its decision if it does not follow the GAC Advice.
- II. The GAC advises ICANN that there are concerns about a particular application “dot-example.” The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant. If the issue identified by the GAC is not remediated, the ICANN Board is also expected to provide a rationale for its decision if the Board does not follow GAC advice.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any

application (i.e., an application will not be suspended but will continue through the stages of the application process).

## 3.2 *Public Objection and Dispute Resolution Process*

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The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

### 3.2.1 *Grounds for Objection*

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A formal objection may be filed on any one of the following four grounds:

**String Confusion Objection** – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

**Legal Rights Objection** – The applied-for gTLD string infringes the existing legal rights of the objector.

**Limited Public Interest Objection** – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

**Community Objection** – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>.

### 3.2.2 *Standing to Object*

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	Rightholders
Limited public interest	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

#### 3.2.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

### 3.2.2.2 *Legal Rights Objection*

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name<sup>1</sup>:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

### 3.2.2.3 *Limited Public Interest Objection*

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a "quick look" procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

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<sup>1</sup> See also <http://www.iana.org/domains/int/policy/>.

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.<sup>2</sup>

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

#### 3.2.2.4 Community Objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify

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<sup>2</sup> The jurisprudence of the European Court of Human Rights offers specific examples of how the term "manifestly ill-founded" has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application." The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court's website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

for standing for a community objection, the objector must prove both of the following:

***It is an established institution*** – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

***It has an ongoing relationship with a clearly delineated community*** – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

### ***3.2.3 Dispute Resolution Service Providers***

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To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.

- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.
- The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest<sup>3</sup> followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

#### *3.2.4 Options in the Event of Objection*

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Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

#### *3.2.5 Independent Objector*

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A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

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<sup>3</sup> See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

**Mandate and Scope** - The IO may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

**Selection** – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and

international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

**Budget and Funding** – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

### 3.3 Filing Procedures

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The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure ("Procedure") included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed.

- For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program. These rules are available in draft form and have been posted along with this module.
- For a Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute

Resolution. These rules are available and have been posted along with this module.

- For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC)<sup>4</sup>, as supplemented by the ICC as needed.
- For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC)<sup>5</sup>, as supplemented by the ICC as needed.

### 3.3.1 *Objection Filing Procedures*

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The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date. Objections will not be accepted by the DRSPs after this date.
- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.

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<sup>4</sup> See <http://www.iccwbo.org/court/expertise/id4379/index.html>

<sup>5</sup> *Ibid.*

- A description of the basis for the objection, including:
  - A statement giving the specific ground upon which the objection is being filed.
  - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

### *3.3.2 Objection Filing Fees*

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At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

### ***3.3.3 Response Filing Procedures***

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Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.
- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.
- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

### ***3.3.4 Response Filing Fees***

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At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

## ***3.4 Objection Processing Overview***

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The information below provides an overview of the process by which DRSPs administer dispute proceedings that have

been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

### ***3.4.1 Administrative Review***

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Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

### ***3.4.2 Consolidation of Objections***

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Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

### 3.4.3 *Mediation*

---

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

### 3.4.4 *Selection of Expert Panels*

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A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

### ***3.4.5 Adjudication***

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The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

### ***3.4.6 Expert Determination***

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The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;
- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

### ***3.4.7 Dispute Resolution Costs***

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Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and

community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) calendar days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) calendar days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

### **3.5 Dispute Resolution Principles (Standards)**

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Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

### 3.5.1 *String Confusion Objection*

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A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

### 3.5.2 *Legal Rights Objection*

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In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector’s existing mark.
2. Whether the objector’s acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant’s intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector’s mark, or could not have reasonably been unaware of that mark, and including whether the applicant has

engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.

5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
  - a. Level of global recognition of both entities;
  - b. Length of time the entities have been in existence;
  - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6<sup>ter</sup> of the Paris Convention for the Protection of Industrial Property.

3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

### ***3.5.3 Limited Public Interest Objection***

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An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of discrimination that violate generally accepted legal norms recognized under principles of international law;
- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

#### *3.5.4 Community Objection*

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The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a

significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

**Community** – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;
- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

**Substantial Opposition** – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;

- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
  - Regional
  - Subsectors of community
  - Leadership of community
  - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

**Targeting** – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

**Detriment** – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

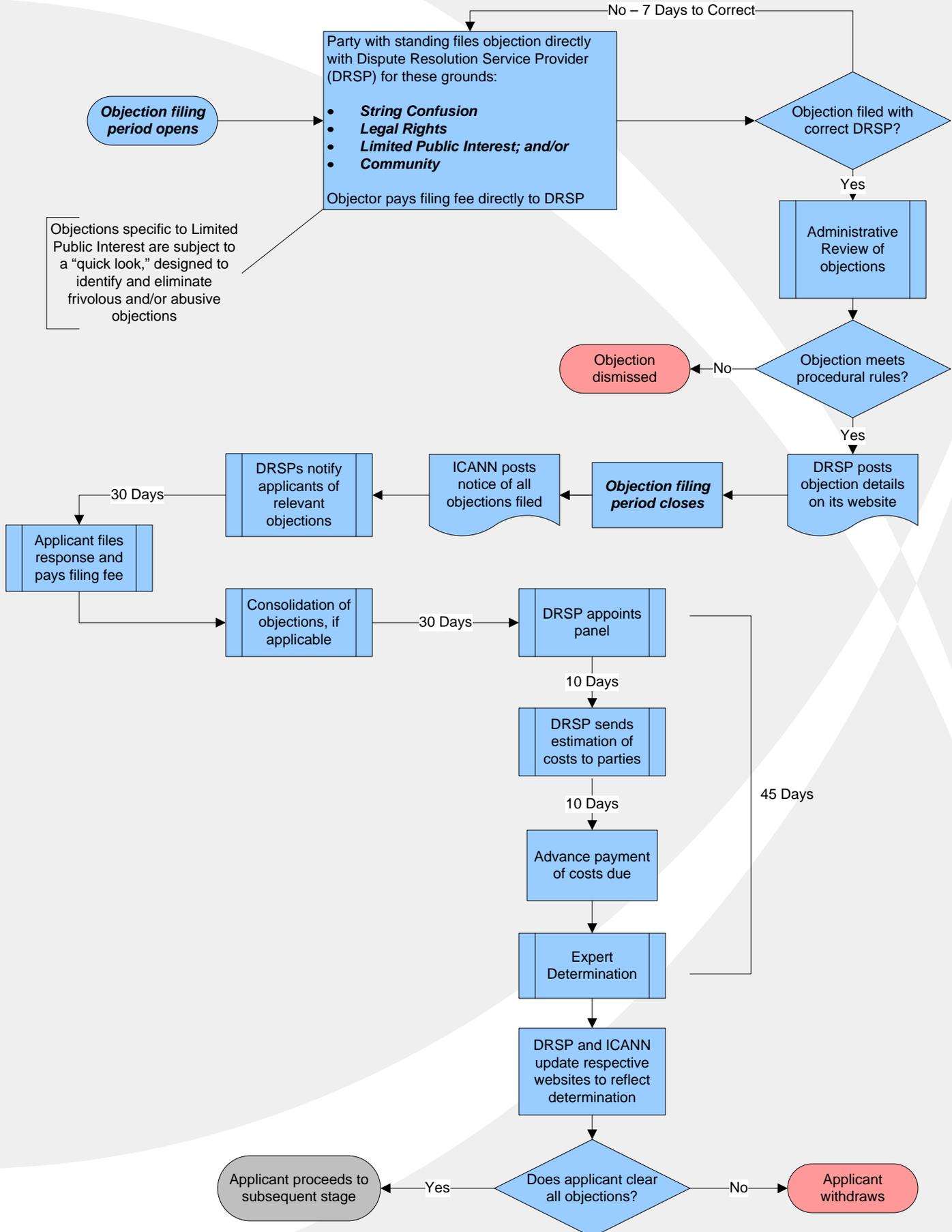
Factors that could be used by a panel in making this determination include but are not limited to:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

# DRAFT - New gTLD Program – Objection and Dispute Resolution



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# *Attachment to Module 3*

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## *New gTLD Dispute Resolution Procedure*

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

## NEW gTLD DISPUTE RESOLUTION PROCEDURE

### Article 1. ICANN's New gTLD Program

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

### Article 2. Definitions

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
  - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
  - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) “Limited Public Interest Objection” refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
- (iv) “Community Objection” refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) “DRSP Rules” are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

### **Article 3. Dispute Resolution Service Providers**

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

### **Article 4. Applicable Rules**

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
  - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN’s New gTLD Program.
  - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
  - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
  - (iv) For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

#### **Article 5. Language**

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

#### **Article 6. Communications and Time Limits**

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

#### **Article 7. Filing of the Objection**

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
  - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
  - (iii) A Limited Public Interest Objection must be filed at: [●].
  - (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
  - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

## **Article 8. Content of the Objection**

- (a) The Objection shall contain, *inter alia*, the following information:
- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
  - (ii) A statement of the Objector's basis for standing; and
  - (iii) A description of the basis for the Objection, including:
    - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
    - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

## **Article 9. Administrative Review of the Objection**

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

## **Article 10. ICANN's Dispute Announcement**

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

## **Article 11. Response to the Objection**

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
  - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
  - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

## **Article 12. Consolidation of Objections**

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

### **Article 13. The Panel**

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
  - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
  - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
  - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
  - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

### **Article 14. Costs**

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
  - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

### **Article 15. Representation and Assistance**

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

### **Article 16. Negotiation and Mediation**

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

### **Article 17. Additional Written Submissions**

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

## **Article 18. Evidence**

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

## **Article 19. Hearings**

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
  - (i) The Panel shall decide how and where the hearing shall be conducted.
  - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
  - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
  - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

## **Article 20. Standards**

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

## **Article 21. The Expert Determination**

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

## **Article 22. Exclusion of Liability**

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

## **Article 23. Modification of the Procedure**

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.

International Centre for Dispute Resolution (ICDR)

Fees & Costs Schedule for String Confusion Objections  
(Fee Schedule)

May 20, 2010

Administrative Filing Fees (non-refundable)

- US \$2750 Filing Fee; per party; per objection.  
This amount is due on all objections filed.
- US \$1250<sup>1</sup> Case Service Fee; per party; per objection.  
This additional amount only becomes due if any type of hearing is conducted in accordance with Article 19 of the gTLD Dispute Resolution Procedures.

Neutral Panel Compensation (limited to one arbitrator)

- US \$6000<sup>2</sup> per objector/applicant.  
This is collected for all cases to be heard on documents only and includes all arbitrator expenses.
- US \$3000<sup>3</sup> per party.  
This is billed if any type of hearing is conducted.
  - Same amount billed for each additional day of hearing beyond one day.
  - Includes all travel time of the neutral.
  - Does not include travel expenses which will be billed separately

<sup>1</sup>See Article 19 of the gTLD Dispute Resolution Procedures.

<sup>2</sup>See Article 14(b) of the gTLD Dispute Resolution Procedures.

<sup>3</sup>See Article 14(c) of the gTLD Dispute Resolution Procedures.

International Centre for Dispute Resolution (ICDR)

Supplementary Procedures for String Confusion Objections  
(Rules)

10 January 2012

**Impartiality and Independence of Experts**

**Article 1**

1. Dispute Resolution Panelists, who shall be referred to as "Experts", acting under the New **gTLD DISPUTE RESOLUTION PROCEDURES** and these Rules shall be impartial and independent. Prior to accepting appointment, a prospective Expert shall disclose to the Dispute Resolution Service Provider (DRSP) any circumstance likely to give rise to justifiable doubts as to the Expert's impartiality or independence. If, at any stage during the proceedings, new circumstances arise that may give rise to such doubts, an Expert shall promptly disclose such circumstances to the parties and to the DRSP. Upon receipt of such information from an Expert or a party, the DRSP shall communicate it to the other parties and to the panel.
2. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any Expert.

**Challenge of Experts**

**Article 2**

1. A party may challenge any Expert whenever circumstances exist that give rise to justifiable doubts as to the Expert's impartiality or independence. A party wishing to challenge an Expert shall send notice of the challenge to the DRSP within 10 days after being notified of the appointment of the Expert or within 10 days after the circumstances giving rise to the challenge become known to that party.
2. The challenge shall state in writing the reasons for the challenge.
3. Upon receipt of such a challenge, the DRSP shall notify the other parties of the challenge. Upon review of the challenge the DRSP in its sole discretion shall make the decision on the challenge and advise the parties of its decision. The challenged Expert may also withdraw from office upon notice of the challenge.

## **Replacement of an Expert**

### **Article 3**

If an Expert withdraws after a challenge, or the DRSP sustains the challenge, or the DRSP determines that there are sufficient reasons to accept the resignation of an Expert, or an Expert dies, a substitute Expert shall be appointed pursuant to the provisions of Article 13 of the **gTLD Dispute Resolution Procedures**.

## **Waiver of Rules**

### **Article 4**

A party who knows that any provision of the Rules or requirement under the Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, shall be deemed to have waived the right to object.

## **Confidentiality**

### **Article 5**

Confidential information disclosed during the proceedings by the parties, counsel, or by witnesses shall not be divulged by an Expert or by the DRSP.

## **Interpretation of Rules**

### **Article 6**

The Expert shall interpret and apply these Rules insofar as they relate to its powers and duties. The DRSP shall interpret and apply all other Rules.

## **Exclusion of Liability**

### **Article 7**

1. Neither the International Centre for Dispute Resolution (ICDR), the American Arbitration Association (AAA), nor any Expert in a proceeding under the New gTLD Dispute Resolution Procedures and/or these Rules is a necessary or proper party in judicial proceedings relating to the Objection proceeding.

2. Parties to an Objection proceeding under the New gTLD Dispute Resolution Procedures and/or these Rules shall be deemed to have consented that neither the ICDR, the AAA, nor any Expert shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any Objection proceeding under the gTLD Dispute Resolution Procedures and/or these Rules.

DRAFT

**World Intellectual Property Organization Schedule of Fees and Costs:  
New gTLD Pre-Delegation Legal Rights Objection Procedure**

(All amounts are in United States dollars)

*(This Schedule of Fees and Costs may be amended by WIPO in accordance with the WIPO Rules for New gTLD Dispute Resolution.)*

**DRSP Fee <sup>1</sup>**

	DRSP Fee
Single-Expert Panel	2,000
Three-Expert Panel	3,000

**Panel Fee <sup>2</sup>**

*Base Panel Fee for Single Objection to Single Application Dispute*

Single-Expert Panel	8,000
Three-Expert Panel	20,000 (Presiding Expert: 10,000; Co-Expert: 5,000)

*Panel Fee for Multiple Objections to Single Application: <sup>3</sup>  
60% of Regular Base Fee (to be paid per Objection filed)*

Single-Expert Panel	4,800
Three-Expert Panel	12,000 (Presiding Expert: 6,000; Co-Expert: 3,000)

*Panel Fee for Multiple Objections filed by Same Objector to Multiple Applications:  
80% of Regular Base Fee (to be paid per Objection filed)<sup>3</sup>*

Single-Expert Panel	6,400
Three-Expert Panel	16,000 (Presiding Expert: 8,000; Co-Expert: 4,000)

<sup>1</sup> See Articles 8(c) and 11(f) of the New gTLD Dispute Resolution Procedure.

<sup>2</sup> See Article 14 of the New gTLD Dispute Resolution Procedure.

<sup>3</sup> See Article 12 of the New gTLD Dispute Resolution Procedure.

World Intellectual Property Organization Schedule of Fees and Costs:  
New gTLD Pre-Delegation Legal Rights Objection Procedure

*All Other Scenarios*<sup>3</sup>

In all other scenarios, the DRSP shall determine the applicable fees in consultation with the Panel, taking into account the base fees stipulated above and the circumstances of the consolidated objections and applications.

**Additional Advance Payments**

Depending on the circumstances of the case, additional advance payments may be required to be made. In determining whether additional advance payments shall be required, the DRSP, in consultation with the Panel, may consider the following non-exclusive factors: the number of Applications and/or Objections to the TLD, the number of parties, the complexity of the dispute, the anticipated time required for rendering an Expert Determination, and the possible need for hearings, phone or video conferences, or additional pleading rounds.

**World Intellectual Property Organization  
Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections  
("WIPO Rules for New gTLD Dispute Resolution")**

*(In effect as of June 20, 2011)*

**1. Scope of WIPO Rules for New gTLD Dispute Resolution in Relation to Procedure**

(a) Set out below are the applicable WIPO Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections as referred to in Article 4 of the New gTLD Dispute Resolution Procedure ("Procedure") as approved by the Internet Corporation for Assigned Names and Numbers ("ICANN") on June 20, 2011. The WIPO Rules for New gTLD Dispute Resolution are to be read and used in connection with the Procedure which provides the basic framework for the four categories of objections (as referred to in Articles 2 and 4 of the Procedure) arising from Applications under ICANN's New gTLD Program.

(b) The version of the WIPO Rules for New gTLD Dispute Resolution applicable to a proceeding conducted under the Procedure is the version in effect on the day when the relevant Application for a new gTLD is submitted (as referred to in Article 23(b) of the Procedure).

**2. Definitions**

Terms defined in the Procedure shall have the same meaning in the WIPO Rules for New gTLD Dispute Resolution. Words used in the singular shall include the plural and *vice versa* as the context may require.

**3. Communications**

(a) Subject to Article 6 of the Procedure, except where otherwise agreed beforehand with the WIPO Arbitration and Mediation Center ("Center"), and subject to the discretion of any appointed Panel, any submission to the Center or to the Panel shall be made by electronic mail (email) using [arbiter.mail@wipo.int](mailto:arbiter.mail@wipo.int).

(b) In the event a party wishes to submit a hard copy or other non-electronic submission prior to Panel appointment, it shall first request leave to do so from the Center; the Center shall, in its sole discretion, then determine whether to accept the non-electronic submission. After Panel appointment, parties are referred to Article 6(a) of the Procedure.

#### **4. Submission of Objection and Response**

(a) In accordance with Articles 7 and 8 of the Procedure, the Objector shall transmit its Objection using the Objection Model Form set out in Annex A hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex B hereto and posted on the Center's website.

(b) In accordance with Article 11 of the Procedure, the Applicant shall transmit its Response using the Response Model Form set out in Annex C hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex B hereto and posted on the Center's website.

#### **5. Center Review of Objections**

(a) In accordance with Article 9 of the Procedure if an Objection is dismissed due to the Objector's failure to remedy an administrative deficiency, there shall be no refund of any DRSP Fee paid by the Objector pursuant to Article 14 of the Procedure and Paragraph 10 of the WIPO Rules for New gTLD Dispute Resolution.

(b) If an Objector submits a new Objection within ten (10) calendar days of closure of a proceeding as provided in Article 9(d) of the Procedure and Paragraph 5(a) of the WIPO Rules for New gTLD Dispute Resolution to remedy an administratively deficient Objection, such new Objection may be accompanied by a request for a DRSP Fee waiver, in whole or in part, for the Center's consideration in its sole discretion.

#### **6. Appointment of Case Manager**

(a) The Center shall advise the parties of the name and contact details of the Case Manager who shall be responsible for all administrative matters relating to the dispute and communications to the Panel.

(b) The Case Manager may provide administrative assistance to the parties or Panel, but shall have no authority to decide matters of a substantive nature concerning the dispute.

#### **7. Consolidation**

(a) In accordance with Article 12 of the Procedure, the Center may, where possible and practicable, and in its sole discretion, decide to consolidate Objections by appointing the same Panel to decide multiple Objections sharing certain commonalities. In the event of consolidation, the Panel shall render individual Expert Determinations for each Objection.

(b) A party may submit a consolidation request pursuant to Article 12(b) of the Procedure, or may oppose any consolidation request submitted. Any such opposition to a consolidation request shall be provided within seven (7) calendar days of the consolidation request. Any consolidation request or opposition thereto shall be limited to 1,500 words in length.

(c) In the case of consolidated Objections, the applicable reduced Panel fees are specified in Annex D hereto and posted on the Center's website.

(d) Pursuant to Article 12 of the Procedure, in weighing the benefits that may result from consolidation against the possible prejudice or inconvenience that consolidation may cause, the Center in reaching its decision concerning consolidation, may take into account, *inter alia*, the following non-exclusive factors:

- (i) Whether the Objections concern the same or similar TLD(s);
- (ii) Whether the same Objector files Objections concerning multiple TLD applications;
- (iii) Whether in any consolidation request, or opposition thereto, the Objector or Applicant relies on single or multiple mark(s);
- (iv) The scope of evidence relied on by an Objector or Applicant in any Objection or application;
- (v) Any other arguments raised in any consolidation request, or opposition thereto;
- (vi) Expert availability to accept appointment.

(e) The Center's decision on any consolidation of multiple Objections for Expert Determination by the same Panel is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

## **8. Panel Appointment Procedures**

(a) The Center will maintain and publish on its website a publicly-available List of Experts.

(b) Pursuant to Article 13(b)(ii) of the Procedure, there shall be a Single-Expert Panel unless all the Parties agree to the appointment of a Three-Expert Panel.

(c) In the event of a Single-Expert Panel, the Center shall in its sole discretion appoint an Expert from its List of Experts.

(d) In the event all the Parties agree to the appointment of a Three-Expert Panel, any such agreement shall be communicated to the Center within five (5) calendar days of the Center's receipt of the Response filed in accordance with Article 11 of the Procedure and Paragraph 4(b) of the WIPO Rules for New gTLD Dispute Resolution.

- (i) If Objections are not consolidated, and if the parties have communicated their agreement on the appointment of a Three-Expert Panel, within five (5) days of such communication each party shall separately submit to the Center (notwithstanding Article 6(b) of the Procedure) the names of three (3) candidates from the Center's List of Experts, in the order of their respective preference, for appointment by the Center as a Co-Expert. In the event none of a party's three (3) candidates is available for appointment as a Co-Expert, the Center shall appoint the Co-Expert in its sole discretion.

- (ii) In the event of consolidation in accordance with Paragraph 7 of the WIPO Rules for New gTLD Dispute Resolution, the Objectors or Applicants shall, as the case may be, jointly submit the names of the three (3) candidates from the Center's List of Experts in order of preference (i.e., one list on behalf of all Objector(s) and one list on behalf of all Applicant(s)). If the Objectors or Applicants as the case may be do not jointly agree on and submit the names of three (3) candidates within five (5) calendar days of the parties' communication to the Center on their agreement to the appointment of a Three-Expert Panel, the Center shall in its sole discretion appoint the Co-Experts.
- (iii) The third Expert, who shall be the Presiding Expert, shall absent exceptional circumstances be appointed by the Center from a list of five (5) candidates submitted by the Center to the parties. The Center's selection of a Presiding Expert shall be made in a manner that seeks to reasonably balance the preferences of each party as communicated to the Center within five (5) calendar days of the Center's communication of the list of candidates to the parties.
- (iv) Where any party fails to indicate its order of preference for the Presiding Expert to the Center, the Center shall nevertheless proceed to appoint the Presiding Expert in its sole discretion, taking into account any preferences of any other party.

## 9. Expert Impartiality and Independence

(a) In accordance with Article 13(c) of the Procedure, any prospective Expert shall, before accepting appointment, disclose to the Center and parties any circumstance that might give rise to justifiable doubt as to the Expert's impartiality or independence, or confirm in writing that no such circumstance exist by submitting to the Center a *Declaration of Impartiality and Independence* using the form set out in Annex E hereto and posted on the Center's website.

(b) If at any stage during a proceeding conducted under the Procedure, circumstances arise that might give rise to justifiable doubt as to an Expert's impartiality or independence, the Expert shall promptly disclose such circumstances to the parties and the Center.

(c) A party may challenge an Expert if circumstances exist which give rise to justifiable doubt as to the Expert's impartiality or independence. A party may challenge an Expert whom it has appointed or in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

- (i) A party challenging an Expert shall send notice to the Center and the other party, stating the reasons for the challenge, within five (5) calendar days after being notified of that Expert's appointment or becoming aware of circumstances that it considers give rise to justifiable doubt as to that Expert's impartiality or independence.
- (ii) The decision on the challenge shall be made by the Center in its sole discretion. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision. In the event of an Expert's removal, the Center shall appoint a new Expert in accordance with the Procedure and these WIPO Rules for New gTLD Dispute Resolution.

## 10. Fees

(a) The applicable fees for the Procedure for Existing Legal Rights Objections are specified in Annex D hereto and posted on the Center's website.

(b) After the Expert Determination has been rendered or a proceeding conducted under the Procedure has been terminated, the Center shall provide an accounting to the parties of the payments received and, in consultation with any Panel, return any unexpended balance of the Panel Fee to the parties.

## 11. Confidentiality

(a) A party invoking the confidentiality of any information it wishes or is required to submit in any Existing Legal Rights Objection proceeding conducted under the Procedure, shall submit the request for confidentiality to the Center for the Panel's consideration, stating the reasons for which it considers the information to be confidential. If the Panel decides that the information is to be treated as confidential, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(b) Further to Article 6(b) of the Procedure, except in exceptional circumstances as decided by the Panel and in consultation with the parties and the Center, no party or anyone acting on its behalf shall have any *ex parte* communication with the Panel.

## 12. Mediation

Further to Article 16 of the Procedure, prior to the Panel rendering its Expert Determination in a proceeding conducted under the Procedure, the parties may inform the Center that they wish to participate in mediation to attempt to resolve the dispute and may request the Center to administer the mediation. In such event, unless both parties agree otherwise, the WIPO Mediation Rules shall apply *mutatis mutandis*. On request from the parties, and absent exceptional circumstances, the Center's mediation administration fee shall be waived.

## 13. Effect of Court Proceedings

(a) The Objector and Applicant shall include in any Objection or Response relevant information regarding any other legal proceedings concerning the TLD. In the event that a party initiates any legal proceedings during the pendency of a proceeding conducted under the Procedure, it shall promptly notify the Center.

(b) In the event of any legal proceedings initiated prior to or during a proceeding conducted under the Procedure, the Panel shall have the discretion to decide whether to suspend or terminate such proceeding under the Procedure, or to proceed to an Expert Determination.

#### **14. Termination**

(a) If, before the Panel renders an Expert Determination, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Panel may in its discretion terminate the proceeding.

(b) If, prior to Panel appointment, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Center in consultation with the parties and ICANN, may in its discretion terminate the proceeding.

#### **15. Amendments**

Subject to the Procedure, the Center may amend these WIPO Rules for New gTLD Dispute Resolution in its sole discretion.

#### **16. Exclusion of Liability**

Except in respect of deliberate wrongdoing, an Expert, the World Intellectual Property Organization, and the Center shall not be liable to any party or ICANN for any act or omission in connection with any proceeding conducted under the Procedure and the WIPO Rules for New gTLD Dispute Resolution.



# gTLD Applicant Guidebook

(v. 2012-01-11)

Module 4

11 January 2012

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# Module 4

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## *String Contention Procedures*

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

### *4.1 String Contention*

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String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

(In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

#### *4.1.1 Identification of Contention Sets*

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Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

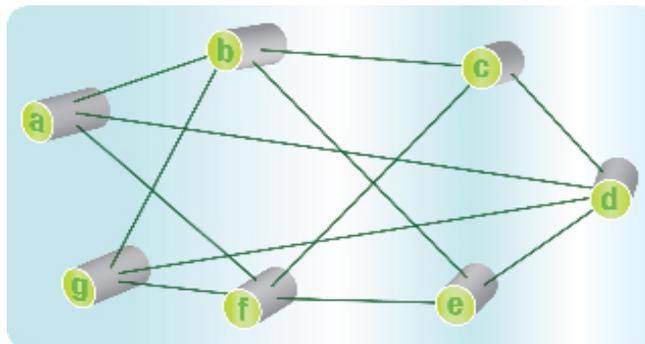
Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.



**Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.**

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

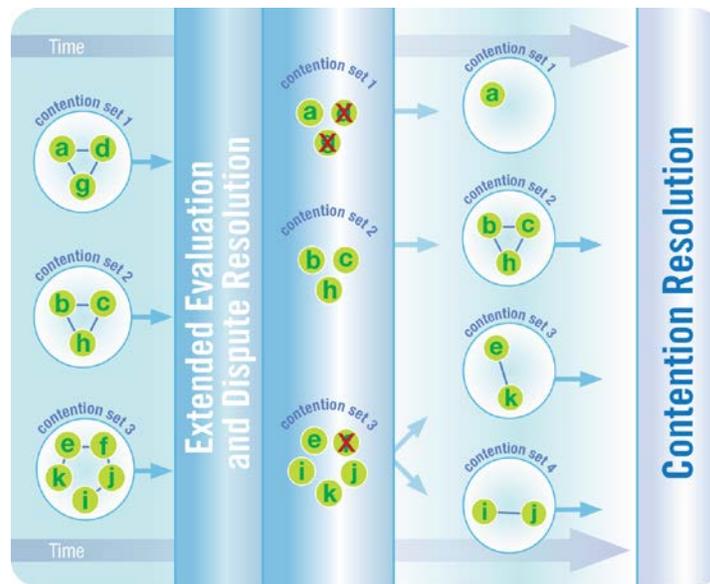


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

#### 4.1.2 Impact of String Confusion Dispute Resolution Proceedings on Contention Sets

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string

confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

#### *4.1.3 Self-Resolution of String Contention*

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Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

#### *4.1.4 Possible Contention Resolution Outcomes*

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An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

## ***4.2 Community Priority Evaluation***

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Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

### ***4.2.1 Eligibility for Community Priority Evaluation***

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As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

#### ***4.2.2 Community Priority Evaluation Procedure***

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Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

### ***4.2.3 Community Priority Evaluation Criteria***

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The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

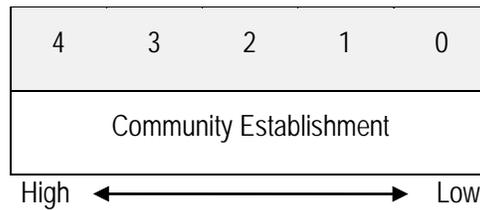
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

**Criterion #1: Community Establishment (0-4 points)**

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not

considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

### **Criterion 1 Definitions**

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be:  
(a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

**Criterion 1 Guidelines**

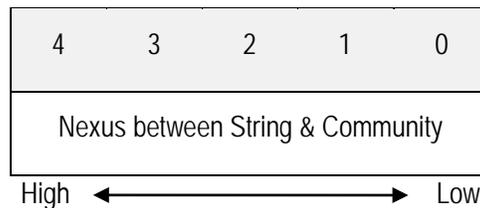
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

**Criterion #2: Nexus between Proposed String and Community (0-4 points)**

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

3	2	0
The string matches the name of the community or is a well-known short-form or abbreviation of the community	String identifies the community, but does not qualify for a score of 3.	String nexus does not fulfill the requirements for a score of 2.

3	2	0
---	---	---

name.

B. Uniqueness (1)

1	0
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String has no other significant meaning beyond identifying the community described in the application.	String does not fulfill the requirement for a score of 1.
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This section evaluates the relevance of the string to the specific community that it claims to represent.

**Criterion 2 Definitions**

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

**Criterion 2 Guidelines**

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

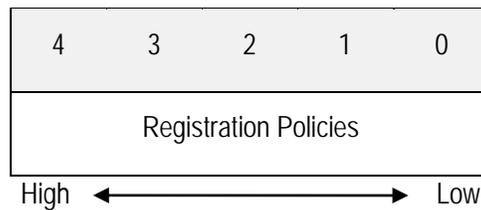
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores 2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

**Criterion #3: Registration Policies (0-4 points)**

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)

<b>1</b>	<b>0</b>
Eligibility restricted to community members.	Largely unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

### **Criterion 3 Definitions**

- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

### **Criterion 3 Guidelines**

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.

**Criterion #4: Community Endorsement (0-4 points)**

4	3	2	1	0	
Community Endorsement					
High		←————→			Low

As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

**Criterion 4 Definitions**

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by

the community members as representative of the community.

- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

#### **Criterion 4 Guidelines**

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed

in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

### ***4.3 Auction: Mechanism of Last Resort***

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It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.<sup>1</sup>

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<sup>1</sup> The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

### 4.3.1 Auction Procedures

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An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants ("bidders") will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described

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The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.

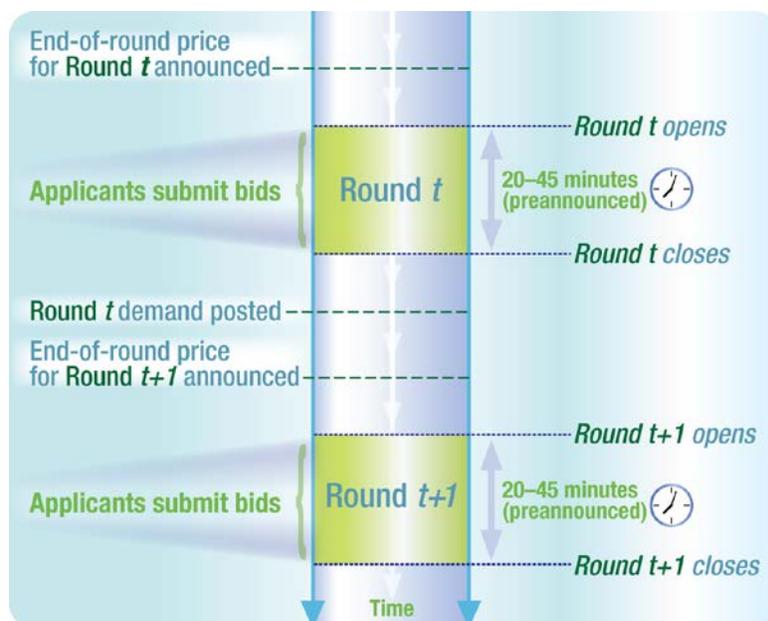


Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.

4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
  - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
  - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
  - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.
  - To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.

- No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
  - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

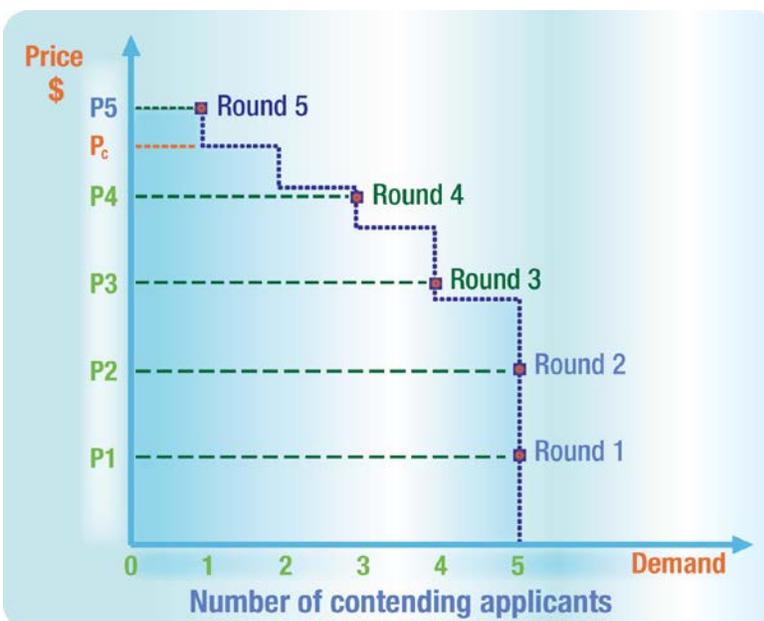


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price  $P_1$ .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_1$ . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at  $P_1$  and announces the end-of-round price  $P_2$ .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least  $P_2$ . The auctioneer discloses that five contending applications remained at  $P_2$  and announces the end-of-round price  $P_3$ .
- During Auction round 3, one of the bidders submits an exit bid at slightly below  $P_3$ , while the other four bidders submit bids of at least  $P_3$ . The auctioneer discloses that four contending applications remained at  $P_3$  and announces the end-of-round price  $P_4$ .
- During Auction round 4, one of the bidders submits an exit bid midway between  $P_3$  and  $P_4$ , while the other three remaining bidders submit bids of at least  $P_4$ . The auctioneer discloses that three contending applications remained at  $P_4$  and announces the end-of-auction round price  $P_5$ .
- During Auction round 5, one of the bidders submits an exit bid at slightly above  $P_4$ , and one of the bidders submits an exit bid at  $P_c$  midway between  $P_4$  and  $P_5$ . The final bidder submits a bid greater than  $P_c$ . Since the aggregate demand at  $P_5$  does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is  $P_c$ , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

#### 4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

#### 4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from non-defaulting losing bidders will be returned following the close of the auction.

#### 4.3.2 Winning Bid Payments

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Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

### *4.3.3 Post-Default Procedures*

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Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.<sup>2</sup> Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

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<sup>2</sup> If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.

## 4.4 *Contention Resolution and Contract Execution*

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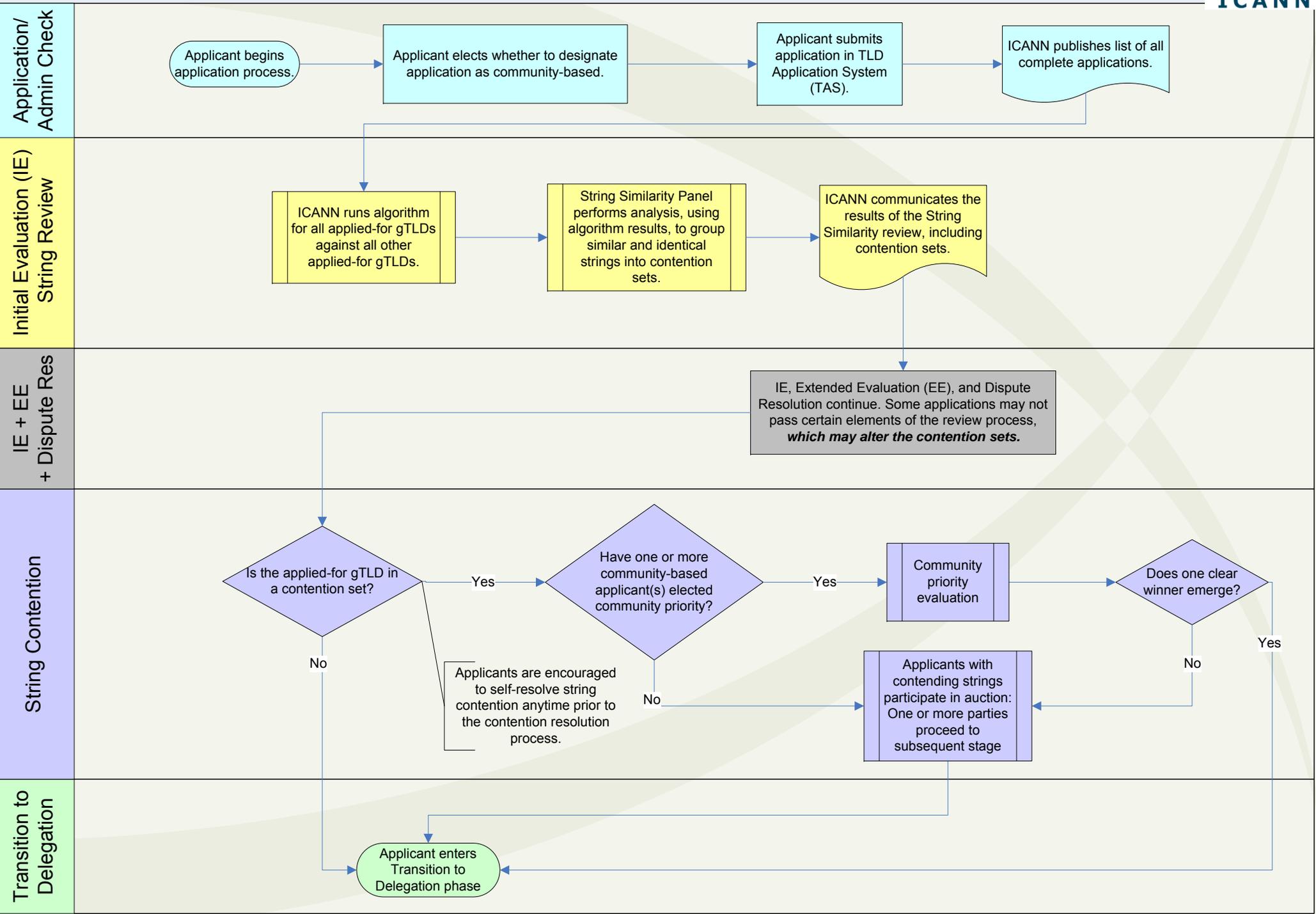
An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 calendar days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

# DRAFT - New gTLD Program - String Contention



ICANN





# gTLD Applicant Guidebook

(v. 2012-01-11)

Module 5

11 January 2012

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# Module 5

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## *Transition to Delegation*

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

### *5.1 Registry Agreement*

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All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends

the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

## *5.2 Pre-Delegation Testing*

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Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

### *5.2.1 Testing Procedures*

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The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

### **5.2.2 Test Elements: DNS Infrastructure**

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The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

**UDP Support** -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

**TCP support** -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform TCP reachability and transaction capability tests across a

randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

**DNSSEC support** -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

### 5.2.3 Test Elements: Registry Systems

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As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

**System performance** -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

**Whois support** -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

**EPP Support** -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

**IPv6 support** -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

**DNSSEC support** -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

**IDN support** -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in <http://iana.org/procedures/idn-repository.html>.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

**Escrow deposit** -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from escrowed data. ICANN may elect to test the data release process with the escrow agent.

## 5.3 Delegation Process

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Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at <http://iana.org/domains/root/>.

## 5.4 Ongoing Operations

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An applicant that is successfully delegated a gTLD will become a “Registry Operator.” In being delegated the role of operating part of the Internet’s domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

### 5.4.1 What is Expected of a Registry Operator

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The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator’s obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

**Operate the TLD in a stable and secure manner.** The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591<sup>1</sup>:

“The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping

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<sup>1</sup> See <http://www.rfc-editor.org/rfc/rfc1591.txt>

the central IR<sup>2</sup> (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

***Comply with consensus policies and temporary policies.***

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)<sup>3</sup> following the process in Annex A of the ICANN Bylaws.<sup>4</sup> The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

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<sup>2</sup> IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

<sup>3</sup> <http://gns0.icann.org>

<sup>4</sup> <http://www.icann.org/en/general/bylaws.htm#AnnexA>

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

**Implement start-up rights protection measures.** The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

**Implement post-launch rights protection measures.** The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry operators may introduce additional rights protection measures relevant to the particular gTLD.

**Implement measures for protection of country and territory names in the new gTLD.** All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and

procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

**Pay recurring fees to ICANN.** In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

**Regularly deposit data into escrow.** This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

**Deliver monthly reports in a timely manner.** A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

**Provide Whois service.** A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

**Maintain partnerships with ICANN-accredited registrars.** A registry operator creates a Registry-Registrar Agreement (RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all

registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

**Maintain an abuse point of contact.** A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

**Cooperate with contractual compliance audits.** To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

**Maintain a Continued Operations Instrument.** A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

**Maintain community-based policies and procedures.** If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

**Have continuity and transition plans in place.** This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate

by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

***Make TLD zone files available via a standardized process.***

This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

***Implement DNSSEC.*** The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

#### ***5.4.2 What is Expected of ICANN***

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ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See <http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

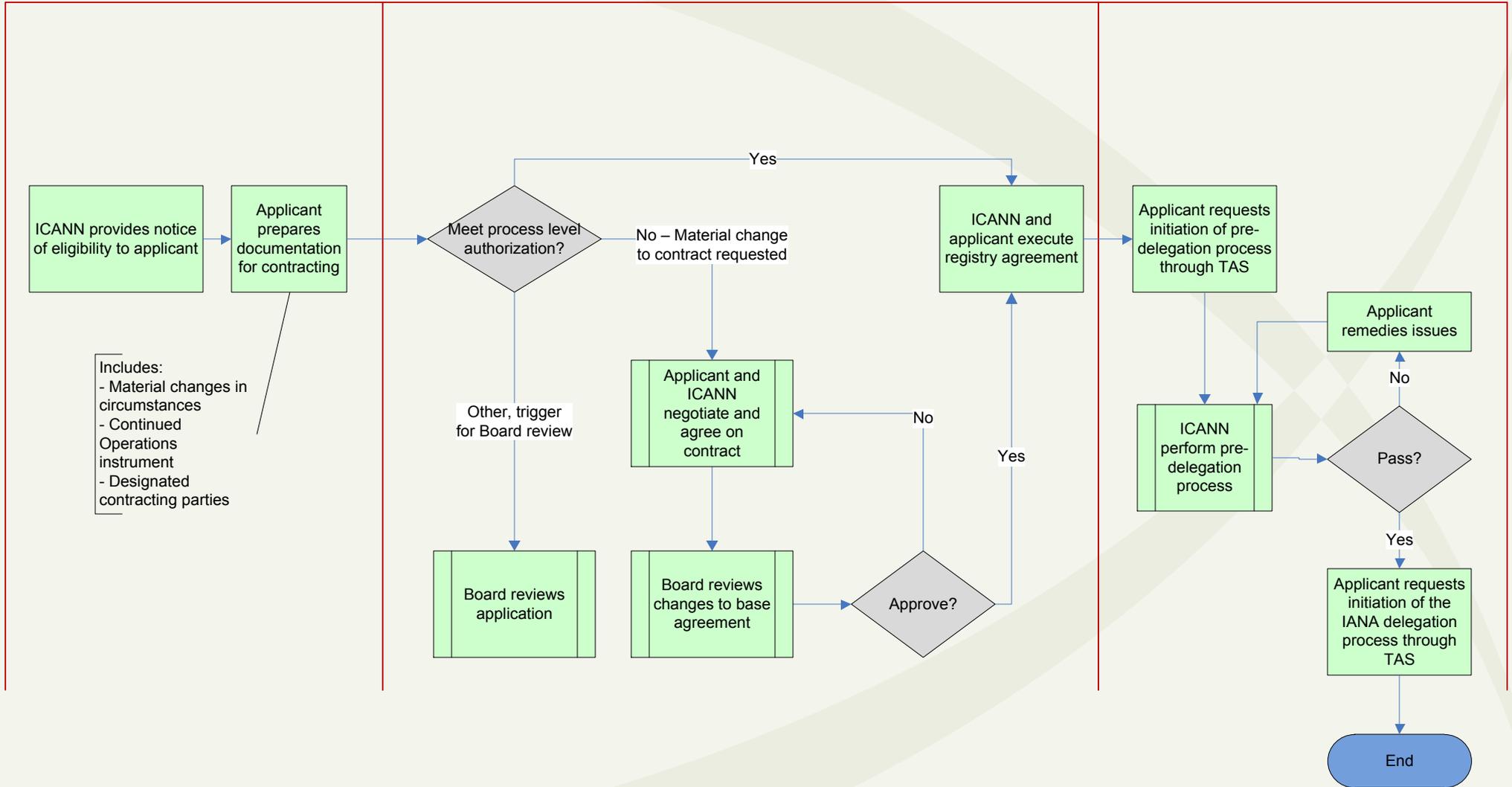
# Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

## Applicant Doc Prep 1 Month

## Contracting – 1 day to 9 months

## Pre-Delegation Testing – 1 to 12 months



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# *New gTLD Agreement*

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This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

## REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and \_\_\_\_\_, a \_\_\_\_\_ (“Registry Operator”).

### ARTICLE 1.

#### DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

**1.1 Domain and Designation.** The Top-Level Domain to which this Agreement applies is \_\_\_\_\_ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

**1.2 Technical Feasibility of String.** While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

#### **1.3 Representations and Warranties.**

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

## ARTICLE 2.

### COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

**2.1 Approved Services; Additional Services.** Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

**2.2 Compliance with Consensus Policies and Temporary Policies.** Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]\* (“Specification 1”).

**2.3 Data Escrow.** Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]\*.

**2.4 Monthly Reporting.** Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]\*.

**2.5 Publication of Registration Data.** Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]\* (“Specification 4”).

**2.6 Reserved Names.** Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]\* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

**2.7 Registry Interoperability and Continuity.** Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

**2.8 Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]\* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

**2.9 Registrars.**

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

**2.10 Pricing for Registry Services.**

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

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duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

## **2.11 Contractual and Operational Compliance Audits.**

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

**2.12 Continued Operations Instrument.** Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

**2.13 Emergency Transition.** Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at \_\_\_\_\_) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

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provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

**2.14 Registry Code of Conduct.** In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

**2.15 Cooperation with Economic Studies.** If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

**2.16 Registry Performance Specifications.** Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]\*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

**2.17 Personal Data.** Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

**2.18 [*Note: For Community-Based TLDs Only*] Obligations of Registry Operator to TLD Community.** Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

### ARTICLE 3.

#### COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

**3.1 Open and Transparent.** Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.

**3.2 Equitable Treatment.** ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

**3.3 TLD Nameservers.** ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

**3.4 Root-zone Information Publication.** ICANN’s publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

**3.5 Authoritative Root Database.** To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

### ARTICLE 4.

#### TERM AND TERMINATION

**4.1 Term.** The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the “Term”).

**4.2 Renewal.**

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

#### **4.3 Termination by ICANN.**

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

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(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*  
ICANN may terminate this Agreement pursuant to Section 7.14.

#### **4.4 Termination by Registry Operator.**

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

**4.5 Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

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escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

*[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:*

**“Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

**4.6 Effect of Termination.** Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

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Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

## ARTICLE 5.

### DISPUTE RESOLUTION

**5.1 Cooperative Engagement.** Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

**5.2 Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

**“Arbitration.** Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."}]

**5.3 Limitation of Liability.** ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

**5.4 Specific Performance.** Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

## ARTICLE 6.

### FEES

**6.1 Registry-Level Fees.** Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

**6.2 Cost Recovery for RSTEP.** Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

**6.3 Variable Registry-Level Fee.**

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

**6.4 Adjustments to Fees.** Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

**6.5 Additional Fee on Late Payments.** For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

## ARTICLE 7.

### MISCELLANEOUS

#### 7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

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litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

**7.2 Indemnification Procedures.** If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

**7.3 Defined Terms.** For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

**7.4 No Offset.** All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

**7.5 Change in Control; Assignment and Subcontracting.** Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

#### **7.6 Amendments and Waivers.**

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

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Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

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Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

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**7.7 No Third-Party Beneficiaries.** This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

**7.8 General Notices.** Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:  
Internet Corporation for Assigned Names and Numbers  
4676 Admiralty Way, Suite 330  
Marina Del Rey, California 90292  
Telephone: 1-310-823-9358  
Facsimile: 1-310-823-8649  
Attention: President and CEO

With a Required Copy to: General Counsel  
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

Telephone:
Facsimile:
Attention:

With a Required Copy to:
Email: (As specified from time to time.)

**7.9 Entire Agreement.** This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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**7.10 English Language Controls.** Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

**7.11 Ownership Rights.** Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

**7.12 Severability.** This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

**7.13 Court Orders.** ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

*[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]*

**7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.**

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the "Applicable Laws"). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator's compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, "ICANN Requirements"), may conflict with or violate Applicable Law (hereinafter, a "Potential Conflict"), Registry Operator shall provide detailed notice (a "Notice") of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an “ICANN Determination”). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN’s complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator’s compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

\* \* \* \* \*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_  
[\_\_\_\_\_] President and CEO

Date:

**[Registry Operator]**

By: \_\_\_\_\_  
[\_\_\_\_\_] \_\_\_\_\_  
[\_\_\_\_\_]

Date:

\* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

**EXHIBIT A**

**Approved Services**

# SPECIFICATION 1

## CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

### 1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
  - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
  - 1.2.2. functional and performance specifications for the provision of Registry Services;
  - 1.2.3. Security and Stability of the registry database for the TLD;
  - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
  - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
  - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
  - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
  - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
  - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
  - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
  - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
  - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
  - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
  - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
    - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
    - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

## SPECIFICATION 2

### DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

#### PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
  - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday.
  - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
  - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
  - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
3. **Escrow Format Specification.**
  - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.
  - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section 3.1. ICANN and the respective Registry shall work together to agree on such new objects’ data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
  - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
  - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
  - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
  - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
  - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}\_{YYYY-MM-DD}\_{type}\_S{#}\_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
  - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
  - 5.3 {type} is replaced by:
    - (1) "full", if the data represents a Full Deposit;
    - (2) "diff", if the data represents a Differential Deposit;
    - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
  - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
  - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0";
  - 5.6 {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
- (1) The signature file of each processed file is validated.
  - (2) If processed files are pieces of a bigger file, the latter is put together.
  - (3) Each file obtained in the previous step is then decrypted and uncompressed.
  - (4) Each data file contained in the previous step is then validated against the format defined in [1].
  - (5) If [1] includes a verification process, that will be applied at this step.  
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
- [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
  - [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
  - [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

## PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
- 6.1 the Registry Agreement has expired without renewal, or been terminated; or
  - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
  - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
  - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
  - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
  - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
- 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
  - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

## SPECIFICATION 3

### FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to \_\_\_\_\_ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

**1. Per-Registrar Transactions Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	<a href="http://www.iana.org/assignments/registrar-ids">http://www.iana.org/assignments/registrar-ids</a>
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

**2. Registry Functions Activity Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

## SPECIFICATION 4

### SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

#### 1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

```

Domain Name: EXAMPLE.TLD
Domain ID: D1234567-TLD
WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX

```

Registrant Phone: +1.5555551212  
Registrant Phone Ext: 1234  
Registrant Fax: +1.5555551213  
Registrant Fax Ext: 4321  
Registrant Email: EMAIL@EXAMPLE.TLD  
Admin ID: 5372809-ERL  
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE  
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION  
Admin Street: 123 EXAMPLE STREET  
Admin City: ANYTOWN  
Admin State/Province: AP  
Admin Postal Code: A1A1A1  
Admin Country: EX  
Admin Phone: +1.5555551212  
Admin Phone Ext: 1234  
Admin Fax: +1.5555551213  
Admin Fax Ext:  
Admin Email: EMAIL@EXAMPLE.TLD  
Tech ID: 5372811-ERL  
Tech Name: EXAMPLE REGISTRAR TECHNICAL  
Tech Organization: EXAMPLE REGISTRAR LLC  
Tech Street: 123 EXAMPLE STREET  
Tech City: ANYTOWN  
Tech State/Province: AP  
Tech Postal Code: A1A1A1  
Tech Country: EX  
Tech Phone: +1.1235551234  
Tech Phone Ext: 1234  
Tech Fax: +1.5555551213  
Tech Fax Ext: 93  
Tech Email: EMAIL@EXAMPLE.TLD  
Name Server: NS01.EXAMPLEREGISTRAR.TLD  
Name Server: NS02.EXAMPLEREGISTRAR.TLD  
DNSSEC: signedDelegation  
DNSSEC: unsigned  
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

## 1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.  
Street: 1234 Admiralty Way  
City: Marina del Rey  
State/Province: CA  
Postal Code: 90292  
Country: US  
Phone Number: +1.3105551212  
Fax Number: +1.3105551213

Email: registrar@example.tld  
 WHOIS Server: whois.example-registrar.tld  
 Referral URL: http://www.example-registrar.tld  
 Admin Contact: Joe Registrar  
 Phone Number: +1.3105551213  
 Fax Number: +1.3105551213  
 Email: joeregistrar@example-registrar.tld  
 Admin Contact: Jane Registrar  
 Phone Number: +1.3105551214  
 Fax Number: +1.3105551213  
 Email: janeregistrar@example-registrar.tld  
 Technical Contact: John Geek  
 Phone Number: +1.3105551215  
 Fax Number: +1.3105551216  
 Email: johngeek@example-registrar.tld  
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

## 1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD  
 IP Address: 192.0.2.123  
 IP Address: 2001:0DB8::1  
 Registrar: Example Registrar, Inc.  
 WHOIS Server: whois.example-registrar.tld  
 Referral URL: http://www.example-registrar.tld  
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

## 2. Zone File Access

### 2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard.** Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

**2.1.5. Use of Data by User.** Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

**2.1.6. Term of Use.** Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

**2.1.7. No Fee for Access.** Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

## **2.2 Co-operation**

**2.2.1. Assistance.** Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

**2.3 ICANN Access.** Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

**2.4 Emergency Operator Access.** Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

### 3. Bulk Registration Data Access to ICANN

**3.1. Periodic Access to Thin Registration Data.** In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

**3.1.1. Contents.** Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

**3.1.2. Format.** The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

**3.1.3. Access.** Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

**3.2. Exceptional Access to Thick Registration Data.** In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

## SPECIFICATION 5

### SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
  - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union  
<[http://www.iso.org/iso/support/country\\_codes/iso\\_3166\\_code\\_lists/iso-3166-1\\_decoding\\_table.htm#EU](http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU)>;
  - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
  - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

## SPECIFICATION 6

### REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

#### 1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

## 2. Registry Services

2.1. **Registry Services.** “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

## 3. Registry Continuity

3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

## 4. Abuse Mitigation

4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

## **5. Supported Initial and Renewal Registration Periods**

5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

## SPECIFICATION 7

### MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

## SPECIFICATION 8

### CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [\_\_] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6<sup>th</sup>) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [\_\_] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

## SPECIFICATION 9

### Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
  - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
  - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
  - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
  - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
  - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to

- ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.
4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
  5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
  6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

## SPECIFICATION 10

### REGISTRY PERFORMANCE SPECIFICATIONS

#### 1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

#### 2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
<b>DNS</b>	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
<b>RDDS</b>	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
<b>EPP</b>	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

### 3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding SLR, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.

3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

#### 4. **RDDS**

4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.

4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

## 5. EPP

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**“ of the EPP servers of the TLD being monitored and make an “**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

<b>Critical Function</b>	<b>Emergency Threshold</b>
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

### 7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

### 7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

## 8. Covenants of Performance Measurement

- 8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).
- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

**TRADEMARK CLEARINGHOUSE**  
**11 JANUARY 2012**

**1. PURPOSE OF CLEARINGHOUSE**

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

**2. SERVICE PROVIDERS**

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.

2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.

2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).

2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.

2.4 Contractual Relationship.

2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.

2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.

2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.

2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
  - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
  - 2.5.2 employ systems that are technically reliable and secure (database administrator);
  - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
  - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
  - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
  - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
  - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
  - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

### **3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE**

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
  - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
  - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
  - 3.2.4 Other marks that constitute intellectual property.
  - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

#### **4. USE OF CLEARINGHOUSE DATA**

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

## **5. DATA AUTHENTICATION AND VALIDATION GUIDELINES**

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
  - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
  - 5.1.3 Electronic contact information is provided and accurate;
  - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

## **6. MANDATORY RIGHTS PROTECTION MECHANISMS**

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
  - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).

6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.

6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion. Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa)

## 6.2 Sunrise service

6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.

6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and

incorporate a Sunrise Dispute Resolution Policy (SDRP).

- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

## **7. PROTECTION FOR MARKS IN CLEARINGHOUSE**

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.
- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

## **8. COSTS OF CLEARINGHOUSE**

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

## TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

***Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]***

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

***If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.***

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below. The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

\*\*\*\*\* [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)  
11 JANUARY 2012**

**DRAFT PROCEDURE**

**1. Complaint**

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

## **2. Fees**

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

## **3. Administrative Review**

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

## **4. Notice and Locking of Domain**

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

## **5. The Response**

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
  - 5.4.1 Confirmation of Registrant data.
  - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
  - 5.4.3 Any defense which contradicts the Complainant's claims.
  - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
  - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
  - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
  - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
  - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
  - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
  - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

## **6. Default**

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

## **7. Examiners**

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

## **8. Examination Standards and Burden of Proof**

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

## **9. Determination**

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

## **10. Remedy**

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

## **11. Abusive Complaints**

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
  - 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
  - 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

## **12. Appeal**

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

## **13. Other Available Remedies**

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

**14. Review of URS**

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

**TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)**  
**11 JANUARY 2012**

**1. Parties to the Dispute**

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

**2. Applicable Rules**

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

**3. Language**

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

**4. Communications and Time Limits**

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

## 5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

## 6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

### 6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

*(a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or*

*(b) impairing the distinctive character or the reputation of the complainant's mark; or*

*(c) creating a likelihood of confusion with the complainant's mark.*

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

### 6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

*(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and*

*(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:*

*(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or*

*(ii) impairs the distinctive character or the reputation of the complainant's mark, or*

*(iii) creates a likelihood of confusion with the complainant's mark.*

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such as enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

## **7. Complaint**

### **7.1 Filing:**

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

### **7.2 Content:**

**7.2.1** The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
  - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
  - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
  - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
  - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
  - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
  - (g) A statement that the proceedings are not being brought for any improper purpose.
  - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

## **8. Administrative Review of the Complaint**

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

## **9. Threshold Review**

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
  - 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
    - 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
    - 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
  - 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
  - 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein  
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

- 9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.
- 9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.
- 9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.
- 9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.
- 9.6 Provider shall electronically serve the Threshold Determination on all parties.
- 9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.
- 9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

## **10. Response to the Complaint**

- 10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.
- 10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.
- 10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

## **11. Reply**

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

## **12. Default**

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

## **13. Expert Panel**

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three- member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

**14. Costs**

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the “Complaint” section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant’s share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator’s share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

**15. Discovery**

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel’s own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

**16. Hearings**

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

**17. Burden of Proof**

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

**18. Remedies**

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
- 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
  - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
    - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
    - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
  - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
  - 18.5.1 Temporary bans from filing Complaints;
  - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
  - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

## **19. The Expert Panel Determination**

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

## **20. Appeal of Expert Determination**

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

## **21. Challenge of a Remedy**

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

**22. Availability of Court or Other Administrative Proceedings**

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

**REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)<sup>1</sup>**  
**11 JANUARY 2012**

**1. Parties to the Dispute**

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

**2. Applicable Rules**

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

**3. Language**

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

**4. Communications and Time Limits**

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

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<sup>1</sup> Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

## **5. Standing**

5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.

5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.

5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.

5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

## **6. Standards**

6.1 For a claim to be successful, the claims must prove that:

6.1.1 The community invoked by the objector is a defined community;

6.1.2 There is a strong association between the community invoked and the gTLD label or string;

6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;

6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

## **7. Complaint**

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
  - 7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and
  - 7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.
- 7.2.4 A statement that the proceedings are not being brought for any improper purpose.
- 7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.
- 7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

## **8. Administrative Review of the Complaint**

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

## **9. Response to the Complaint**

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

## **10 Reply**

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

## **11. Default**

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

## **12. Expert Panel**

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

## **13. Costs**

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

#### **14. Discovery/Evidence**

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

#### **15. Hearings**

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

#### **16. Burden of Proof**

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

## **17. Recommended Remedies**

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
  - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

## **18. The Expert Determination**

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

## **19. Appeal of Expert Determination**

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

## **20. Breach**

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

**21. Availability of Court or Other Administrative Proceedings**

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



# gTLD Applicant Guidebook

(v. 2012-01-11)

Module 6

11 January 2012

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# Module 6

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## *Top-Level Domain Application - Terms and Conditions*

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.
  
7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:
  - a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
  - b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
  - c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

- d. Applicant may be requested to supply certain information in the original language as well as in English.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:
  - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
  - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.
14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

**EXHIBIT JJN-49**



# TLD Application: Registry Operator's Fitness Disclosure

15 August 2000

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## Registry Operator's Fitness Disclosure

The following disclosures are hereby made on behalf of the registry operator.

H1. Within the past ten years, has any current director, officer, or manager of the registry operator (a) been convicted of any felony; (b) been convicted of any misdemeanor related to financial activities; (c) been judged by a court to have committed fraud or breach of fiduciary duty, or (d) been the subject of a judicial determination that is similar or related to any of these?

[INSTRUCTION: Answer "yes" or "no."]

H2. Within the past ten years, has the registry operator itself (a) been convicted of any felony; (b) been convicted of any misdemeanor related to financial activities; (c) been judged by a court to have committed fraud or breach of fiduciary duty, or (d) been the subject of a judicial determination that is similar or related to any of these?

[INSTRUCTION: Answer "yes" or "no."]

H3. Within the past ten years, has any current director, officer, or manager of the registry operator been disciplined by any government or by any organization of which he or she was a member for conduct involving dishonesty or misuse of funds of others?

[INSTRUCTION: Answer "yes" or "no."]

H4. Within the past ten years has the registry operator itself been disciplined by any government or by any organization of which it was a member for conduct involving dishonesty or misuse of funds of others?

[INSTRUCTION: Answer "yes" or "no."]

H5. Is any director, officer, or manager of the registry operator currently involved in any judicial or regulatory proceeding that could result in a conviction, judgment, determination, or discipline of the type specified in items [H1](#) or [H3](#)?  
[INSTRUCTION: Answer "yes" or "no."]

H6. Is the registry operator itself currently involved in any judicial or regulatory proceeding that could result in a conviction, judgment, determination, or discipline of the type specified in items [H2](#) or [H4](#)?  
[INSTRUCTION: Answer "yes" or "no."]

H7. Within the past three years, has any current director, officer, or manager of the registry operator been adjudged to be bankrupt or insolvent?  
[INSTRUCTION: Answer "yes" or "no."]

H8. Has the registry operator itself ever been adjudged to be bankrupt or insolvent?  
[INSTRUCTION: Answer "yes" or "no."]

H9. If the response to any of [H1](#) through [H8](#) is affirmative, please provide complete details on separate sheets of paper attached to this disclosure.  
[INSTRUCTION: Please attach one or more sheets with complete details.]

By signing this fitness disclosure, the undersigned certifies that he or she has authority to do so on behalf of the registry operator. On his or her own behalf and on behalf of the registry operator, the undersigned certifies that all information contained in this fitness disclosure, and all documents attached to this disclosure, is true and accurate to the best of his/her/its knowledge and information. The undersigned and the registry operator understand that any material misstatement or misrepresentation will reflect negatively on any application of which this disclosure is a part and may cause cancellation of any delegation of a top-level domain based on such an application.

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Signature

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Name (please print)

---

Title

---

Name of Registry Operator

---

Date

---

Comments concerning the layout, construction and functionality of this site  
should be sent to [webmaster@icann.org](mailto:webmaster@icann.org).

Page Updated 15-August-00.

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**EXHIBIT JJN-50**



## New Generic Top-Level Domains

ICANN APPLICANT GUIDEBOOK NAMING SERVICES PORTAL GLOBAL SUPPORT

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### NEW GTLD REVEAL DAY - APPLIED-FOR STRINGS

#### **New Top-Level Domain Name Applications Revealed**

#### **Historic Milestone for the Internet's Domain Name System**

The Internet Corporation for Assigned Names and Numbers (ICANN) today revealed who has applied for which generic Top-Level Domain (gTLD) names in what is expected to become the largest expansion in the history of the Internet's Domain Name System.

A total of 1,930 new gTLD applications were received during the application period of the new generic Top-Level Domain program.

"We are standing at the cusp of a new era of online innovation," said Rod Beckstrom, President and Chief Executive Officer. "That means new businesses, new marketing tools, new jobs, and new ways to link communities and share information."

Beckstrom made the comments during a London news conference, where it was revealed which organizations have applied for which specific domain names.

Senior Vice President Kurt Pritz noted that the applications will now be subject to a public comment and objection period, and a rigorous, objective and independent evaluation system.

"A 60-day comment period begins today, allowing anyone in the world to submit comments on any application, and the evaluation panels will consider them," said Pritz. "If anyone objects to an application and believes they have the grounds to do so, they can file a formal objection to the application. And they will have seven months to do that."

Of the 1,930 applications received:

- 66 are geographic name applications.
- 116 applications are for Internationalized Domain Names, or IDNs, for strings in scripts such as Arabic, Chinese, and Cyrillic.

Applications were received from 60 countries and territories, broken down by ICANN's geographic regions;

- 911 from North America.
- 675 from Europe.
- 303 are from Asia-Pacific.

- 24 from Latin America and the Caribbean.
- 17 from Africa.

Beckstrom noted that the applications from Latin America/Caribbean and Africa would be the first gTLDs ever from those regions.

He also pointed out that the new gTLD program is the result of seven years of international consultation and debate among a wide variety of Internet stakeholders.

###

To listen to the audio file from the London Reveal Day event, go here:

<http://www.icann.org/en/news/press/kits/reveal-day-audio-13jun12-en.htm>

To see who has applied for which generic Top-Level Domain, go here:

<http://newgtlds.icann.org/en/program-status/application-results>

To post comments on applications, go here: <http://newgtlds.icann.org/en/program-status/application-comments>

To file an objection, go here: <http://newgtlds.icann.org/en/program-status/objection-dispute-resolution>

To obtain background information on the new generic Top-Level Domain program, go here:

<http://www.icann.org/en/news/press/kits/reveal-day-13jun12-en.htm>

For information on ICANN's geographic regions, go here:

<http://archive.icann.org/en/meetings/montreal/geo-regions-topic.htm>

**EXHIBIT JJN-51**

## INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

## New gTLD String Confusion Panel

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Re: ICDR Case Nos. 50 504 221 13 and 50 504 246 13 (Consolidated)

Web.com Group, Inc., Objector

and

Vistaprint Limited, Applicant

String: <.webs>

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**Expert Determination****The Parties**

The Objector is Web.com Group, Inc., 12808 Gran Bay Parkway, West Jacksonville, Florida 32258 U.S.A., represented by Steven C. Sereboff, Esq., SoCal IP Law Group LLP, 310 North Westlake Boulevard, Suite 120, Westlake Village, California 91362 U.S.A.

The Applicant is Vistaprint Limited, 22 Victoria Street, Canon's Court, Hamilton, Bermuda, BAHAMAS, HM12, represented by Flip Petillion, Advocaat, Crowell & Moring, Rue Joseph Stevens 7, Brussels, 1000, BELGIUM.

**The New gTLD Objected To**

The new gTLD string applied for and objected to is <.webs>.

**Prevailing Party**

The Objector has prevailed, and the Objection is sustained.

**The New gTLD String Confusion Process**

In June 2011, the Internet Corporation for Assigned Names and Numbers ("ICANN") approved the gTLD Applicant Guidebook ("Guidebook"), regarding applications for new generic top level domains ("gTLDs"). Module 3 of the Guidebook, Objection Procedures ("Module 3"), addresses, *inter alia*, dispute resolution procedures when

a third party files an objection to an application. Attachment to Module 3, New gTLD Dispute Resolution Procedure (“Attachment to Module 3”), provides for procedures that “apply to all proceedings administered by each of the dispute resolution service providers (DRSP).”

Article 1(b) of Attachment to Module 3 states: “The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure . . . .”

There are four separate grounds on which an objection to an application of a new gTLD may be made.<sup>1</sup> One of these grounds is the string confusion objection, in which “[t]he applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.”<sup>2</sup> Article 3(a) of Attachment to Module 3 states that “String Confusion Objections shall be administered by the International Centre for Dispute Resolution.” In accordance with this mandate, on January 10, 2012, the International Centre for Dispute Resolution (“ICDR”) issued its Supplementary Procedures for String Confusion Objections (“ICDR Procedures”).

### **Procedural History of This Case**

The ICDR has informed the Panel of the following history.

The Objector filed this String Confusion Objection, with annexes thereto, on March 13, 2013. Pursuant to Paragraph 3.4.2 of Module 3, and Article 12 of Attachment to Module 3, the ICDR consolidated the two cases, on May 6, 2013. On May 23, 2013, the Applicant/Respondent filed its Response and annexes thereto. On June 28, 2013, the ICDR appointed a panelist for an Expert Determination. On July 19, 2013, the Objector submitted its Objector’s Reply to Applicant’s Response, with annexes thereto. On July 31, 2013, the Applicant submitted a statement objecting to the Objector’s supplemental filing, to which the Objector responded, on August 5, 2013. On August 8, 2013, the appointed panelist acknowledged receipt of the Objector’s Reply to Applicant’s Response and the parties’ respective statements dated July 31, and August 5, 2013, and instructed, “Under Article 17 of [Attachment to Module 3], I hereby authorize Applicant to submit a surreply, not to exceed 5 pages, and any additional annexes, no later than 6 September 2013.” The Applicant filed its Surreply and annexes thereto, on August 29, 2013.

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<sup>1</sup> Module 3 ¶ 3.2.1; Attachment to Module 3 art. 2(e).

<sup>2</sup> Module 3 ¶ 3.2.1. Likewise, Article 2(e)(i) of Attachment to Module 3 provides: “String Confusion Objection’ refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.”

On October 1, 2013, under Article 2 of the ICDR Procedures, the ICDR removed the initial panelist. On October 14, 2013, the ICDR, under Article 3 of the ICDR Procedures, appointed a replacement panelist. On November 4, 2013, the ICDR removed the second panelist.

On November 20, 2013, the ICDR appointed Professor Ilhyung Lee to serve as the Panel, with notice to counsel for both parties. Before the appointment, the Panel stated that it has no disclosure of any circumstances that would likely give rise to justifiable doubts as to the Panel's impartiality or independence, as required by Article 1 of the ICDR Procedures, and to ensure compliance with the Guidebook.<sup>3</sup>

### **Basis for Objector's Standing to Object Based on String Confusion**

Paragraph 3.2.2 of Module 3 requires that an objector must satisfy the standing requirement in order for its objection to be considered. Regarding standing for a string confusion objection, Paragraph 3.2.2.1 states in relevant part,

Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

Here, Web.com Group, Inc., the Objector, is an applicant for the gTLD string <.web>. In the Initial Evaluation, ICANN placed the Objector's <.web> gTLD in String Contention Set 222, and the Applicant's <.webs> gTLD in String Contention Set 223.

The Objector has satisfied the standing requirement.

### **Parties' Contentions**

#### **A. The Objector**

The Objector asserts principally that it has standing to file this String Confusion Objection, and that it has met its burden of proving that the Applicant's applied-for gTLD <.webs> is likely to result in string confusion, under Paragraph 3.5.1 of Module 3. In summary, the Objector states:

WEB and WEBS are merely the plural and singular forms of the same word. As a result the two strings are virtually indistinguishable in sight, sound and meaning such that there is a strong likelihood that average, reasonable

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<sup>3</sup> Module 3 ¶ 3.4.4; Attachment to Module 3 art. 13(c).

Internet users would be confused or deceived if the two strings were delegated.<sup>4</sup>

In addition, the Objector:

>states that confusion is “especially acute for non-native English speakers”, who “commonly confuse plural and singular word forms or omit the plural all together”, and also notes that “the vast majority of Internet users are non-native English speakers”;<sup>5</sup>

>relies on the conclusions of an expert with “a doctoral degree in linguistics (morphophonology)”,<sup>6</sup> who stated that the average reasonable Internet user “may or may not notice the extra ‘s’ on the end. This is particularly true in the context of an Internet gTLD, which will appear to the Internet user at the end of a longer letter string that incorporates at the very least a second-level domain name that is the focus of what the Internet user is searching to find”;<sup>7</sup>

>refers also to its expert’s conclusions:

In my opinion “web” and “webs” fall into a category where there is more likelihood of confusion between them than there might be with other noun/noun + plural morpheme words, given the similarities in orthography, phonology and concept, particularly as these terms are already used interchangeably in some contexts.

For this reason, there is a high likelihood of confusion in the minds of the “average, reasonable Internet user,” who would be viewing these nearly identical letter strings as top-level domain names at the end of longer URL strings that contain material which is more important to and more easily distinguishable for the typical user.<sup>8</sup>

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<sup>4</sup> Objector’s String Confusion Objection at 3 [hereinafter Objection].

<sup>5</sup> *Id.* at 5 (emphasis in original). In this regard, the Objector relies on its linguistics expert, who reported that less than 14% of the Internet users in the world are from English-speaking countries. Objector’s Reply to Applicant’s Response Annex R1 at 3 [hereinafter Annex R1].

<sup>6</sup> Annex R1, *supra* note 5, at 1.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 5. The Objector’s linguistics expert also offered a sharp critique of the report submitted by her counterpart on the Applicant’s side, stating, among other things, that the Applicant’s expert is “an expert in French linguistics. . . . The average, reasonable Internet user probably does not speak French.” *Id.* at 4.

>points to “abundant evidence of actual confusion between WEBS and WEB”, including confusion by U.S. law enforcement agencies, the Applicant’s own customers, and the Applicant itself;<sup>9</sup> and

>refers to numerous court decisions and decisions under the Uniform Domain Name Dispute Resolution Policy that have found confusing similarity between singular and plural forms of the same noun.

## **B. The Applicant**

The Applicant contends principally that the Objector has failed to meet its burden of proving that the Applicant’s applied-for <.webs> is likely to result in string confusion. In addition, the Applicant states, *inter alia*, that:

\*the <.webs> and <.web> strings are different, visually, aurally, and in meaning:

Visually, the ‘S’ is a clear differentiator because it is positioned at the end of the short word (which gives it priority in the processing of word recognition) and it has the function to indicate the plural, which is a regular plural.<sup>10</sup>

[A]urally, the strings are different. . . . [B]oth ‘webs’ and ‘web’ consist of completely regular patterns and are spelled out exactly as they sound. In other words, all letters are clearly pronounced in both words, which makes the words clearly recognizable and distinct from one another.<sup>11</sup>

The strings have a different meaning. ‘Web’ refers to the world wide web or to a network or silken structure created by a spider . . . , whereas ‘webs’ has no particular meaning and could be anything. On Wikipedia, ‘webs’ is used for the Applicant’s web hosting services, a radio station and a 2003 sci-fi movie . . . . ‘Web’ on the other hand has a clear dictionary meaning . . . .<sup>12</sup>

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<sup>9</sup> Objection at 7-8.

<sup>10</sup> Applicant’s Response at 9.

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.*

\*“[t]he difference between the .WEBS and .WEB strings is grounded in the character ‘S’ present in the first and not part of the second. In linguistic terms, the character ‘S’ is manifestly distinct”;<sup>13</sup>

\*the Objector failed to produce any evidence in support of the argument “that the vast majority of Internet users are non-native English speakers and that non-English speakers commonly confuse plural and singular word forms or omit the plural altogether”, and also asks, “[H]ow can the Objector (without any evidence) know what a non-native English speaker sees and not, or what he distinguishes and she does not?”;<sup>14</sup>

\*there is no evidence of actual confusion;

\*“ICANN’s String Similarity Assessment Tool provides a low similarity rate”, and when comparing <.webs> and <.web>, the “similarity rate is 72%[,] . . . which is much lower than the similarity rate of various TLDs that currently co-exist”;<sup>15</sup>

\*“neither the String Similarity Panel nor ICANN (who endorses the determinations by the String Similarity Panel) were of the opinion that the .WEBS and .WEB strings are so similar that they would create a probability of user confusion if allowed to coexist in the DNS”;<sup>16</sup>

\*in addition to the Objector, there are six other applicants for the <.web> gTLD, and none of these applicants has filed a string confusion objection against the Applicant;<sup>17</sup>

\*given that there are multiple applicants for the Objector’s applied-for gTLD <.web>, while there are no other applicants for <.webs> other than the Applicant, “The Objector has realized that it faces a challenge in obtaining the delegation of the .WEB extension,” and “[t]he Objector’s sole motive in filing the objection is to prevent a potential competitor, who does not have the

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<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 11.

<sup>15</sup> *Id.* at 6. The Applicant further states, “The 72% similarity is also much lower than the 88% similarity between the applied-for .ACCOUNTANTS and .ACCOUNTANT or the 84% similarity between the applied-for .COUPONS and .COUPON . . . . The applicants for these strings did not file a string confusion objection.” *Id.*

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Id.* at 3.

intention to create goodwill in the Objector's name, from entering the gTLD market";<sup>18</sup>

\*"the Objector seeks to use the string confusion objection to limit competition. Such use of the objection proceedings directly conflicts with the purpose of ICANN's new gTLD program";<sup>19</sup>

\*the Applicant uses the <webs.com> domain name for the Applicant's business of providing "free website creation tools and hosting services", while the Objector uses its <web.com> domain name for "web site development services," the two parties "have co-existed for many years without any problem",<sup>20</sup> and "[t]he Objector has never instituted a formal challenge to the WEBS.COM domain name";<sup>21</sup>

\*while the Objector and a third party agreed that there was no likelihood of confusion between the Objector's WEB.COM and the third party's WEB.COM, and having "enjoyed long coexistence without any known instances of actual confusion", "it is impossible to understand how the Objector can agree to coexistence between WEB.COM and WEB.COM and yet object to a coexistence between WEB and WEBS";<sup>22</sup> and

\*"[w]hereas the letter 'S' in 'WEBS.COM' makes 'WEBS.COM' clearly differ from 'WEB.COM', the difference between a 'WEBS' TLD and a 'WEB' TLD is even greater. As a TLD will always come at the end of the domain name syntax, the distinctive letter 'S' will always appear at the end, making this last letter more significant."<sup>23</sup>

The Applicant also relies on the findings of an expert, a professor "in linguistics and language teaching methodology",<sup>24</sup> who made the following findings:

Exterior letters serve as visual clues for word recognition. The first and last letters of a word have been shown to be more salient than the rest of the

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<sup>18</sup> *Id.* at 11.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.* at 7.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 7-8.

<sup>24</sup> *Id.* at 8.

letters and to receive priority in processing. Readers can recognize a word even when its interior letters are scrambled.

....

In the case of 'web' and 'webs', completely regular patterns allow for a one-to-one mapping of spelling to sound. In other words, a word that consists of completely regular patterns is spelled out exactly as it sounds. The sound of the word easily translates into the spelling of the word and *vice versa*. Words consisting of completely regular patterns facilitate word recognition.

....

[T]here is an extremely limited number of words that could be generated by changing only one single letter in 'webs' and 'web'. In other words, 'webs' and 'web' have a limited number of orthographic neighbors. Words with a high number of orthographic neighbors are more difficult to recognize and have an inhibitory effect when reading, as evidence by eye-fixation patterns. Words with fewer orthographic neighbors are more easily recognizable.

....

[A] reader will first decompose the word 'webs' into meaningful units. 'Webs' is composed of two meaningful units, namely 'web' and the plural marker '-s'. 'Web' only has one meaningful unit.<sup>25</sup>

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<sup>25</sup> *Id.* at 8-9. The Applicant also responds to the assertion made by the Objector's expert that the Applicant's expert is an expert in *French* linguistics:

The Objector claims that [the Applicant's expert] is a professor of French linguistics and language pedagogy and that he would therefore not be qualified to express an opinion on the meaning of English words such as webs and webs [sic].

While it is correct that [the Applicant's expert] teaches French linguistics, he has been building relevant and profound expertise in various domains of Applied Linguistics for many years. In this respect, he has performed in-depth analysis of various West-European languages, including English. At the same time, he has also built strong expertise in General Linguistics, which gave him a thorough understanding and comprehension of the mechanisms that form the basis of the functioning of the human language. . . .

In contrast, the consultant that was hired by the Objector and who wrote the "criticism" of [the Applicant's linguistics expert's] opinion, has only published very modestly and almost exclusively in conference proceedings, *i.e.*, with high acceptance rates and not systematically with double-blind peer review . . . . This, in combination with the fact that, ever since her doctoral thesis (carried out many years ago), she has been active in consultancy rather than in an academic

The Applicant refers to the Expert Determinations issued in string confusion objections involving the applied-for gTLD strings, <.cars>, <.tvs>, and <.hotels>, in which each of the three panels separately concluded that there was no likelihood of string confusion.<sup>26</sup>

## Discussion and Findings

The Panel issues this Expert Determination, under Paragraph 3.4.6 of Module 3.

Before turning to the merits, the Panel pauses to commend counsel for both parties for their zealous representation and comprehensive argument.

The Guidebook governs here. Paragraph 3.5.1 of Module 3 instructs that “[a] DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion”, and further guides:

[i] String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. [ii] For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.<sup>27</sup>

The Objector bears the burden of proof.<sup>28</sup>

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environment, . . . probably explains why her opinion does not contain a single reference to scientific literature.

Applicant’s Surreply at 1.

<sup>26</sup> Applicant’s Surreply at 4. The Applicant submitted full copies of the three Expert Determinations. *Id.* Annexes 79 (*Charleston Road Registry Inc. v. Koko Castle, LLC*, ICDR Case No. 50 504 233 13 (Aug. 7, 2013) (<.cars>)), 80 (*Verisign Switzerland SA v. T V Sundram Iyengar & Sons Limited*, ICDR Case No. 50 504 257 13 (Aug. 8, 2013) (<.tvs>)), 81 (*HOTEL Top-Level-Domain S.a.r.l v. Booking.com B.V.*, ICDR Case No. 50 504 237 13 (Aug. 8, 2013) (<.hotels>)). The Panel will discuss herein these and other Expert Determinations of interest.

<sup>27</sup> Module 3 ¶ 3.5.1. *See* Attachment to Module 3 art. 2(e)(i) (“‘String Confusion Objection’ refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.”).

<sup>28</sup> Module 3 ¶ 3.5; Attachment to Module 3 art. 20(c).

[i] *String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion.*

Module 2 of the Guidebook, Evaluation Procedures, explains that the String Similarity Review by the String Similarity Panel during the Initial Evaluation entails a “preliminary comparison” of the applied-for gTLD with other strings, a “visual similarity check”.<sup>29</sup> But during the formal string confusion objection stage, the objection “is not limited to visual similarity. Rather, confusion based on any type of similarity (including visual, aural, or similarity of meaning) may be claimed by an objector.”<sup>30</sup>

The Panel concludes that the <.webs> string so nearly resembles <.web> -- visually, aurally and in meaning -- that it is likely to cause confusion. A contrary conclusion, the Panel is simply unable to reach. The Applicant’s <.webs> is visually identical to the Objector’s <.web>, except for the letter “s” at the end of “.web”. When read aloud, the words in the two strings also sound the same, again with only the phonetic “s” at the end of “web” distinguishing the two. Regarding the meaning of “web”, the Panel is not entirely unsympathetic to the Applicant’s argument that “web” commonly refers to the world wide web, and as such, it is not normally a word where the plural form would be used. Nevertheless, “web” is also used in the context of, for example, a “spider web”, and “webs” is the plural of “web”. Considering all of the indicia of similarity, the Panel determines that the resemblance between <.webs> and <.web> is likely to cause confusion.

The nature of the difference between the two strings is significant. In the Panel’s view, the addition of “s” to the end of “.web” resulting in another string would lead to confusion, whereas the addition of a different letter to the end of another three-letter noun may not. For example, there is a distinction between “web” and “webs”, on the one hand, and “tub” and “tuba”, on the other.

[ii] *For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.*

The Guidebook requires that in order for the string confusion objection to be sustained, the likelihood of confusion between the two gTLDs must be (a) probable,

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<sup>29</sup> Module 2 ¶ 2.2.1.1.

<sup>30</sup> Module 2 ¶ 2.2.1.1.3. Paragraph 2.2.1.1 elaborates on the nature of the similarity review at the Initial Evaluation in relation to the review during the string confusion objection phase: “The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.”

not merely possible (b) in the mind of the average, reasonable Internet user. The Guidebook does not define “average, reasonable Internet user”. It appears to be ICANN’s intention to allow individual panelists to determine the likely perceptions of such Internet user. Nor does the Guidebook elaborate on the distinction between probability and possibility of confusion, other than the text relied on by the Applicant (and all applicants in string confusion objections) that “[m]ere association, in the sense that the string brings another string to mind, is insufficient”.<sup>31</sup>

The Panel concludes that given the similarity of <.webs> and <.web> as discussed above, it is probable, and not merely possible, that confusion will arise in the mind of the average, reasonable Internet user. This is not a case of “mere association”. A more apt example of mere association between two strings would be the hypothetical gTLD <.twoweb>, which would likely “bring to mind” another hypothetical gTLD <.oneweb>. In contrast, the presence of <.webs> in the same net that also includes <.web>, and vice versa, requires Internet users actively to differentiate between the two.

In reaching its decision, the Panel has the benefit of reviewing the ten previously issued Expert Determinations (as of this date) stemming from string confusion objections involving precisely the same situation seen in this Objection, i.e., where the gTLD objected to is the plural form of the objector’s gTLD, indicated by the addition of the letter “s” to the end of the objector’s string.<sup>32</sup> All of these determinations are publicly available on the ICDR Internet site.<sup>33</sup> The determinations resolved objections to the following seven applied-for gTLDs: <.cars> (three separate decisions<sup>34</sup>), <.games>,<sup>35</sup> <.hotels>,<sup>36</sup> <.pets> (two separate

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<sup>31</sup> Module 3 ¶ 3.5.1.

<sup>32</sup> Not included in this list are the decisions involving <.hoteles> and <.hoteis>, in which the party that applied for <.hotel> filed separate string confusion objections.

<sup>33</sup> International Centre for Dispute Resolution, *ICANN New gTLD Program: ICDR Dispute Resolution Process - String Confusion Objections*, at <[http://images.go.adr.org/Web/AmericanArbitrationAssociation/%7Bdf3f46b6-4c35-4bd1-a428-7c70d7dbe53b%7D\\_ICANN\\_DRP\\_StringConfusion\\_Objections.pdf](http://images.go.adr.org/Web/AmericanArbitrationAssociation/%7Bdf3f46b6-4c35-4bd1-a428-7c70d7dbe53b%7D_ICANN_DRP_StringConfusion_Objections.pdf)>.

<sup>34</sup> *Charleston Road Registry Inc. v. Koko Castle, LLC*, ICDR Case No. 50 504 233 13 (Aug. 7, 2013) (Panelist Paul E. Mason); *Charleston Road Registry Inc. v. DERCars, LLC*, ICDR Case No. 50 504 234 13 (Aug. 27, 2013) (Panelist John A.M. Judge); *Charleston Road Registry Inc. v. Uniregistry, Corp.*, ICDR Case No. 50 504 238 13 (Oct. 10, 2013) (Panelist Hon. Neil Anthony Brown QC).

<sup>35</sup> *Charleston Road Registry Inc. v. Foggy Beach, LLC*, ICDR Case No. 50 504 243 13 (Sep. 19, 2013) (Panelist Earl A. Cherniak, Q.C.).

decisions<sup>37</sup>), <.sports>,<sup>38</sup> <.tours>,<sup>39</sup> and <.tvs>.<sup>40</sup> These decisions are not binding on the Panel, but are of interest, in that they may offer persuasive reasoning and analysis.

#### *Decisions in accord*

The Panel's determination herein finding similarity and probable confusion between the Applicant's <.webs> and the Objector's <.web> is consistent with the result in six of the reported "plural form" Expert Determinations, those involving: <.cars> (but just one of the three cases<sup>41</sup>), <.games>,<sup>42</sup> <.pets> (both cases<sup>43</sup>), <.sports>,<sup>44</sup> and <.tours>.<sup>45</sup> In each of these decisions, the panelist determined that the applicant's plural form string was confusingly similar, visually, aurally, and in meaning, to the objector's string in singular form, and that confusion was probable.

#### *Contrary decisions*

The Panel acknowledges that there are determinations involving the plural form of the objector's string, in which the panelist decided that the objector did not meet its burden of proving likelihood of string confusion, and thus dismissed the objection.

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<sup>36</sup> *HOTEL Top-Level-Domain S.a.r.l v. Booking.com B.V.*, ICDR Case No. 50 504 237 13 (Aug. 8, 2013) (Panelist Bruce W. Belding).

<sup>37</sup> *Charleston Road Registry Inc. v. John Island, LLC*, ICDR Case No. 50 504 274 13 (Aug. 14, 2013) (Panelist Richard W. Page) [hereinafter *John Island, LLC*]; *Afilias Limited v. John Island, LLC*, ICDR Case No. 50 504 219 13 (Oct. 20, 2013) (Panelist Urs Laeuchli) [hereinafter *Afilias Limited*].

<sup>38</sup> *SportAccord v. Steel Edge LLC*, ICDR Case No. 50 504 210 13 (Aug. 20, 2013) (Panelist M. Scott Donahey).

<sup>39</sup> *Charleston Road Registry Inc. v. Sugar Station, LLC*, ICDR Case No. 50 504 275 13 (Aug. 16, 2013) (Panelist Robert M. Nau).

<sup>40</sup> *Verisign Switzerland SA v. T V Sundram Iyengar & Sons Limited*, ICDR Case No. 50 504 257 13 (Aug. 8, 2013) (Panelist Stephen S. Strick).

<sup>41</sup> *DERCars, LLC*. As to the other two cases, see *infra* note 48.

<sup>42</sup> *Foggy Beach, LLC*.

<sup>43</sup> *John Island, LLC; Afilias Limited*.

<sup>44</sup> *SportAccord*.

<sup>45</sup> *Sugar Station, LLC*.

These four cases involve (1) <.tvs>,<sup>46</sup> (2) <.hotels>,<sup>47</sup> and the other two decisions involving (3) and (4) <.cars>.<sup>48</sup> As indicated above, the Applicant relies on three of these determinations.<sup>49</sup> The Panel offers the following observations in regard to these decisions.

(1) *Verisign Switzerland SA v. T V Sundram Iyengar & Sons Limited*, ICDR Case No. 50 504 257 13 (Aug. 8, 2013) (<.tvs>).

In the determination involving the <.tvs> gTLD, the panelist relied on “the analysis of the thirteen factors . . . derived from [*Application of E.I. DuPont DeNemours & Co.* 50]”.<sup>51</sup> In *DuPont DeNemours*, a U.S. court looked to the multiple factors to assess the likelihood of confusion between the applicant’s trademark “RALLY” for “a combination polishing, glazing and cleaning agent for use on automobiles”, and the previously registered “RALLY” for “an all-purpose detergent.”<sup>52</sup> Initially, the Panel questions whether the factors to be considered when “testing for likelihood of confusion under Sec. 2(d)”<sup>53</sup> of the Lanham Act should be the test for determining

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<sup>46</sup> *Verisign Switzerland SA*.

<sup>47</sup> *HOTEL Top-Level-Domain S.a.r.l.*

<sup>48</sup> *Koko Castle, LLC; Uniregistry, Corp.* To state it explicitly, there are three string confusion objection cases, all filed by Charleston Road Registry Inc. (which had applied for the <.car> gTLD), challenging the application of <.cars> by three separate parties. Panelists Paul E. Mason and The Honourable Neil Anthony Brown QC separately determined that the respective applicant’s <.cars> was not confusing with the objector’s <.car>, while Panelist John A.M. Judge reached the opposite conclusion, *DERCars, LLC*. Thus, conflicting determinations resulted in the objections to the very same gTLD. As to this circumstance, Panelist Brown QC observed:

[I]t is difficult for the Expert to decide how ICANN might deal with the potential conflicts . . . , but the process is ICANN’s, it has control over the entirety of the process, it seems to have contemplated that some such problem may arise during the process and it is ICANN’s role to manage the remainder of the process. Indeed, the parties are bound by ICANN’s process[;] they have agreed to it by virtue of taking part in it . . . .

*Uniregistry, Corp.* at 7.

<sup>49</sup> See *supra* text accompanying note 26.

<sup>50</sup> 476 F.2d 1357 (C.C.P.A. 1973).

<sup>51</sup> *Verisign Switzerland SA* at 5.

<sup>52</sup> 476 F.2d at 1359.

<sup>53</sup> *Id.* at 1361. The thirteen factors are:

likelihood of confusion between two gTLD strings -- <.webs> and <.web>.<sup>54</sup> Moreover, assuming, but only *arguendo*, that the *DuPont DeNemours* factors are pertinent in assessing string confusion, some of the factors do not weigh in the Applicant's favor. In the <.tvs> determination, the panel noted as a matter of factual background that the applicant's "TVS Brand was created over 100 years ago, [and] is a well known brand, . . . with global revenues of US\$7 Billion in Financial Year 2012-13."<sup>55</sup> This, as well as other descriptions of the string objected to in *Verisign Switzerland SA*, is simply inapt in the present case.

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- (1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
- (2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- (3) The similarity or dissimilarity of established, likely-to-continue trade channels.
- (4) The conditions under which and buyers to whom sales are made, i. e. "impulse" vs. careful, sophisticated purchasing.
- (5) The fame of the prior mark (sales, advertising, length of use).
- (6) The number and nature of similar marks in use on similar goods.
- (7) The nature and extent of any actual confusion.
- (8) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
- (9) The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).
- (10) The market interface between applicant and the owner of a prior mark:
  - (a) a mere "consent" to register or use.
  - (b) agreement provisions designed to preclude confusion, i. e. limitations on continued use of the marks by each party.
  - (c) assignment of mark, application, registration and good will of the related business.
  - (d) laches and estoppel attributable to owner of prior mark and indicative of lack of confusion.
- (11) The extent to which applicant has a right to exclude others from use of its mark on its goods.
- (12) The extent of potential confusion, i. e., whether *de minimis* or substantial.
- (13) Any other established fact probative of the effect of use.

*Id.*

<sup>54</sup> Two panelists have commented on the applicability of trademark law decisions on string confusion objections: "Trademark law standards do not entirely fit here . . ., because the Objector's string <.CAR> is generic and hence ineligible for trademark protection", *Koko Castle, LLC* at 5 (Panelist Mason); "for purposes of this St[r]ing Confusion Objection, the decisions . . . of American trademark law involved different standards and will not be applied", *John Island, LLC* at 10 (Panelist Page).

<sup>55</sup> *Verisign Switzerland SA* at 4.

(2) *HOTEL Top-Level-Domain S.a.r.l v. Booking.com B.V.*, ICDR Case No. 50 504 237 13 (Aug. 8, 2013) (<.hotels>).

In the string confusion objection involving the <.hotels> gTLD, the panelist stated that “it [is] undisputed that the words ‘hotel’ and ‘hotels’ are similar, with only the addition of an ‘s’ differentiating them visually”.<sup>56</sup> He nevertheless concluded that the strings are “sufficiently visually and aurally different for string confusion purposes.”<sup>57</sup> The panelist explained: “I find persuasive [i] the degrees of similarity or dissimilarity between the strings by use of the String Similarity Assessment Tool . . ., [ii] that ICANN did not put the applications for .HOTEL and .HOTELS in the same contention set . . ., and [iii] the analysis and conclusions of the independent expert retained by Applicant.”<sup>58</sup>

First, ICANN’s String Similarity Assessment Tool, while relevant in the Panel’s consideration, is not determinative in resolving a string confusion objection.<sup>59</sup> Second, regarding the relevance of ICANN not placing two applied-for strings in the same contention set, as one panelist in a previous string confusion objection noted, an applicant’s gTLD application is not entitled to “an evidentiary presumption of acceptability because it passed through the initial ICANN visual similarity tool tests.”<sup>60</sup> Rather, “the Objection process is an independent review process.”<sup>61</sup> Third, this Panel has considered, and found not persuasive, the opinions of the Applicant’s linguistics expert urging dissimilarity between <.webs> and <.web>.

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<sup>56</sup> *HOTEL Top-Level-Domain S.a.r.l* at 3.

<sup>57</sup> *Id.* at 4.

<sup>58</sup> *Id.*

<sup>59</sup> See *DERCars, LLC* at 29.

<sup>60</sup> *Koko Castle, LLC* at 5 (Panelist Mason).

<sup>61</sup> *Id.* In this regard, Module 2 provides:

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.

An application that passes the String Similarity review is still subject to objection by an existing TLD operator or by another gTLD applicant in the current application round. That process requires that a string confusion objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity (including visual, aural, or similarity of meaning) may be claimed by an objector. . . .

Module 2 ¶ 2.2.1.1.3.

As previously noted, in a string confusion objection against the <.cars> gTLD, Panelist John A.M. Judge determined that confusion was probable and sustained the objection.<sup>62</sup> But in two other objections brought by the same objector against the very same <.cars> string, both panelists separately determined that there was *no* likelihood of confusion.

(3) *Charleston Road Registry Inc. v. Koko Castle, LLC*, ICDR Case No. 50 504 233 13 (Aug. 7, 2013) (<.cars>).

In the first of the two, Panelist Mason stated that regarding visual similarity, there was “adequate evidence to show that ‘CAR’ and ‘CARS’ do not have a high probability of being confused visually. This is partly because the ICANN visual similarity tool test assigned a similarity score of only 72%, in comparison with other string pairs with more distinct meanings having much higher similarity scores.”<sup>63</sup> But Panelist Judge, faced with the same 72% algorithmic score, determined that the score “supports the finding that the burden of proving likely confusion on a balance of probabilities has been met.”<sup>64</sup> Likewise, in two other string confusion objections that also involved a 72% score (for <.pets> and <.pet>), Panelists Richard W. Page and Urs Laeuchli separately characterized the score as “high”.<sup>65</sup> Panelists Judge, Page and Laeuchli all found likelihood of string confusion, and sustained the objection. The 72% figure is the same algorithmic score seen in the present Objection.

In *Koko Castle, LLC*, the panelist wrote, “There . . . does appear to be visual ‘peaceful coexistence’ at the secondary domain name level between singular and plural names. Applicant has presented evidence that singular and plural websites have existed together commercially without much internet user confusion between them.”<sup>66</sup> In this vein, the Applicant here argues that the Applicant’s <webs.com> domain name has co-existed with the Objector’s <web.com>. Yet the Panel questions whether this consideration, alone or in combination with others, is relevant in this determination.

Ultimately, Panelist Mason concluded that “[the] Objector has not met its heavy burden of proving that there is a probability, not just a possibility, of aural and/or visual similarity between the strings <.CAR> and <.CARS>, as opposed to mere

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<sup>62</sup> *DERCars, LLC*. See *supra* note 48.

<sup>63</sup> *Koko Castle, LLC* at 5 (emphasis added).

<sup>64</sup> *DERCars, LLC* at 29.

<sup>65</sup> *John Island, LLC* at 10 (Panelist Page); *Afilias Limited* at 4 (Panelist Laeuchli).

<sup>66</sup> *Koko Castle, LLC* at 5-6.

association between them.”<sup>67</sup> Regardless of whether ICANN intended the burden on string confusion objectors to be heavy or otherwise, this Panel reaches a different conclusion regarding probable confusion for the strings <.webs> and <.web>.

(4) *Charleston Road Registry Inc. v. Uniregistry, Corp.*, ICDR Case No. 50 504 238 13 (Oct. 10, 2013) (<.cars>).

In the second determination involving <.cars> in which the string confusion objection was dismissed, the panelist ultimately concluded that “the string <.cars> is not confusingly similar to the string <.car>.”<sup>68</sup> Given that the panelist’s task was “to place itself in the position of the average, reasonable internet user and to assess whether such a person would probably be confused by the proposed string”,<sup>69</sup> he wrote, “Users will recognize that one of the strings is singular and one of them is plural and that that difference means that they should regard the two strings as different, as they are.”<sup>70</sup> Specifically,

the reader and the user will appreciate the fact that the two words that constitute the strings, “cars” and “car”, are separate words, with distinct meanings, with each of them being capable of being given their own function, namely that the former invokes cars in general and as a group, while the latter clearly invokes the concept of a single entity and that there is no reason why they should be understood as regarded as being used, in the internet context, in anything other than those distinct meanings.<sup>71</sup>

The panelist also noted that Internet users of today are

very well aware that, on the internet, small differences in spelling and meaning are significant and that they mean different things . . . . Internet users have become increasingly aware of such differences and are now mature and sophisticated enough to realize it, when they are being presented with such differences; indeed, internet users are so astute to such matters that they now look for them to ensure as best they can that they are not being misle[]d or deceived. There will therefore, in the opinion of the Expert, be no

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<sup>67</sup> *Id.* at 6 (emphasis added).

<sup>68</sup> *Uniregistry, Corp.* at 10 (¶¶ 14, 17) (in original).

<sup>69</sup> *Id.* at 9 (¶ 9).

<sup>70</sup> *Id.* at 10 (¶ 15).

<sup>71</sup> *Id.* at 11 (¶ 19(a)).

probability of user confusion if the two strings are delegated into the root zone.<sup>72</sup>

The Panel is unable to concur with the above descriptions, and perceptions, of Internet users generally. As an aside, it is a fair question to ask, if the above quoted text amounts to the rule, whether, as a practical matter, any string confusion objection could prevail under the Guidebook. In all events, the Panel determines that the Applicant's <.webs> string so nearly resembles the Objector's <.web> in a number of respects that it is probable that confusion will arise in the human mind of the average, reasonable Internet user.

The Panel has considered the Applicant's many arguments, including those emphasizing: the absence of previous litigation between the parties, the Objector's alleged motives in filing this Objection, the absence of objections by other applicants for the <.web> gTLD, and the alleged anti-competitive effect. Under the governing Guidebook and the applicable principles, these arguments carry little weight.<sup>73</sup>

Per the Guidebook, "The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards."<sup>74</sup> The Objector has met this burden.

### **Determination**

The Objector has prevailed, and the String Confusion Objection is sustained.

January 24, 2014



Ilhyung Lee

Sole Expert Panelist

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<sup>72</sup> *Id.* at 10 (¶ 15). The panelist acknowledged that "[i]t is of course possible that some internet user will be confused by the two strings", but added that such possibility "will, at most, exist only in very few cases". *Id.* at 11 (¶ 19(a)). "[I]t is not enough to conclude that someone, somewhere will probably be confused by the string." *Id.* at 9 (¶ 9).

<sup>73</sup> See *HOTEL Top-Level-Domain S.a.r.l* at 4 ("The parties' arguments and contentions regarding alleged business motives and/or attempts to limit competition, alleged detriments that could arise if [the challenged gTLD] is approved, . . . are deemed irrelevant to the task of the expert panel.").

<sup>74</sup> Attachment to Module 3 art. 20(c).

**EXHIBIT JJN-52**



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**APPLICATION COMMENT DETAILS**

Comment ID: ywu8llsb

Name: Paul McGrady

Affiliation: Winston & Strawn LLP

Applicant: DotWeb Inc.

String: WEB

Application ID: 1-956-26846

Panel/Objection Background Screening

Ground:

Subject: Public Comment re Directi Group (1 of 6)

Comment Submission 26 September 2012 at 23:29:09 UTC

Date:

Comment: In addition to our previous submission, due to space limitations in the comment field, we have divided our Public Comment and will post it in six separate sections.

Public Comment re Directi Group (1 of 6)

We represent Karsten Manufacturing Corporation, the owner of the famous PING trademark and the parent company of the applicant which has filed App. No. 1-1833-90242 to run the <.ping> registry. We are writing concerning the thinly veiled attempt by

Directi, which has formed new entities to apply for thirty-one new gTLDs, to make an end-run around the ICANN's clearly stated applicant requirements. Specifically, we draw ICANN's attention to the above-referenced applications (each an "Application") filed by a newly-formed company (each a "NewCo"). Research into publicly available documents has confirmed that each NewCo (with the exception of the NewCo applicant entity for .web[1]) is controlled by Bhavin Turakhia, an individual who also controls Directi, whose service "PrivacyProtect.org" has been the losing Respondent in more than sixty recent Uniform Domain Name Dispute Resolution Policy ("UDRP") proceedings.

Given the significant fiduciary and legal responsibilities associated with operating a gTLD, ICANN has established a set of requirements in the "gTLD Applicant Guidebook" ("Guidebook") that, absent "extraordinary circumstances," forbid applicants with a history of adverse UDRP decisions from applying for new gTLDs. Each of Bhavin Turakhia's applications thus raise two simple questions:

1. Should a party who has been the named respondent in dozens of adverse UDRP decisions be permitted to thwart the Guidebook's prohibitions by forming new companies to serve as the applicant entity for a new gTLD?
2. Is providing a "privacy service" whereby the service provider does not disclose customer information even when a UDRP is filed against a customer's domain name an "extraordinary" circumstance such that an exception to the Guidebook's applicant restrictions should be granted?

For the reasons outlined in detail herein, it is clear that the answer to both questions presented is unequivocally "no." Any applicant who has engaged in a pattern of disqualifying activities under the Guidebook's policies cannot evade ICANN's well-reasoned process by simply filing new gTLD applications through a newly formed company they control. Simply put, each Application referenced above and each NewCo must be automatically disqualified.

[1] While the NewCo applicant entity for the .web application (DotWeb Inc.) does not list Bhavin Turakhia as the founder of DotWeb Inc., NewCo's Application for .web states that DotWeb Inc. is a "wholly owned subsidiary" of Directi. Because Bhavin Turakhia controls Directi, which in turn holds DotWeb Inc., the fact that Bhavin Turakhia is not listed as the founder of DotWeb Inc. does not impact the analysis. DotWeb Inc., like all of the other NewCos, should be disqualified as a gTLD applicant for the reasons outlined herein.

**EXHIBIT JJN-53**



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**APPLICATION COMMENT DETAILS**

Comment ID: tkudyfhj

Name: Paul McGrady

Affiliation: Winston & Strawn LLP

Applicant: DotWeb Inc.

String: WEB

Application ID: 1-956-26846

Panel/Objection Background Screening

Ground:

Subject: Public Comment re Directi Group (2 of 6)

Comment Submission 26 September 2012 at 23:32:07 UTC

Date:

Comment: Public Comment re Directi Group (2 of 6)

I. The Applicant

Each Application must be disqualified because each NewCo was founded or is otherwise controlled by Mr. Bhavin Turakhia, an individual who controls a company that has been the losing respondent in dozens of UDRP proceedings. As detailed in each Application, NewCo “is a wholly owned subsidiary within the Directi Group” (“Directi”). Indeed, each

Application makes clear that NewCo intends to “outsource[] our Abuse and Compliance functions to the Directi Group and our Abuse and Compliance desk will be staffed as a cost center by [Directi].” Mr. Bhavin Turakhia controls both NewCo (as evidenced by each Application) and Directi, as evidenced by the true and correct copy of a Capital IQ report identifying Directi’s officers attached hereto as Exhibit 1.

As reported in the Washington Post article attached hereto as Exhibit 2 and as confirmed by Directi in the blog post attached hereto as Exhibit 3, Directi is also the owner of a service called PrivacyProtect.org. As detailed herein, PrivacyProtect.org has lost dozens of UDRP proceedings in the past several years. At bottom, PrivacyProtect.org and NewCo are all under the common control of Mr. Bhavin Turakhia. Because Bhavin Turakhia’s company has been the named respondent in dozens of adverse UDRP decisions, any company under Mr. Turakhia’s control is an ineligible applicant for a new gTLD. Directi, each NewCo, and PrivacyProtect.org are all collectively referred to herein as “Applicant,” because all of these entities are under the common control of Bhavin Turakhia.

There is little doubt from Directi’s own public statement that all of the mentioned activities are run as a “group.” For example, in an article written by Applicant titled, “Directi Group Applies for Thirty-one Top-Level Domain Strings in the ICANN Process,” Applicant states:

“Directi Group, a global leader in Internet products and Web services, today announced its ambitious effort to secure Top-Level Domains (TLDs) under ICANN’s program to expand the Internet’s addressing system. Under its new brand – Radix – Directi has committed over \$30 million on the application of 31 strings comprising several generic and mass market names.”

See Directi Group Applies for Thirty-one Top-Level Domain Strings in the ICANN Process, RADIX, May 31, 2012, <http://radixregistry.com/radix-applies-for-31-strings-newgtlds.php> (a copy of which is attached hereto as Exhibit 4).

Any argument by Applicant that it should be allowed to form a separate entity to apply for a new gTLD in order to avoid its history of adverse UDRP decisions is unavailing. It is clear that the Guidebook does not permit formation of new entities in order to thwart the consensus of the ICANN community.

**EXHIBIT JJN-54**



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**APPLICATION COMMENT DETAILS**

Comment ID: ycupgfw6

Name: Ivan Smirnov

Affiliation: Self

Applicant: Charleston Road Registry Inc.

String: WEB

Application ID: 1-1681-58699

Panel/Objection Ground: Legal Rights Objection Ground

Subject: .appalled!

Comment Submission Date: 24 September 2012 at 03:00:37 UTC

Date:

Comment: Am I missing something here?

How is a company like Google with a global dominance in the indexing & ranking of websites as well as in online advertising being allowed to operate as a domain name administrator and registry controlling a multitude of generic domain name extensions?

Infinite word combinations of .blog

Infinite word combinations of .game

Infinite word combinations of .car

Infinite word combinations of .ads

Infinite word combinations of .store

Infinite word combinations of .music

Infinite word combinations of .diy

Etc

Etc

Etc.....

Google will have these new websites to administer, register, then

rank in their search engine & put ads on??!!

.fyi

“generic keywords” in a domain name are a very important ranking factor in Google’s own, proprietary, ranking formula.

fyi.fyi

Google is already under investigation from the FTC, the EU, Argentina & South Korea for using it’s dominant position in web search to drive Internet users toward other Google products, services, and websites at the expense of its rivals.

.and (oops! I can’t use this, Google owns it)

.inaddition

There is currently much talk/debate/evidence that Google deems certain domain extensions as “spammy” & automatically ranks them lower. What about the ranking of the multitude of rival domain extensions produced under this program?

The fault isn’t with Google for “applying” for these, it is ICANN’s program that is allowing this to happen and therefore a program that is outrageously flawed & misguided.

I’m all for more consumer choice in domain names, however domain name administration/registration should be at arms length.

I could go on, but I assume this will be only be read & reviewed by the same committee or panel or whatever that voted for this tld expansion to begin with. Or a similar internally elected one using the same modus operandi.

.lastly

5,000 Euros for filing an “official objection” is completely outrageous. The internet belongs to everyone & everyone should be able to have their concerns, opinions, objections voiced especially in something as far-reaching & important as this.

.end (oops! I need 185K to apply to use this)

Ivan Smirnov

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**EXHIBIT JJN-55**



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**APPLICATION COMMENT DETAILS**

Comment ID: mjclg90q

Name: Bill Millner

Affiliation:

Applicant: Ruby Glen, LLC

String: WEB

Application ID: 1-1527-54849

Panel/Objection: Financial Capability Evaluation Panel

Ground:

Subject: DPML's Impact on Financials

Comment Submission: 25 September 2012 at 21:53:08 UTC

Date:

Comment: Recently there have been some comments about potential issues with the Donuts Domain Protected Marks List or DPML. People have pointed out the problem with strings like ING and ER and the real potential for blocking legitimate registrations from others, including brand owners, whose own trademarks incorporate those terms. It's impossible in 3500 characters to show the breadth and depth of the problems with the DPML but if you look beyond the concerns about brands being able to register their trademarks to the problem of the DPML preventing anyone from registering ANY names, it quickly shows that the DPML is not well thought out and should not be allowed.

If the DPML allowed the protection of "IN" or any domain incorporating "IN", for which there are dozens of nationally recognized trademarks across the globe, what would the impact be? If applied to current .com registrations, over 20 million existing registrations would have been denied. That's 20% of all names registered. For "ER" the TV show example raised by another commentator - over 19 million existing registrations denied. With two separate, two letter trademarks, the DPML would prevent the registration of almost 40% of all registration in the .com zone.

If General Electric, now known as GE registers GE, they single handedly could prevent the registration of 4.9 million domain names in .com, 388,000 in .info and over 106,000 in.biz. AT&T could block 724,000 .com and 48,000 .info registrations while HP would block over 300,000 .com registrations.

If the DPML has the potential to eliminate so many domains names from registration, one has to wonder 1) why would Donuts do this as it unnecessarily damages the registration potentials for their TLD and 2) did they account for this impact in their financial projections?

When it comes to the mission and purpose of this TLD, Donuts says all the right things. It wants to operate the TLD in an above board manner that protects the rights of registrants. But do they also realize that the DPML would prevent completely legitimate registration of domains having nothing to do with registered trademarks in the clearinghouse? The DPML eliminates a significant portion of the market who might want to register names across their 307 TLDs.

As for the financials, since those are confidential, it is ultimately up to the evaluators to see if the impacts pointed out in this post and by others have been accurately captured and reflected in the domain name registration projections that make up their answers to Questions 45-50. Did Donuts do a market assessment that eliminated hundreds of thousands of potential registrations? Did their worst case projections include severely depressed registration levels because of the by catch effect of the DPML?

Donuts has done an impressive job in assembling their applications and bid vehicle. Raising \$100 million is no small feat and they are to be commended for that. But did they factor in the significant impact that the DPML, which is proving very popular among brand owners, would have on registration, volumes and revenue projections? These are the questions evaluators should be asking. If I was an investor who contributed to that war chest, I would be doing the same.

**EXHIBIT JJN-56**



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**APPLICATION COMMENT DETAILS**

Comment ID: fo2imfq7

Name: Mette Andersen

Affiliation: LEGO Juris A/S

Applicant: Ruby Glen, LLC

String: WEB

Application ID: 1-1527-54849

Panel/Objection String Similarity Evaluation Panel

Ground:

Subject: second level blocking

Comment Submission 8 August 2012 at 08:01:41 UTC

Date:

Comment: While we of course support enhanced fair competition, we call on the evaluators to ensure the maintenance of a clean Internet space by impressing on the new registries the importance of not accepting second level names within their gTLDs that may be confusingly similar to our trade marks, especially from applicants believed to be registering in bad faith. To avoid consumer confusion and the wasted resources of needless dispute resolution procedures, legal actions and defensive registrations (none of which benefit consumers), as well as proving to the entire community that the registries do wish to act in good faith in a clean space, we request that new registries develop

“blocked” lists of brand names that should not be registered absent evidence of good faith. Such lists could take the form of “white lists” at the second level that could only be lifted if requested by and for the brand owner.

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**EXHIBIT JJN-57**



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## APPLICATION COMMENT DETAILS

Comment ID: x77a6fp4

Name: Ewa M Abrams

Affiliation: TIFFANY & CO.

Applicant: Afilias Domains No. 3 Limited,

String: WEB

Application ID: 1-1013-6638

Panel/Objection Registry Services Evaluation Panel

Ground:

Subject: Rights Protection Mechanisms

Comment Submission 7 August 2012 at 21:09:23 UTC

Date:

Comment: After a preliminary evaluation of this application, Tiffany & Co. is of the opinion that the inclusion of additional safeguards would improve the operation of this applied-for new gTLD based upon the proposed mission and purpose cited in this application. While there is no one-size-fits-all solution regarding Rights Protection Mechanisms given the diverse range of proposed applications received by ICANN, Tiffany believes that there are some potential best practices that have begun to emerge in connection with applications received. For example, over 400 applications have incorporated some type of perpetual block mechanism or Domain Protected Marks List (DPML).

By submitting this comment, Tiffany wishes to highlight the need for the ICANN community to engage in an ongoing discussion regarding appropriate proactive safeguards in new gTLD applications.

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**EXHIBIT JJN-58**



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**APPLICATION COMMENT DETAILS**

Comment ID: v53v42i9

Name: Carol E Robbins

Affiliation: Prudential Financial, Inc.

Applicant: NU DOT CO LLC

String: WEB

Application ID: 1-1296-36138

Panel/Objection Registry Services Evaluation Panel

Ground:

Subject: Rights Protection Mechanisms

Comment Submission 8 August 2012 at 19:08:06 UTC

Date:

Comment: After our preliminary evaluation of this application, Prudential Financial, Inc. is of the opinion that the inclusion of additional safeguards would improve the operation of this applied-for new gTLD based upon the proposed mission and purpose cited in this application. While there is no one-size-fits-all solution regarding Rights Protection Mechanisms given the diverse range of proposed applications received by ICANN, Prudential Financial, Inc. believes various potential best practices have begun to emerge

in connection with applications received. For example, over 400 applications have incorporated some type of perpetual block mechanism or Domain Protected Marks List (DPML).

By submitting this comment, Prudential Financial, Inc. wishes to highlight the need for the ICANN community to engage in an ongoing discussion regarding appropriate proactive safeguards related to new gTLD applications.

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**EXHIBIT JJN-59**



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**APPLICATION COMMENT DETAILS**

Comment ID: wt3qpy7q

Name: Carol E Robbins

Affiliation: Prudential Financial, Inc.

Applicant: Afilias Domains No. 3 Limited,

String: WEB

Application ID: 1-1013-6638

Panel/Objection Registry Services Evaluation Panel

Ground:

Subject: Rights Protection Mechanisms

Comment Submission 8 August 2012 at 18:14:10 UTC

Date:

Comment: After our preliminary evaluation of this application, Prudential Financial, Inc. is of the opinion that the inclusion of additional safeguards would improve the operation of this applied-for new gTLD based upon the proposed mission and purpose cited in this application. While there is no one-size-fits-all solution regarding Rights Protection Mechanisms given the diverse range of proposed applications received by ICANN, Prudential Financial, Inc. believes various potential best practices have begun to emerge

in connection with applications received. For example, over 400 applications have incorporated some type of perpetual block mechanism or Domain Protected Marks List (DPML).

By submitting this comment, Prudential Financial, Inc. wishes to highlight the need for the ICANN community to engage in an ongoing discussion regarding appropriate proactive safeguards related to new gTLD applications.

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**EXHIBIT JJN-60**

## Work Efforts

The GAC regularly considers a broad range of public policy issues impacting the DNS and other matters regarding the functions of ICANN. This work can result in consensus advice for the ICANN Board or public comment guidance to the ICANN community. This part of the website shares information related to those ongoing topics and activities.

[Topics](#)[More :](#)

## GAC Early Warnings

Last Updated: 07 Feb 2022

Status: Active

Lead: TBD

## Related Content

If you are an applicant who has received an Early Warning, you can contact [gacearlywarning@icann.org](mailto:gacearlywarning@icann.org) to request further information.

Application	ID Number	Applicant	Filing GAC Member	Early Warning
roma	1-927-80477	Top Level Domain Holdings Limited	Italy	<a href="#">Roma-IT-80477.pdf</a>
africa	1-1165-42560	DotConnect Africa Trust	African Union Commission	<a href="#">Africa-AUC-42560.pdf</a>
swiss	1-1831-36248	Swiss International Air Lines Ltd.	Switzerland	<a href="#">Swiss-CH-36248.pdf</a>
date	1-1247-30301	dot Date Limited	Japan	<a href="#">Date-JP-30301.pdf</a>
persiangulf	1-2128-55439	Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.	Bahrain, Oman, UAE, Qatar	<a href="#">Persiangulf-AE-55439.pdf</a>
patagonia	1-1084-78254	Patagonia, Inc.	Argentina	<a href="#">Patagonia-AR-78254.pdf</a> Updated: <a href="#">GAC EW Submission PATAGONIA 2.pdf</a>

gcc	1-1936-21010	GCCIX WLL	Bahrain, Oman, UAE, Qatar	<a href="#">GCC-AE-21010.pdf</a>
capital	1-1375-20218	Delta Mill, LLC	Australia	<a href="#">Capital-AU-20218.pdf</a>
city	1-1066-67099	DotCity Inc.	Australia	<a href="#">City-AU-67099.pdf</a>
city	1-1389-12139	Snow Sky, LLC	Australia	<a href="#">City-AU-12139.pdf</a>
town	1-1655-79604	Koko Moon, LLC	Australia	<a href="#">Town-AU-79604.pdf</a>
fail	1-1448-73190	Atomic Pipe, LLC	Australia	<a href="#">Fail-AU-73190.pdf</a>
gripe	1-1486-63504	Corn Sunset, LLC	Australia	<a href="#">Gripe-AU-63504.pdf</a>
sucks	1-1596-35125	Dog Bloom, LLC	Australia	<a href="#">Sucks-AU-35125.pdf</a>
sucks	1-1279-43617	Top Level Spectrum, Inc.	Australia	<a href="#">Sucks-AU-43617.pdf</a>
sucks	1-2080-92776	Vox Populi Registry Inc.	Australia	<a href="#">Sucks-AU-92776.pdf</a>
wtf	1-1508-57100	Hidden Way, LLC	Australia	<a href="#">WTF-AU-57100.pdf</a>
africa	1-1165-42560	DotConnect Africa Trust	Comoros	<a href="#">Africa-KM-42560.pdf</a>

accountant	1-1240-93305	dot Accountant Limited	Australia	<a href="#">Accountant-AU-93305.pdf</a>
accountants	1-1340-40734	Knob Town, LLC	Australia	<a href="#">Accountants-AU-40734.pdf</a>
architect	1-1342-7920	Spring Frostbite, LLC	Australia	<a href="#">Architect-AU-7920.pdf</a>
attorney	1-1348-99321	Victor North, LLC	Australia	<a href="#">Attorney-AU-99321.pdf</a>
casino	1-1382-33633	Binky Sky, LLC	Australia	<a href="#">Casino-AU-33633.pdf</a>
casino	1-1203-44541	dot Casino Limited	Australia	<a href="#">Casino-AU-44541.pdf</a>
casino	1-907-62211	dotBeauty LLC	Australia	<a href="#">Casino-AU-62211.pdf</a>
casino	1-868-87246	Afilias Limited	Australia	<a href="#">Casino-AU-87246.pdf</a>
charity	1-1384-49318	Corn Lake, LLC	Australia	<a href="#">Charity-AU-49318.pdf</a>
charity	1-1241-87032	Spring Registry Limited	Australia	<a href="#">Charity-AU-87032.pdf</a>
cpa	1-1411-59458	Trixy Canyon	Australia	<a href="#">CPA-AU-59458.pdf</a>

credit	1-1410-93823	Snow Shadow, LLC	Australia	<a href="#">Credit-AU-93823.pdf</a>
creditcard	1-1412-63109	Binky Frostbite, LLC	Australia	<a href="#">Creditcard-AU-63109.pdf</a>
creditunion	1-1130-18309	CUNA Performance Resources, LLC	Australia	<a href="#">Creditunion-AU-18309.pdf</a>
degree	1-1418-57248	Puff House, LLC	Australia	<a href="#">Degree-AU-57248.pdf</a>
dental	1-1421-91857	Tin Birch, LLC	Australia	<a href="#">Dental-AU-91857.pdf</a>
dentist	1-1422-97537	Outer Lake, LLC	Australia	<a href="#">Dentist-AU-97537.pdf</a>
doctor	1-1430-52453	Brice Trail, LLC	Australia	<a href="#">Doctor-AU-52453.pdf</a>
engineer	1-1255-37010	United TLD Holdco Ltd.	Australia	<a href="#">Engineer-AU-37010.pdf</a>
finance	1-1454-18725	Cotton Cypress, LLC	Australia	<a href="#">Finance-AU-18725.pdf</a>
financial	1-1453-71764	Just Cover, LLC	Australia	<a href="#">Financial-AU-71764.pdf</a>

insurance	1-1512-20834	Auburn Park, LLC	Australia	<a href="#">Insurance-AU-20834.pdf</a>
insure	1-1516-617	Pioneer Willow, LLC	Australia	<a href="#">Insure-AU-617.pdf</a>
investments	1-1521-75718	Holly Glen, LLC	Australia	<a href="#">Investments-AU-75718.pdf</a>
lawyer	1-1531-96078	Atomic Station, LLC	Australia	<a href="#">Lawyer-AU-96078.pdf</a>
loan	1-1222-21097	dot Loan Limited	Australia	<a href="#">Loan-AU-21097.pdf</a>
loans	1-1544-18264	June Woods, LLC	Australia	<a href="#">Loans-AU-18264.pdf</a>
mba	1-1556-47497	Lone Hollow, LLC	Australia	<a href="#">MBA-AU-47497.pdf</a>
mortgage	1-1564-75367	Outer Gardens, LLC	Australia	<a href="#">Mortgage-AU-75367.pdf</a>
ooo	1-1950-81778	INFIBEAM INCORPORATION LIMITED	Australia	<a href="#">OOO-AU-81778.pdf</a>
tax	1-1562-9879	Storm Orchard, LLC	Australia	<a href="#">Tax-AU-9879.pdf</a>

university	1-1651-77163	Little Station, LLC	Australia	<a href="#">University-AU-77163.pdf</a>
.慈善 [charity]	1-961-6109	Excellent First Limited	Australia	<a href="#">CharityIDN-AU-6109.pdf</a>
africa	1-1165-42560	DotConnect Africa Trust	Kenya	<a href="#">Africa-KE-42560.pdf</a>
engineering	1-1436-74788	Romeo Canyon	Australia	<a href="#">Engineering-AU-74788.pdf</a>
autoinsuranc ce	1-1191-86372	Allstate Fire and Casualty Insurance Company	Australia	<a href="#">Autoinsuran ce-AU-86372.pdf</a>
baby	1-1156-50969	Johnson & Johnson Services, Inc.	Australia	<a href="#">Baby-AU-50969.pdf</a>
beauty	1-1302-76087	L'Oréal	Australia	<a href="#">Beauty-AU-76087.pdf</a>
blog	1-1680-47770	Charleston Road Registry Inc.	Australia	<a href="#">Blog-AU-47770.pdf</a>
antivirus	1-1027-34295	Symantec Corporation	Australia	<a href="#">Antivirus-AU-34295.pdf</a>

app	1-1138-33325	Charleston Road Registry Inc.	Australia	<a href="#">App-AU-33325.pdf</a>
app	1-1315-63009	Amazon EU S.à r.l.	Australia	<a href="#">App-AU-63009.pdf</a>
book	1-1315-44051	Amazon EU S.à r.l.	Australia	<a href="#">Book-AU-44051.pdf</a>
broker	1-1332-82635	IG Group Holdings PLC	Australia	<a href="#">Broker-AU-82635.pdf</a>
carinsuranc e	1-1191-70059	Allstate Fire and Casualty Insurance Company	Australia	<a href="#">Carinsuranc e-AU-70059.pdf</a>
cars	1-909-45636	DERCars, LLC	Australia	<a href="#">Cars-AU-45636.pdf</a>
cloud	1-1315-79670	Amazon EU S.à r.l.	Australia	<a href="#">Cloud-AU-79670.pdf</a>
cloud	1-1099-17190	Charleston Road Registry Inc.	Australia	<a href="#">Cloud-AU-17190.pdf</a>
cloud	1-1027-19707	Symantec Corporation	Australia	<a href="#">Cloud-AU-19707.pdf</a>
courses	1-1327-45933	OPEN UNIVERSITI ES AUSTRALIA PTY LTD	Australia	<a href="#">Courses-AU-45933.pdf</a>

cpa	1-1744-1971	CPA AUSTRALIA LTD	Australia	<a href="#">CPA-AU-1971.pdf</a>
cpa	1-1911-56672	American Institute of Certified Public Accountants	Australia	<a href="#">CPA-AU-56672.pdf</a>
cpa	1-1910-48133	American Institute of Certified Public Accountants	Australia	<a href="#">CPA-AU-48133.pdf</a>
cruise	1-1852-14467	Cruise Lines International Association Inc.	Australia	<a href="#">Cruise-AU-14667.pdf</a>
cruise	1-1691-43949	Viking River Cruises (Bermuda) Ltd.	Australia	<a href="#">Cruise-AU-43949.pdf</a>
data	1-2009-38008	Dish DBS Corporation	Australia	<a href="#">Data-AU-38008.pdf</a>
dvr	1-2000-89466	Hughes Satellite Systems Corporation	Australia	<a href="#">DVR-AU-89466.pdf</a>
epost	1-1075-2496	Deutsche Post AG	Australia	<a href="#">EPOST-AU-2496.pdf</a>

financialaid	1-1846-66020	Rezolve Group, Inc.	Australia	<a href="#">Financialaid-AU-66020.pdf</a>
flowers	1-1534-89307	Piper Ventures, LLC	Australia	<a href="#">Flowers-AU-89307.pdf</a>
food	1-1326-50608	Lifestyle Domain Holdings, Inc.	Australia	<a href="#">Food-AU-50608.pdf</a>
game	1-1660-73645	Beijing Gamease Age Digital Technology Co., Ltd.	Australia	<a href="#">Game-AU-73645.pdf</a>
game	1-1316-7998	Amazon EU S.à r.l.	Australia	<a href="#">Game-AU-7998.pdf</a>
grocery	1-1189-31055	Safeway Inc.	Australia	<a href="#">Grocery-AU-31055.pdf</a>
grocery	1-2064-74519	Wal-Mart Stores, Inc.	Australia	<a href="#">Grocery-AU-74519.pdf</a>
hair	1-1302-98299	L'Oréal	Australia	<a href="#">Hair-AU-98299.pdf</a>
heart	1-1483-85325	American Heart Association, Inc.	Australia	<a href="#">Heart-AU-85325.pdf</a>
hotel	1-1249-36568	Despegar Online SRL	Australia	<a href="#">Hotel-AU-36568.pdf</a>

insurance	1-1269-14573	Progressive Casualty Insurance Company	Australia	<a href="#">Insurance-AU-14573.pdf</a>
jewelry	1-1253-11362	Richemont DNS Inc.	Australia	<a href="#">Jewelry-AU-11362.pdf</a>
mail	1-1256-50020	1&1 Mail & Media GmbH	Australia	<a href="#">Mail-AU-50020.pdf</a>
mail	1-1316-17384	Amazon EU S.à r.l.	Australia	<a href="#">Mail-AU-17384.pdf</a>
makeup	1-1302-1511	L'Oréal	Australia	<a href="#">Makeup-AU-1511.pdf</a>
map	1-1316-5335	Amazon EU S.à r.l.	Australia	<a href="#">Map-AU-5335.pdf</a>
mobile	1-1316-6133	Amazon EU S.à r.l.	Australia	<a href="#">Mobile-AU-6133.pdf</a>
mobile	1-2012-89566	Dish DBS Corporation	Australia	<a href="#">Mobile-AU-89566.pdf</a>
motorcycles	1-909-56431	DERMotorcycles, LLC	Australia	<a href="#">Motorcycles-AU-56431.pdf</a>
movie	1-1316-44615	Amazon EU S.à r.l.	Australia	<a href="#">Movie-AU-44615.pdf</a>
movie	1-1920-39242	Dish DBS Corporation	Australia	<a href="#">Movie-AU-39242.pdf</a>

music	1-1316-18029	Amazon EU S.à r.l.	Australia	<a href="#">Music-AU-18029.pdf</a>
army	1-1255-29986	United TLD Holdco Ltd.	United States	<a href="#">Army-US-29986.pdf</a> <a href="#">Final USG Input into GAC Early Warning Process.pdf</a>
africa	1-1165-42560	DotConnect Africa Trust	Cameroon	<a href="#">Africa-CM-42560.pdf</a>
airforce	1-1255-29190	United TLD Holdco Ltd.	United States	<a href="#">Airforce-US-29190.pdf</a> <a href="#">Final USG Input into GAC Early Warning Process.pdf</a>
navy	1-1255-53893	United TLD Holdco Ltd.	United States	<a href="#">Navy-US-53893.pdf</a> <a href="#">Final USG Input into GAC Early Warning Process.pdf</a>
news	1-1316-26110	Amazon EU S.à r.l.	Australia	<a href="#">News-AU-26110.pdf</a>
phone	1-2011-80942	Dish DBS Corporation	Australia	<a href="#">Phone-AU-80942.pdf</a>

salon	1-1302-58142	L'Oréal	Australia	<a href="#">Salon-AU-58142.pdf</a>
search	1-1317-13549	Amazon EU S.à r.l.	Australia	<a href="#">Search-AU-13549.pdf</a>
search	1-1141-50966	Charleston Road Registry Inc.	Australia	<a href="#">Search-AU-50966.pdf</a>
shop	1-1317-37897	Amazon EU S.à r.l.	Australia	<a href="#">Shop-AU-37897.pdf</a>
show	1-1317-52877	Amazon EU S.à r.l.	Australia	<a href="#">Show-AU-52877.pdf</a>
africa	1-1165-42560	DotConnect Africa Trust	DRC	<a href="#">Africa-CD-42560.pdf</a>
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stroke	1-1483-31708	American Heart Association, Inc.	Australia	<a href="#">Stroke-AU-31708.pdf</a>
theater	1-1326-97308	Key GTLD Holding Inc	Australia	<a href="#">Theater-AU-97308.pdf</a>
theatre	1-1326-3558	Key GTLD Holding Inc	Australia	<a href="#">Theatre-AU-3558.pdf</a>
skin	1-1302-80853	L'Oréal	Australia	<a href="#">Skin-AU-80853.pdf</a>

song	1-1317-53837	Amazon EU S.à r.l.	Australia	<a href="#">Song-AU-53837.pdf</a>
store	1-1317-24947	Amazon EU S.à r.l.	Australia	<a href="#">Store-AU-24947.pdf</a>
tennis	1-1723-69677	TENNIS AUSTRALIA LTD	Australia	<a href="#">Tennis-AU-69677.pdf</a>
tires	1-1884-1217	The Goodyear Tire & Rubber Company	Australia	<a href="#">Tires-AU-1217.pdf</a>
tires	1-2123-56973	Bridgestone Americas Tire Operations, LLC	Australia	<a href="#">Tires-AU-56973.pdf</a>
travelersinsurance	1-1895-33687	Travelers TLD, LLC	Australia	<a href="#">Travelersinsurance-AU-33687.pdf</a>
tunes	1-1317-30761	Amazon EU S.à r.l.	Australia	<a href="#">Tunes-AU-30761.pdf</a>
video	1-1317-52344	Amazon EU S.à r.l.	Australia	<a href="#">Video-AU-52344.pdf</a>
watches	1-1253-13044	Richemont DNS Inc.	Australia	<a href="#">Watches-AU-13044.pdf</a>

weather	1-1977-49078	The Weather Channel LLC	Australia	<a href="#">Weather-AU-49078.pdf</a>
yachts	1-909-89547	DERYachts, LLC	Australia	<a href="#">Yachts-AU-89547.pdf</a>
airforce	1-1255-29190	United TLD Holdco Ltd.	Australia	<a href="#">Airforce-AU-29190.pdf</a>
army	1-1255-29986	United TLD Holdco Ltd.	Australia	<a href="#">Army-AU-29986.pdf</a>
navy	1-1255-53893	United TLD Holdco Ltd.	Australia	<a href="#">Navy-AU-53893.pdf</a>
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.ストア [store]	1-1318-83013	Amazon EU S.à r.l.	Australia	<a href="#">StoreIDN-AU-83013.pdf</a>
.セール[sale]	1-1318-75179	Amazon EU S.à r.l.	Australia	<a href="#">SaleIDN-AU-75179.pdf</a>
.ファッション [fashion]	1-1318-40887	Amazon EU S.à r.l.	Australia	<a href="#">FashionIDN-AU-40887.pdf</a>
.家電 [consumer electronics]	1-1318-54339	Amazon EU S.à r.l.	Australia	<a href="#">ConsumerElectronicsIDN-AU-54339.pdf</a>

.手表 [watches]	1-1253-73407	Richemont DNS Inc.	Australia	<a href="#">WatchesIDN-AU-73407.pdf</a>
.書籍[book]	1-1318-52278	Amazon EU S.à r.l.	Australia	<a href="#">BookIDN-AU-52278.pdf</a>
.珠宝 [jewelry]	1-1253-4621	Richemont DNS Inc.	Australia	<a href="#">JewelryIDN-AU-4621.pdf</a>
africa	1-1165-42560	Dot Connect Africa	Gabon	<a href="#">Africa-GA-42560.pdf</a>
.食品[food]	1-1318-83264	Amazon EU S.à r.l.	Australia	<a href="#">FoodIDN-AU-83264.pdf</a>
.通販[online shopping]	1-1318-15593	Amazon EU S.à r.l.	Australia	<a href="#">OnlineshoppingIDN-AU-15593.pdf</a>
SARL	1-1624-75239	Delta Orchard, LLC	Benin	<a href="#">Sarl-BJ-75239.pdf</a>
SARL	1-1624-75239	Delta Orchard, LLC	Cameroon	<a href="#">Sarl-CM-75239.pdf</a>
vuelos [flights]	1-1249-83471	Despegar Online SRL	Australia	<a href="#">Vuelos-AU-83471.pdf</a>
hoteis [hotels]	1-1249-87712	Despegar Online SRL	Australia	<a href="#">Hoteis-AU-87712.pdf</a>

hoteles [hotels]	1-1249-1940	Despegar Online SRL	Australia	<a href="#">Hoteles-AU-1940.pdf</a>
hotels	1-1016-75482	Booking.co m B.V.	Australia	<a href="#">Hotels-AU-75482.pdf</a>
passagens[t ravel]	1-1249-57355	Despegar Online SRL	Australia	<a href="#">Passagens-AU-57355.pdf</a>
政府	1-1658-94344	Net-Chinese Co., Ltd.	Hong Kong Special Administrati ve Region, China	<a href="#">GOVIDN-HK-94344.pdf</a>
islam	1-2130-23450	Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.	UAE	<a href="#">Islam-AE-23450.pdf</a>
halal	1-2131-60793	Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.	UAE	<a href="#">Halal-AE-60793.pdf</a>
sarl	1-1624-75239	Delta Orchard, LLC	France	<a href="#">Sarl-FR-75239.pdf</a>
sarl	1-1013-83132	mySARL GmbH	France	<a href="#">Sarl-FR-83132.pdf</a>
africa	1-1165-42560	DotConnect Africa Trust	Burkina Faso	<a href="#">Africa-BF-42560.pdf</a>

vin	1-1538-23177	Holly Shadow, LLC	France	<a href="#">Vin-FR-23177.pdf</a>
health	1-1684-6394	DotHealth, LLC	France	<a href="#">Health-FR-6394.pdf</a>
health	1-1489-82287	Goose Fest, LLC	France	<a href="#">Health-FR-82287.pdf</a>
health	1-1178-3236	dot Health Limited	France	<a href="#">Health-FR-3236.pdf</a>
archi	1-1000-49620	STARTING DOT	France	<a href="#">Archi-FR-49620.pdf</a>
health	1-868-3442	Afilias Limited	France	<a href="#">Health-FR-3442.pdf</a>
.健康	1-1708-88054	Stable Tone Limited	France	<a href="#">HealthyIDN-FR-88054.pdf</a>
architect	1-1342-7920	Spring Frostbite, LLC	France	<a href="#">Architect-FR-7920.pdf</a>
patagonia	1-1084-78254	Patagonia, Inc.	Chile	<a href="#">Patagonia-Chile-78254.pdf</a>
africa	1-1165-42560	DotConnect Africa Trust	Ghana	<a href="#">Africa-GH-42560.pdf</a>
basketball	1-1355-53565	Little Hollow, LLC	Greece	<a href="#">Basketball-GR-1-53565.pdf</a>

africa	1-1165-42560	DotConnect Africa Trust	Morocco	<a href="#">Africa-MA-42560.pdf</a>
basketball	1-1199-43437	Dot Basketball Limited	Greece	<a href="#">Basketball-GR-1-43437.pdf</a>
health	1-1178-3236	Dot Health Limited	Mali	<a href="#">Health-ML-3236.pdf</a>
health	1-1684-6394	DotHealth, LLC	Mali	<a href="#">Health-ML-6394.pdf</a>
health	1-1489-82287	Goose Fest, LLC	Mali	<a href="#">Health-ML-82287.pdf</a>
健康 (HEALTHY)	1-1708-88054	Stable Tone Limited	Mali	<a href="#">HealthyIDN-ML-88054.pdf</a>
SARL	1-1624-75239	Delta Orchard, LLC	Mali	<a href="#">Sarl-ML-75239.pdf</a>
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health	1-868-3442	Afilias	Mali	<a href="#">Health-ML-3442.pdf</a>
政务	1-922-56316	China Organizational Name Administration Center	Chinese Taipei	<a href="#">GOVIDN-TW-56316.pdf</a>
yun	1-1318-12524	Amazon EU S.à r.l.	China	<a href="#">Yun-CN-12524.pdf</a>

sarl	1-1624-75239	Delta Orchard, LLC	Luxembourg	<a href="#">Sarl-LU-75239.pdf</a>
广州	1-1121-22691	Guangzhou YU Wei Information Technology Co., Ltd.	China	<a href="#">GuangzhouIDN-CN-22691.pdf</a>
shangrila	1-940-76333	Shangri-La International Hotel Management Limited	China	<a href="#">Shangrila-CN-76333.pdf</a>
香格里拉	1-940-19689	Shangri-La International Hotel Management Limited	China	<a href="#">ShangrilaIDN-CN-19689.pdf</a>
深圳	1-1121-82863	Guangzhou YU Wei Information Technology Co., Ltd.	China	<a href="#">ShenzhenIDN-CN-82863.pdf</a>
sarl	1-1624-75239	Delta Orchard, LLC	Burkina Faso	<a href="#">Sarl-BF-75239.pdf</a>
政府	1-1658-94344	Net-Chinese Co., Ltd.	Japan	<a href="#">GOVIDN-JP-94344.pdf</a>
vin	1-1538-23177	Holly Shadow LLC	Luxembourg	<a href="#">Vin-LU-23177.pdf</a>

africa	1-1165-42560	DotConnect Africa	Uganda	<a href="#">Africa-UG-42560.pdf</a>
africa	1-1165-42560	DotConnect Africa	Senegal	<a href="#">Africa-SN-42560.pdf</a>
hotel	1-1500-16803	Spring MCCook LLC	France	<a href="#">Hotel-FR-16803.pdf</a>
hotel	1-1032-95136	Hotel TLD	France	<a href="#">Hotel-FR-95136.pdf</a>
hotel	1-1181-77853	Dot Hotel Limited	France	<a href="#">Hotel-FR-77853.pdf</a>
hotel	1-1249-36568	Despegar Online SRL	France	<a href="#">Hotel-FR-36568.pdf</a>
hotel	1-1913-57874	Fegistry, LLC	France	<a href="#">Hotel-FR-57874.pdf</a>
hotels	1-1016-75482	Booking.com B.V.	France	<a href="#">Hotels-FR-75842.pdf</a>
hotel	1-1059-97519	Dot Hotel Inc	France	<a href="#">Hotel-FR-97519.pdf</a>
zulu	1-994-74713	Top Level Domain Holdings Limited (TLDH Ltd)	South Africa	<a href="#">Zulu-ZA-74713.pdf</a>
africa	1-1165-42560	DotConnect Africa	South Africa	<a href="#">Africa-ZA-89583.pdf</a>

hotel	1-927-25198	Top Level Domain Holdings Limited (TLDH Ltd)	France	<a href="#">Hotel-FR-25198.pdf</a>
amazon	1-1315-58086	Amazon EU S.à r.l.	Brazil and Peru	<a href="#">Amazon-BR-PE-58086.pdf</a>
sarl	1-1013-83132	MySarl	Luxembourg	<a href="#">Sarl-LU-83132.pdf</a>
website	1-1037-47594	Top Level Domain Holdings	Samoa	<a href="#">Website-WS-47594.pdf</a>
website	1-1050-30871	Dot Website Inc	Samoa	<a href="#">Website-WS-30871.pdf</a>
website	1-1524-44846	Fern Edge, LLC	Samoa	<a href="#">Website-WS-44846.pdf</a>
africa	1-1165-42560	DotConnect Africa	Nigeria	<a href="#">Africa-NG-2-42560.pdf</a>
delta	1-1259-75287	Delta Airlines	Nigeria	<a href="#">Delta-NG-75287.pdf</a>

Radix Registry - 31 individual strings		Radix Registry	United States	<a href="#">RadixReg-US-31.pdf</a> <a href="#">Final USG Input into GAC Early Warning Process.pdf</a>
reise	1-892-71956	DotReise	Germany	<a href="#">Reise-DE-71956.pdf</a>
gmbh	1-1952-21459	InterNetWir eWeb	Germany	<a href="#">GMBH-DE-21459.pdf</a>
gmbh	1-1693-16758	GMBH Registry LLC	Germany	<a href="#">GMBH-DE-16785.pdf</a>
gmbh	1-1682-34664	Charleston Road Registry Inc.	Germany	<a href="#">GMBH-DE-34664.pdf</a>
gmbh	1-1477-91047	Extra Dynamite	Germany	<a href="#">GMBH-DE-91047.pdf</a>
gmbh	1-1296-52581	NU DOT CO LLC	Germany	<a href="#">GMBH-DE-52581.pdf</a>
gmbh	1-1273-63351	TLDDOT GMBH	Germany	<a href="#">GMBH-DE-63351.pdf</a>
reisen	1-1606-68851	New Cypress	Germany	<a href="#">Reisen-DE-68851.pdf</a>
city	1-1938-29030	TLD Registry	Germany	<a href="#">City-DE-29030.pdf</a>
city	1-1389-12139	Snow Sky	Germany	<a href="#">City-DE-12139.pdf</a>

city	1-1066-67099	DotCity	Germany	<a href="#">City-DE-67099.pdf</a>
Africa	1-1165-42560	DotConnect Africa	Tanzania	<a href="#">Africa-TZ-42560.pdf</a>
hotel	1-1913-57874	Fegistry, LLC	Germany	<a href="#">Hotel-DE-57874.pdf</a>
hotel	1-1500-16803	Spring McCook, LLC	Germany	<a href="#">Hotel-DE-16803.pdf</a>
hotel	1-1249-36568	Spring McCook, LLC	Germany	<a href="#">Hotel-DE-36568.pdf</a>
hotel	1-1181- <a href="#">77853</a>	Dot Hotel Limited	Germany	<a href="#">Hotel-DE-77853.pdf</a>
hotel	1-1059-97519	Dot Hotel Inc	Germany	<a href="#">Hotel-DE-97519.pdf</a>
hotel	1-1032-95136	HOTEL Top-Level-Domain S.a.rl	Germany	<a href="#">Hotel-DE-95136.pdf</a>
hotel	1-927-25198	Top Level Domain Holdings	Germany	<a href="#">Hotel-DE-25198.pdf</a>
hotels	1-1016-75482	Booking.com B.V.	Germany	<a href="#">Hotels-DE-75482.pdf</a>
hoteis	1-1249-87712	DespegarOnline SRL	Germany	<a href="#">Hoteis-DE-87712.pdf</a>

rugby	1-1612-2805	Atomic Cross LLC	United Kingdom	<a href="#">Rugby-UK-2805.pdf</a>
rugby	1-1206-66762	DotRugby Limited	United Kingdom	<a href="#">Rugby-UK-66762.pdf</a>
green	1-1255-2257	United TLD Holdco Ltd.	Czech Republic	<a href="#">Green-CZ-2257.pdf</a>
green	1-1039-46343	Top Level Domain Holdings Limited	Czech Republic	<a href="#">Green-CZ-46343.pdf</a>
green	1-868-24661	Afilias Limited	Czech Republic	<a href="#">Green-CZ-24661.pdf</a>
bio	1-1000-94806	STARTING DOT	France	<a href="#">Bio-FR-94806.pdf</a>
islam	1-2130-23450	Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.	India	<a href="#">Islam-IN-23459.pdf</a>
bible	1-994-57975	American Bible Society	India	<a href="#">Bible-IN-57975.pdf</a>
indians	1-1308-78414	Reliance Industries Limited	India	<a href="#">Indians-IN-78414.pdf</a>
ram	1-2055-15880	Chrysler Group, LLC	India	<a href="#">Ram-IN-15880.pdf</a>
army	1-1255-29986	United TLD Holdco Ltd.	India	<a href="#">Army-IN-29986.pdf</a>

navy	1-1255-53893	United TLD Holdco Ltd.	India	<a href="#">Navy-IN-53893.pdf</a>
airforce	1-1255-29190	United TLD Holdco Ltd.	India	<a href="#">Airforce-IN-29190.pdf</a>
halal	1-2131-60793	Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.	India	<a href="#">Halal-IN-60793.pdf</a>
shiksha	1-868-35885	Afilias Limited	India	<a href="#">Shiksha-IN-35885.pdf</a>

### Early Warnings received from GAC Member(s) after the EW Deadline

Application	Application ID	Filing GAC Member	Early Warning	dotCMS Link
dot-eco	1-912-59314	Iran	<a href="#">GAC EW Submission-Iran-1-912-59314 (ECO).docx</a>	/reports/GAC+EW+Submission-Iran-1-912-59314+%28ECO%29.docx
dot-eco	1-1039-91823	Iran	<a href="#">GAC EW Submission-Iran-1-1039-91823 (ECO).docx</a>	/reports/GAC+EW+Submission-Iran-1-1039-91823+%28ECO%29.doc

dot-krd	1-1260-38811	Iran	<a href="#">GAC EW Submission-Iran-1-1260-38811 (KRD).docx</a>	/reports/GAC+EW+Submission-Iran-1-1260-38811+%28KRD%29.docx
dot-eco	1-1434-1370	Iran	<a href="#">GAC EW Submission-Iran-1-1434-1370 (ECO).docx</a>	/reports/GAC EW Submission-Iran-1-1434-1370 (ECO).docx
dot-eco	1-1710-92415	Iran	<a href="#">GAC EW Submission-Iran-1-1710-92415 (ECO).docx</a>	/reports/GAC+EW+Submission-Iran-1-1710-92415+%28ECO%29.docx
dot-imamat	1-1013-17019	Iran	<a href="#">GAC EW Submission-Iran-1-1013-17019 (IMAMAT).docx</a>	/reports/GAC+EW+Submission-Iran-1-1013-17019+%28IMAMAT%29.docx
dot-bet	1-2015-28690	Iran	<a href="#">GAC EW Submission-Iran-1-2015-28690 (BET).docx</a>	/reports/GAC+EW+Submission-Iran-1-2015-28690+%28BET%29.docx

dot-spreadbetting	1-2045-23929	Iran	<a href="#">GAC EW Submission-Iran-1-2045-23929 (SPREADBETTING).docx</a>	/reports/GAC+EW+Submission-Iran-1-2045-23929+%28SPREADBETTING%29.docx
dot-sex	1-2113-59868	Iran	<a href="#">GAC EW Submission-Iran-1-2113-59868 (SEX).docx</a>	/reports/GAC+EW+Submission-Iran-1-2113-59868+%28SEX%29.docx
dot-gay	1-1255-4825	Iran	<a href="#">GAC EW Submission-Iran-1-1255-4825 (GAY).docx</a>	/reports/GAC+EW+Submission-Iran-1-1255-4825+%28GAY%29.docx
dot-wine	1-1223-37711	Iran	<a href="#">GAC EW Submission-Iran-1-1223-37711 (WINE).docx</a>	/reports/GAC+EW+Submission-Iran-1-1223-37711+%28WINE%29.docx
dot-bet	1-1359-21671	Iran	<a href="#">GAC EW Submission-Iran-1-1359-21671 (BET).docx</a>	/reports/GAC+EW+Submission-Iran-1-1359-21671+%28BET%29.docx

dot-poker	1-1202-1720	Iran	<a href="#">GAC EW Submission-Iran-1-1202-1720 (POKER).docx</a>	/reports/GAC+EW+Submission-Iran-1-1202-1720+%28POKER%29.docx
dot-bar	1-1255-43729	Iran	<a href="#">GAC EW Submission-Iran-1-1255-43729 (BAR).docx</a>	/reports/GAC+EW+Submission-Iran-1-1255-43729+%28BAR%29.docx
dot-bet	1-1201-33931	Iran	<a href="#">GAC EW Submission-Iran-1-1201-33931 (BET).docx</a>	/reports/GAC+EW+Submission-Iran-1-1201-33931+%28BET%29.docx
dot-casino	1-1203-44541	Iran	<a href="#">GAC EW Submission-Iran-1-1203-44541 (CASINO).docx</a>	/reports/GAC+EW+Submission-Iran-1-1203-44541+%28CASINO%29.docx
dot-sex	1-1106-79501	Iran	<a href="#">GAC EW Submission-Iran-1-1106-79501 (SEX).docx</a>	/reports/GAC+EW+Submission-Iran-1-1106-79501+%28SEX%29.docx

dot-adult	1-1107-2377	Iran	<a href="#">GAC EW Submission-Iran-1-1107-2377 (ADULT).docx</a>	/reports/GAC+EW+Submission-Iran-1-1107-2377+%28ADULT%29.docx
dot-porn	1-1108-8653	Iran	<a href="#">GAC EW Submission-Iran-1-1108-8653 (PORN).docx</a>	/reports/GAC+EW+Submission-Iran-1-1108-8653+%28PORN%29.docx
dot-gay	1-1086-79087	Iran	<a href="#">GAC EW Submission-Iran-1-1086-79087 (GAY).docx</a>	/reports/GAC+EW+Submission-Iran-1-1086-79087+%28GAY%29.docx
dot-gay	1-1039-47682	Iran	<a href="#">GAC EW Submission-Iran-1-1039-47682 (GAY).docx</a>	/reports/GAC+EW+Submission-Iran-1-1039-47682+%28GAY%29.docx
dot-casino /reports/	1-907-62211	Iran	<a href="#">GAC EW Submission-Iran-1-907-62211 (CASINO).docx</a>	/reports/GAC+EW+Submission-Iran-1-907-62211+%28CASINO%29.docx

/reports/dot-beer	1-1013-94737	Iran	<a href="#">GAC EW Submission-Iran-1-927-52478 (BEER).docx</a>	/reports/GAC+EW+Submission-Iran-1-927-52478+%28BEER%29.docx
dot-poker	1-1013-94737	Iran	<a href="#">GAC EW Submission-Iran-1-1013-94737 (POKER).docx</a>	/reports/GAC+EW+Submission-Iran-1-1013-94737+%28POKER%29.docx
dot-casino	1-868-87246	Iran	<a href="#">GAC EW Submission-Iran-1-868-87246 (CASINO).docx</a>	/reports/GAC+EW+Submission-Iran-1-868-87246+%28CASINO%29.docx
dot-wine	1-868-66341	Iran	<a href="#">GAC EW Submission-Iran-1-868-66341 (WINE).docx</a>	/reports/GAC+EW+Submission-Iran-1-868-66341+%28WINE%29.docx
dot-sexy	1-855-58140	Iran	<a href="#">GAC EW Submission-Iran-1-855-58140 (SEXY).docx</a>	/reports/GAC+EW+Submission-Iran-1-855-58140+%28SEXY%29.docx

dot-lotto	1-868-7904	Iran	<a href="#">GAC EW Submission-Iran-1-868-7904 (LOTTO).docx</a>	/reports/GAC+EW+Submission-Iran-1-868-7904+%28LOTTO%29.docx
dot-bet	1-868-21199	Iran	<a href="#">GAC EW Submission-Iran-1-868-21199 (BET).docx</a>	/reports/GAC+EW+Submission-Iran-1-868-21199+%28BET%29.docx

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**EXHIBIT JJN-61**

THE MANAGEMENT OF INTERNET NAMES AND ADDRESSES:  
INTELLECTUAL PROPERTY ISSUES

Final Report  
of the  
WIPO Internet Domain Name Process  
*<http://wipo2.wipo.int>*

April 30, 1999



*The World Intellectual Property Organization (WIPO)* is an organization founded through a treaty by States, which has 171 States of the World as members. The member States established the Organization as the vehicle for promoting the protection, dissemination and use of intellectual property throughout the world for economic, cultural and social development.

The Organization provides services both to its Member States and to the individuals and enterprises that are constituent of those States.

The services provided by WIPO to its member States include the provision of a forum for the development and implementation of intellectual property policies internationally through treaties and other policy instruments.

The services provided to the private sector by WIPO include the administration of systems that make it possible to obtain protection for patents, trademarks, industrial designs and geographical indications in multiple countries through a single international procedure.

The operations of WIPO are financed as to 88 per cent by fees generated by the Organization for the services it renders to the private sector, and as to the remaining 12 per cent by contributions made by the Member States.

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## EXECUTIVE SUMMARY

### Background

Domain names are the human-friendly form of Internet addresses. While designed to serve the function of enabling users to locate computers in an easy manner, domain names have acquired a further significance as business identifiers and, as such, have come into conflict with the system of business identifiers that existed before the arrival of the Internet and that are protected by intellectual property rights.

The tension between domain names, on the one hand, and intellectual property rights, on the other hand, have led to numerous problems that raise challenging policy questions. These policy questions have new dimensions that are a consequence of the intersection of a global, multipurpose medium, the Internet, with systems designed for the physical, territorial world.

On the proposal of the Government of the United States of America, and with the approval of its Member States, WIPO has since July 1998 undertaken an extensive international process of consultations (“the WIPO Process”). The purpose of the WIPO Process was to make recommendations to the corporation established to manage the domain name system, the Internet Corporation for Assigned Names and Numbers (ICANN), on certain questions arising out of the interface between domain names and intellectual property rights. Seventeen consultation meetings were held in 15 different cities throughout the world in the course of the WIPO Process, and written submissions were received from 334 governments, intergovernmental organizations, professional associations, corporation and individuals.

An Interim Report containing draft recommendations was issued in December 1998 as part of the WIPO Process. The present document constitutes the Final Report. It is being submitted to ICANN and to the Member States of WIPO. The main recommendations in the Final Report are summarized below.

### Best Practices for Registration Authorities

- (i) The adoption of a number of improved, standard practices for registrars with authority to register domain names in the generic top-level domains (gTLDs) will reduce the tension that exists between domain names and intellectual property rights.
- (ii) In particular, the collection and availability of accurate and reliable contact details of domain name holders is an essential tool for facilitating the protection of intellectual property rights on a borderless and otherwise anonymous medium. Such contact details provide the principal means by which intellectual property owners can go about the process of enforcing their rights.

(iii) Where it is shown that contact details are inaccurate and unreliable and that contact cannot be established with a domain name holder through them, a third party should have the right to serve a notification to this effect on the responsible registrar. Upon independent verification of the impossibility of establishing contact, the registrar should be required to cancel the domain name registration.

(iv) In the WIPO Interim Report, it was suggested that consideration be given to the introduction of a non-commercial, use-restricted domain, where the contact details of domain name holders would not be publicly available, as a means of allaying the concerns of those who consider that the public availability of contact details may lead to intrusions of privacy. In the Final Report, it is concluded that this idea requires further consideration, elaboration and consultation in a separate process before any recommendation can be made on it.

#### Administrative Procedure Concerning Abusive Domain Name Registrations

(v) ICANN should adopt a dispute-resolution policy under which a uniform administrative dispute-resolution procedure is made available for domain name disputes in all gTLDs. In the Interim Report, it was recommended that domain name applicants should be required to submit to the procedure in respect of any intellectual property dispute arising out of a domain name registration. The Final Report recommends that the scope of the administrative procedure be limited to cases of bad faith, abusive registration of domain names that violate trademark rights (“cybersquatting,” in popular terminology). Domain name holders would thus be required to submit to the administrative procedure only in respect of allegations that they are involved in cybersquatting, which was universally condemned throughout the WIPO Process as an indefensible activity that should be suppressed.

(vi) The administrative procedure would be quick, efficient, cost-effective and conducted to a large extent on-line. Determinations under it would be limited to orders for the cancellation or transfer of domain name registrations and the allocation of the costs of the procedure (not including attorneys’ fees) against the losing party. Determinations would be enforced by registration authorities under the dispute-resolution policy.

#### Exclusions for Famous and Well-known Marks

(vii) Famous and well-known marks have been the special target of predatory and parasitical practices on the part of a small, but active, minority of domain name registrants. A mechanism should be introduced whereby the owner of a famous or well-known mark can obtain an exclusion in some or all gTLDs for the name of the mark where the mark is famous or well-known on a widespread geographical basis and across different classes of goods or services. The effect of the exclusion would be to prohibit any person other than the owner of the famous or well-known mark from registering the mark as a domain name.

(viii) The exclusion mechanism gives expression in cyberspace to the special protection that is established for famous and well-known marks in the Paris Convention for the Protection of Industrial Property and the TRIPS Agreement.

(ix) Since an exclusion would cover only the exact name of the famous or well-known mark, and since experience shows that cybersquatters typically register many close variations of famous or well-known marks, an exclusion, once granted, should give rise to an evidentiary presumption in the administrative procedure. The effect of the evidentiary presumption would be to place the burden of proving justification for the use of a domain name on the domain name holder where the domain name is identical or misleadingly similar to the famous or well-known mark and the domain name is being used in a way that is likely to damage the interests of the owner of the mark.

#### New gTLDs

(x) The evidence shows that the experience of the last five years in gTLDs has led to numerous instances of abusive domain name registrations and, consequently, to consumer confusion and an undermining of public trust in the Internet. It has also led to the necessity for intellectual property owners to invest substantial human and financial resources in defending their interests. This arguably wasteful diversion of economic resources can be averted by the adoption of the improved registration practices, administrative dispute-resolution procedure and exclusion mechanism recommended in the Final Report of the WIPO Process.

(xi) In view of past experience, intellectual property owners are very apprehensive about the introduction of new gTLDs and the possible repetition in the new gTLDs of that experience.

(xii) Many issues other than intellectual property protection are involved in the formulation of a policy on the introduction of new gTLDs. Insofar as intellectual property is concerned, it is believed that the introduction of new gTLDs may be envisaged on the condition that the recommendations of the WIPO Final Report with respect to improved registration practices, dispute resolution and an exclusion mechanism for famous and well-known marks are adopted, and on the further condition that any new gTLDs are introduced in a slow and controlled manner that allows for experience with the new gTLDs to be monitored and evaluated.

#### First Steps and Outstanding Issues

The recommendations of the Final Report of the WIPO Process have been directed at the most egregious problems between intellectual property and domain names and at obtaining effective solutions to those problems. Other issues remain outstanding and require further reflection and consultation. Amongst these other issues are:

- (a) as signaled above, the exploration of the feasibility of introducing a non-commercial, use-restricted domain where contact details of domain name holders might not be readily available publicly;
- (b) the problem of bad faith, abusive domain name registrations that violate intellectual property rights other than trademarks or service marks, for example, geographical indications and personality rights;
- (c) the problem of bad faith, abusive domain name registrations of the names and acronyms of international intergovernmental organizations that are protected against use and registration as trademarks by the Paris Convention; and
- (d) the problem of bad faith, abusive domain name registrations of International Nonproprietary Names selected by the World Health Organization for the identification of specific pharmaceutical substances under single, globally available names in order to protect the safety of patients.

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## 1. THE INTERNET, DOMAIN NAMES AND THE WIPO PROCESS

### THE INTERNET

1. The Internet can be very simply described as a, or the, network of networks. That simple technical description, however, lacks the eloquence to speak of the profound ways in which the Internet is affecting the way in which we communicate with each other, the way we express ourselves, the way we learn, the way we do business and the way in which we interact culturally. Given the fundamental changes that we sense are underway, we have difficulty in placing faith in a simple definition of technical function.

2. We are not yet at the stage of being able to articulate adequately what exactly the Internet is as a social phenomenon and why it is changing us. We can, however, point to certain features of the Internet that indicate that it is a distinct and profound phenomenon. Six such features can be mentioned:

(i) The Internet is something that increasingly large numbers of people throughout the world find an interest in being connected to. From 1990 to 1997, the estimated number of Internet users grew from around one million to around 70 million.<sup>1</sup> While the United States of America still accounts for the large majority of Internet users,<sup>2</sup> the rest of the world can hardly be described as disinterested. Between 1993 and 1996, the number of Internet hosts in Europe increased by about 600 per cent.<sup>3</sup> Over the same period, the growth in Internet hosts in Africa and Asia amounted to about 840 per cent for each region.<sup>4</sup>

(ii) It is increasingly an affordable and relatively low-cost matter to become connected to the Internet and thus to be able to participate in the advantages that it offers. The telecommunications infrastructure is improving constantly and the cost of computer equipment continues to decrease. The estimated worldwide installed base of PCs in the home and in education increased from about 36 million units in 1992 to 118 million units in 1997.<sup>5</sup> The Internet is a popular, rather than elitist, medium.

(iii) Reflecting this popular character, the Internet is multifunctional. Digital technology permits all forms of expression—text, sound and images—to be expressed in binary notation. The World Wide Web, a key component of the Internet, has provided the graphical interface and hypertext linking protocols to enable all such expressions to be shared on the Internet. In consequence, the purposes for which the Internet is now used encompass the full range of human activity: research, education, social communication, politics, entertainment and commerce.

(iv) The Internet does not have a central point of authority and control. Compared to other social institutions, it has developed in a spontaneous and autochthonous manner. Its technical development has been guided by protocols established through participatory decision-making processes by bodies such as the Internet Engineering Task Force (IETF) and its subcommittees, and the Internet Assigned Numbers Authority (IANA). There has not

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been, however, a central rule-making entity that has exercised comprehensive legislative authority over the Internet.

(v) The Internet is multijurisdictional. Users can access it from any place on earth. Because of packet-switching technology, information may travel through various countries or jurisdictions in order to reach its destination.<sup>6</sup> It is a global medium transposed on the historical system of separate physical jurisdictions.

(vi) The Internet is unspecifically regulated. It is affected by legislation and regulations that apply generally within the various jurisdictions of the world. But for the most part, until now, there have been few exercises of national legislative authority specifically directed at the Internet and no international legislative instruments specifically designed to regulate the Internet.

3. These special features of the Internet entail several consequences for the formulation of policy in relation to any facet of the Internet's operation. The multijurisdictional and multifunctional nature of the Internet mean that, inevitably, many different interests in many different parts of the world will be concerned with any endeavor to formulate specific policies. Special care needs to be exercised to ensure that any policy developed for one interest or function does not impact unduly on, or interfere unduly with, other interests or functions.

## THE DOMAIN NAME SYSTEM

4. The domain name system (DNS) serves the central function of facilitating users' ability to navigate the Internet. It does so with the aid of two components; the domain name and its corresponding Internet Protocol (IP) number. A domain name is the human-friendly address of a computer that is usually in a form that is easy to remember or to identify, such as `www.wipo.int`. An IP number is the unique underlying numeric address, such as `192.91.247.53`. Distributed databases contain the lists of domain names and their corresponding IP numeric addresses and perform the function of mapping the domain names to their IP numeric addresses for the purpose of directing requests to connect computers on the Internet. The DNS is structured in a hierarchical manner which allows for the decentralized administration of name-to-address mapping. This last new characteristic has provided the basis for the remarkable speed at which new computers can be added to the Internet, while ensuring their accurate name resolution.

5. The DNS has been administered by IANA, pursuant to principles that were described in Request for Comments (RFC) 1591 of March 1994.<sup>7</sup> The DNS operates on the basis of a hierarchy of names. At the top are the top-level domains, which are usually divided into two categories: the generic top-level domains (gTLDs) and the country code top-level domains (ccTLDs).

6. There are, at present, seven gTLDs. Three of these are open, in the sense that there are no restrictions on the persons or entities that may register names in them. These three gTLDs

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are *.com*, *.net* and *.org*. The other four gTLDs are restricted, in the sense that only certain entities meeting certain criteria may register names in them. They are *.int*, which is restricted to use by international organizations; *.edu*, which is restricted to use by four-year, degree-granting colleges and universities; *.gov*, which is restricted to use by agencies of the federal government of the United States of America; and *.mil*, which is restricted to use by the military of the United States of America.

7. There are at present 243 ccTLDs. Each of these domains bears a two-letter country code derived from Standard 3166 of the International Organization for Standardization (ISO 3166),<sup>8</sup> for example *.au* (Australia), *.br* (Brazil), *.ca* (Canada), *.eg* (Egypt), *.fr* (France), *.jp* (Japan) and *.za* (South Africa). Some of these domains are open, in the sense that there are no restrictions on the persons or entities who may register in them. Others are restricted, in that only persons or entities satisfying certain criteria (for example, domicile within the territory) may register names in them.

8. Functionally, there is no distinction between the gTLDs and the ccTLDs. A domain name registered in a ccTLD provides exactly the same connectivity as a domain name registered in a gTLD. Nor can it be said that the gTLDs are open, whereas the ccTLDs are restricted. As mentioned, there are open gTLDs and ccTLDs, which contain no restrictions on use, and restricted gTLDs and ccTLDs, which restrict use to persons or entities meeting certain criteria.

9. At the date of publication of this Report, nearly 7.2 million domain names have been registered worldwide.<sup>9</sup> Of these, approximately 1.8 million have been registered in the ccTLDs. The approximate weekly volume of new registrations is 21,000.

## THE TRANSMUTATION OF DOMAIN NAMES

10. Domain names were intended to perform a technical function in a manner that was convenient to human users of the Internet. They were intended to provide addresses for computers that were easy to remember and to identify without the need to resort to the underlying IP numeric address. Precisely because they are easy to remember and to identify, however, domain names have come to acquire a supplementary existence as business or personal identifiers. As commercial activities have increased on the Internet, domain names have become part of the standard communication apparatus used by businesses to identify themselves, their products and their activities. Advertisements appearing in the media now routinely include a domain name address, along with other means of identification and communication, such as the corporate name, trademark and telephone and facsimile numbers. But, whereas the telephone and facsimile numbers consist of an anonymous string of numbers without any other significance, the domain name, because of its purpose of being easy to remember and to identify, often carries an additional significance which is connected with the name or mark of a business or its product or services.

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## INTELLECTUAL PROPERTY

11. Intellectual property consists in a series of rights in intellectual creations and in certain forms of identifiers. Generally speaking, there are two main policy bases that underlie intellectual property rights. The first is the policy of encouraging new intellectual creations. This is the main policy basis of patents, industrial designs and copyright. A patent, an industrial design or a copyright confers an exclusive right on the owner, for a finite period, to prevent others from exploiting its subject matter—an invention, a design or a literary or artistic work. The exclusive right enables the owner to recover a reward for originality and investment in the creation of originality, and thus serves as an incentive to further investment in the development of new intellectual creations. The second main policy basis is the orderly functioning of the market through the avoidance of confusion and deception. This is the main policy basis of trademarks, rights in geographical indications and protection against unfair competition. A trademark enables consumers to identify the source of a product, to link the product with its manufacturer in widely distributed markets. The exclusive right to the use of the mark, which may be of indefinite duration, enables the owner to prevent others from misleading consumers into wrongly associating products with an enterprise from which they do not originate.

12. Intellectual property has become a central element in economic and cultural policy in a world in which the source of wealth is increasingly intellectual, as opposed to physical, capital and in which markets are distributed across the globe. By becoming members of WIPO, 171 States have subscribed to the importance of promoting the protection of intellectual property. Many of these have also adhered to some or all of the 16 other multilateral treaties administered by WIPO, which establish international frameworks for each of the rights that make up intellectual property or systems for obtaining protection in multiple countries. In addition, the 134 States that are members of the World Trade Organization (WTO) have subscribed to a comprehensive, complementary code of intellectual property protection in the Agreement on the Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement).

13. The discipline of intellectual property is concerned not simply with the establishment of rights, but also with the definition of the proper scope of those rights and their relation with other areas of public policy. It is concerned thus, for example, with defining the boundary between unfair and unjustified misappropriation of another's intellectual creations or business identifiers, on the one hand, and fair use or justified experimental and non-commercial use, on the other hand. It is equally concerned, for example, with regulating any areas of tension between competition policy and intellectual property policy. This definition of the proper scope of intellectual property rights and their relation to other areas of public policy is the subject of case law and legislation that have been developed over many decades throughout the world.

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## THE PROCESS FOR THE REORGANIZATION OF THE MANAGEMENT OF THE DOMAIN NAME SYSTEM

14. The organization and management of the DNS has been the subject of intensive discussions throughout the world over the past two and a half years. These discussions have been motivated by a desire to institutionalize the functions associated with the management of the DNS in a manner which will permit the system to accommodate the growing volume of traffic on the Internet and to be administered in a stable, reliable, competitive and open way, taking into account the interests of all Internet stakeholders.

15. An early stage in the discussions was the work of the International Ad Hoc Committee (IAHC), which culminated in the publication on February 4, 1997, of a final report containing recommendations for the administration and management of gTLDs.<sup>10</sup> The recommendations were directed at enhancing the administration and operation of the gTLDs and balancing concerns for stable operations, continued growth, business opportunities and legal constraints.

16. On July 1, 1997, as part of his Administration's Framework for Global Electronic Commerce, the President of the United States of America, William Clinton, instructed the United States Secretary of Commerce to privatize the DNS in a manner that increased competition and facilitated international participation in its management. The United States Department of Commerce issued a Request for Comments on the administration of the DNS on July 2, 1997. In this document, public input was sought on issues relating to the overall framework of the DNS administration, the creation of new top-level domains, policies for domain name registrars, and trademark issues.

17. On the basis of comments received, on January 30, 1998, the National Telecommunications and Information Administration (NTIA), an agency of the United States Department of Commerce, issued for comment *A Proposal to Improve the Technical Management of Internet Names and Addresses* (the "Green Paper").<sup>11</sup> The Green Paper proposed for discussion a number of measures relating to the administration of the DNS, including the creation by the private sector of a new corporation located in the United States of America and managed by a globally and functionally representative Board of Directors.

18. Following the closure of the comment period, NTIA issued, on June 5, 1998, its *Statement of Policy on the Management of Internet Names and Addresses* (the "White Paper").<sup>12</sup> The White Paper confirmed the call contained in the Green Paper for the creation of a new, private, not-for-profit corporation responsible for coordinating specific DNS functions for the benefit of the Internet as a whole. It noted:

"The U.S. Government is committed to a transition that will allow the private sector to take leadership for DNS management. Most commenters shared this goal. While international organizations may provide specific expertise or act as advisors to the new corporation, the U.S. continues to believe, as do most commenters, that neither national governments acting as sovereigns nor intergovernmental organizations acting as representatives of governments should participate in management of Internet names

and addresses. Of course, national governments now have, and will continue to have, authority to manage or establish policy for their own ccTLDs.”

19. Following the publication of the White Paper, a process occurred which resulted in the formation of the Internet Corporation for Assigned Names and Numbers (ICANN). By-laws have been established for ICANN, and an Interim Chairman, an Interim President and CEO, and an Interim Board of Directors have been appointed as a result of the process and the international discussions that accompanied it. The by-laws, the composition of the Interim Board and other pertinent documentation concerning ICANN can be found at ICANN’s website, [www.icann.org](http://www.icann.org).<sup>13</sup>

20. Since its formation, ICANN has been systematically addressing the various tasks that need to be accomplished under the White Paper’s mandate. The various actions undertaken and meetings held in this regard are referenced on ICANN’s website. One such task, corresponding to the general policy objective established for the transition of introducing competition in the administration of domain name registrations, was the establishment of a policy for the accreditation of registrars, with a view to accrediting five registrars, on a testbed basis, who would be authorized to receive and process applications for domain name registrations in the .com, .net and .org domains. The registry administrator for these domains will continue to be Networks Solutions Inc. (NSI), which to date has performed the functions of both sole registrar and registry administrator for these domains under various contractual authorities. In February 1999, ICANN published for comment “Guidelines for Accreditation of Internet Domain Name Registrars and for the Selection of Registrars for the Shared Registry System Testbed for .COM, .NET and .ORG Domains.” In response to public comments that the guidelines should be “as lightweight as possible,”<sup>14</sup> ICANN introduced certain changes to the draft guidelines and, at its Board meeting in Singapore on March 4, 1999, adopted a “Statement of Registrar Accreditation Policy.”<sup>15</sup> This Statement includes a number of provisions that reflect coordination and consistency with the recommendations that were contained in the Interim Report of the WIPO Internet Domain Name Process (“The Management of Internet Names and Addresses: Intellectual Property Issues”).<sup>16</sup> Furthermore, the Statement indicates that the Registrar Accreditation Policy which it establishes may be reviewed following ICANN’s consideration of the present (final) WIPO Report.<sup>17</sup>

21. Most recently, on April 21, 1999, ICANN announced the five companies that were selected to participate in the initial testbed phase of the Shared Registry System for the .com, .net and .org domains.<sup>18</sup> The testbed phase is expected to continue for two months until the end of June, at which time an additional 29 companies are expected to be accredited to open up competition in registration services.

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## THE INTERFACE BETWEEN THE DOMAIN NAME SYSTEM AND INTELLECTUAL PROPERTY: THE WIPO PROCESS

22. One consistent thread in the fabric of discussions and consultations concerning the management of the DNS has been the interface between domain names as addresses on the Internet and intellectual property or, more specifically, trademarks and other recognized rights of identity as they had existed in the world before the arrival of the Internet. It has become apparent to all that a considerable amount of tension has unwittingly been created between, on the one hand, addresses on the Internet in a human-friendly form which carry the power of connotation and identification and, on the other hand, the recognized rights of identification in the real world, consisting of trademarks and other rights of business identification, the developing field of personality rights, whether attaching to real or fictional characters, and geographical indications. One system—the DNS—is largely privately administered and gives rise to registrations that result in a global presence, accessible from anywhere in the world. The other system—the intellectual property rights system—is publicly administered on a territorial basis and gives rise to rights that are exercisable only within the territory concerned. In this respect, the intersection of the DNS and the intellectual property system is but one example of a larger phenomenon: the intersection of a global medium in which traffic circulates without cognizance of borders with historical, territorially based systems that emanate from the sovereign authority of the territory.

23. The tension that exists between the nature of the two systems has been exacerbated by a number of predatory and parasitical practices that have been adopted by some to exploit the lack of connection between the purposes for which the DNS was designed and those for which intellectual protection exists. These practices include the deliberate, bad faith registration as domain names of well-known and other trademarks in the hope of being able to sell the domain names to the owners of those marks, or simply to take unfair advantage of the reputation attached to those marks.

24. The IAHC recommendations took note of the tension that existed between domain names and intellectual property rights and included specific procedures designed to resolve conflicts between the two. The White Paper of the United States Government confined its specific recommendations to the desirable features of the management of the DNS and to the transition of that management to the new corporation. In respect of intellectual property, the White Paper contained the following passage:

“The U.S. Government will seek international support to call upon the World Intellectual Property Organization (WIPO) to initiate a balanced and transparent process, which includes the participation of trademark holders and members of the Internet community who are not trademark holders, to (1) develop recommendations for a uniform approach to resolving trademark/domain name disputes involving cyberpiracy (as opposed to conflicts between trademark holders with legitimate competing rights), (2) recommend a process for protecting famous trademarks in the generic top level domains, and (3) evaluate the effects, based on studies conducted by independent organizations, such as the National Research Council of the National Academy of Sciences, of adding new gTLDs and related dispute resolution procedures on trademark

and intellectual property holders. These findings and recommendations could be submitted to the board of the new corporation for its consideration in conjunction with its development of registry and registrar policy and the creation and introduction of new gTLDs.”

25. Since the publication of the White Paper, WIPO has received the approval of its Member States<sup>19</sup> to conduct, and has undertaken, the international process called for in the White Paper.

## THE MECHANICS OF THE WIPO PROCESS

### Stages

26. The WIPO Internet Domain Name Process comprised three stages.

27. The first stage was concerned with obtaining consensus on the issues to be addressed in the WIPO Process, the procedures to be used and the timetable in which the Process would take place. To this end a Request for Comments (WIPO RFC-1) was issued on July 8, 1998, with a deadline for receipt of comments of August 24, 1998. WIPO RFC-1 detailed as the terms of reference for the Process the three issues mentioned in the White Paper, namely, uniform dispute resolution procedures, a mechanism for the protection of famous marks and the evaluation of the effects on intellectual property rights of adding new gTLDs. It added a further term of reference, which WIPO considered to be appropriate in the context, namely, dispute prevention or practices in the administration of the DNS that are designed to reduce the incidence of conflict between domain names and intellectual property rights. Sixty-six governments, intergovernmental organizations, professional associations, corporations and individuals provided comments in response to WIPO RFC-1.<sup>20</sup>

28. The second stage of the WIPO Process consisted of seeking comments and consulting on the issues defined after consideration of the comments received on WIPO RFC-1. To this end, a second Request for Comments (WIPO RFC-2) was issued on September 16, 1998, with a deadline for receipt of comments of November 6, 1998. Seventy-two governments, intergovernmental organizations, professional associations, corporations and individuals provided comments in response to WIPO RFC-2.<sup>21</sup> Another important part of the second stage was the holding of regional consultation meetings in order to discuss and to receive comments on the issues under consideration. A total of 848 persons attended those regional consultation meetings. Some 155 of them made presentations and interventions. The schedule of meetings held was as follows:

First Series of Regional Consultations  
(October to November 1998)

<u>Regional Consultation</u>	<b>Participation (approx.)</b>	<b>Presentations/ Interventions</b>
San Francisco, California, United States of America	35	22
Brussels, Belgium	98	13
Washington, DC, United States of America	45	15
Mexico City, Mexico	85	12
Cape Town, South Africa	30	12
Asunción, Paraguay	160	18
Tokyo, Japan	75	8
Hyderabad, India	69	10
Budapest, Hungary	85	10
Cairo, Egypt	86	20
Sydney, Australia	80	15
<b>Total</b>	<b>848</b>	<b>155</b>

29. The third stage of the WIPO Process consisted of the publication, on December 23, 1998, of an Interim Report containing interim recommendations, which were, in turn, opened to comments, in the form of a third Request for Comments (WIPO RFC-3). By the date of the closure of the period for comments, March 19, 1999, 196 governments, intergovernmental organizations, professional associations, corporations and individuals had provided comments in response to WIPO RFC-3.<sup>22</sup> In addition, a second round of regional consultation meetings was held to discuss and to receive comments on the Interim Report. A total of 416 persons attended the second round of regional consultation meetings. Some 77 of them made presentations and interventions. The schedule of meetings held was as follows:

Second Series of Regional Consultations  
(January to March 1999)

Regional Consultation	Participation (approx.)	Presentations/ Interventions
Toronto, Canada	48	11
Singapore	80	14
Rio de Janeiro, Brazil	51	4
Dakar, Senegal	117	10
Brussels, Belgium	50	13
Washington, DC, United States of America	70	25
<b>Total</b>	<b>416</b>	<b>77</b>

Modalities

30. In conducting the Process, WIPO has used three modalities to solicit participation from the widest international range of interested parties:

(i) WIPO established a website (<http://wipo2.wipo.int>) in English, French and Spanish as a primary vehicle for communication concerning the WIPO Process. In addition to the publication of information and documents concerning the WIPO Process, the website contained a facility for interested persons to register in order to receive communications relating to developments in the WIPO Process. Some 1,358 persons or organizations from 74 countries registered under the facility.<sup>23</sup> The website also contained the text of all comments received in response to the three Requests for Comments issued (WIPO RFC-1, RFC-2 and RFC-3). It further established an open listserv discussion forum. The list, which was not moderated, was intended to allow interested parties to discuss freely the widest possible range of questions arising in connection with the WIPO Process. Contributions to the listserv were not formally considered as comments in response to RFCs. The number of subscribers to the listserv, at the date of this Report, was 420.<sup>24</sup>

(ii) Since the Internet is a global medium but access to it is not universal, WIPO also published in paper form each Request for Comments that it issued and sent these to the governments and industrial property offices of each of its member States, as well as to each non-governmental organization that was accredited as an observer with WIPO.

(iii) As mentioned above, WIPO has also sought to complement the Internet- and paper-based consultations with meetings organized in various venues throughout the regions of the world.

### Panel of Experts

31. In order to assist it in the conduct of the Process, WIPO established a panel of experts to advise it in the formulation of recommendations. The composition of the panel was determined in an endeavor to achieve both a geographical balance of representation and a balance of sectoral interests in the Internet. The names and affiliations of the members of the panel are given in Annex I. WIPO wishes to place on record its deep gratitude to the members of the panel for their advice and untiring efforts to assist constructively in developing workable and acceptable recommendations on dealing with the interface between domain names and intellectual property. This Report remains nevertheless the responsibility of WIPO and does not necessarily imply that each expert subscribes to every recommendation contained in it.

### GUIDING PRINCIPLES IN THE FORMULATION OF RECOMMENDATIONS IN THE WIPO PROCESS

32. Before moving, in the remainder of the Report, to the issues considered in the WIPO Process and to the recommendations made in relation to those issues, the methodological principles which have guided the formulation of the recommendations should be made explicit. There are five such principles.

33. Recognizing the global nature of the Internet and the diverse range of purposes for which it is used, WIPO has endeavored to design a process which was international and which allowed for participation by all sectors interested in the use and future development of the Internet. While the mandate of WIPO relates to intellectual property protection, it is recognized that intellectual property cannot be considered in isolation in the context of a multifunctional global medium.

34. It is further recognized that the goal of this WIPO Process is not to create new rights of intellectual property, nor to accord greater protection to intellectual property in cyberspace than that which exists elsewhere. Rather, the goal is to give proper and adequate expression to the existing, multilaterally agreed standards of intellectual property protection in the context of the new, multijurisdictional and vitally important medium of the Internet and the DNS that is responsible for directing traffic on the Internet.<sup>25</sup> The WIPO Process seeks to find procedures that will avoid the unwitting diminution or frustration of agreed policies and rules for intellectual property protection.

35. Conversely, it is not intended that the means of according proper and adequate protection to agreed standards of intellectual property should result in a diminution in, or

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otherwise adversely affect, the enjoyment of other agreed rights, such as the rights guaranteed in the Universal Declaration of Human Rights.<sup>26</sup>

36. The central importance of the Internet and its capacity to serve the diverse interests of a rapidly expanding body of users is fundamental. A constant consideration has therefore been to ensure that the recommendations of the WIPO Process are practical and do not interfere with the functionality of the Internet by imposing unreasonable constraints on the high-volume and automated operations of domain name registration authorities.

37. The dynamic nature of the technologies that underlie the expansion and development of the Internet is also recognized. The WIPO Process also aimed to ensure that its recommendations do not in any way condition or affect the future technological development of the Internet.

#### THE SCOPE OF THE WIPO RECOMMENDATIONS: THEIR RELEVANCE TO ccTLDs

38. In the WIPO Interim Report, as well as in paragraphs 6, 7 and 8 above, a distinction is drawn between “open” TLDs (whether gTLDs or ccTLDs), in which there are no restrictions on the persons or entities who may register in them, and “restricted” TLDs, in which only persons or entities satisfying certain criteria, such as domicile in the relevant territory, may register domain names. In the Interim Report, it was also suggested that, while the recommendations of the WIPO process were limited to the gTLDs, they were potentially applicable to all open TLDs in which domain names may be registered without restriction and in which domain names may be bought and sold.<sup>27</sup>

39. The comments made on the distinction drawn between “open” and “restricted” TLDs were divided. Certain parties were favorable to the distinction and considered it to be helpful as a means of indicating the functional similarities between gTLDs and ccTLDs and, in consequence, the similarity of the problems that may be encountered in respect of the interface between domain names and intellectual property rights.<sup>28</sup> Others regarded the distinction as loose and lacking in definitional precision because of the variety of conditions that apply to registrations in the ccTLDs.<sup>29</sup> Some parties, furthermore, considered the distinction to be dangerous, as it could be used for purposes other than solutions to problems arising out of the interface between domain names and intellectual property rights and as a means of limiting the operations of ccTLDs.<sup>30</sup> Our views on the purpose and usefulness of this distinction, after consideration of the comments received, are set out in the ensuing paragraphs.

40. The purpose of the distinction between “open” and “restricted” TLDs was to draw attention to the fundamental and crucial feature of the Internet as a global medium. A domain name registration, whether in a gTLD or a ccTLD, gives rise to a global presence. Many of the difficulties encountered in dealing with the interface between domain names and intellectual property rights arise from this fact. As pointed out above, intellectual property rights are territorially based and can be enforced only within the territory for which they are granted. A domain name registered in one country can (but does not necessarily) form the

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basis for activities in another country in which a territorially limited intellectual property right, granted under a legislatively sanctioned system, exists. The domain name can (but does not necessarily) lead to consumer confusion and deception and can (but does not necessarily) infringe the territorially limited intellectual property right. In consequence, the protection and enforcement of recognized territorially limited intellectual property rights can be jeopardized by activities originating under a domain name registration in another jurisdiction, which can create practical difficulties both in relation to the assessment of whether the intellectual property right is being violated and in relation to the enforcement of the intellectual property right against infringing activities.

41. Where restrictions apply to the persons or entities that can register in a TLD, those restrictions may (but do not necessarily) provide means for reducing the tension between domain names and territorially based intellectual property rights. For example, if one of the restrictions that is applied is domicile in the territory to which a ccTLD relates, the enforcement of any pertinent intellectual property right that is infringed by the domain name can be facilitated by the connection to jurisdiction, and thus amenability to legal process, that the restriction of domicile imposes. Or, for example, if the restriction applicable to the TLD defines carefully the type of entity that can register in the TLD, such as the requirement in .int that the registrant be an international organization, this restriction may operate to reduce the potential for conflict between domain names and intellectual property rights, since it removes the possibility for commercial entities to register in the domain. We do not recommend that restrictions be introduced in respect of TLDs, but merely draw attention to the fact that restrictions can have an effect on the relationship between domain names and intellectual property rights.

42. Where there are no restrictions that apply on registrations in a TLD, the potential for conflict between domain names and intellectual property rights is heightened. Functionally, in such a case, whether the TLD is a gTLD or a ccTLD, registrations of domain names can give rise to the same sort of problems concerning the interface between domain names and intellectual property rights. Our intention in drawing the distinction between “open” and “restricted” TLDs was simply to highlight the fact that the problems arising between domain names and intellectual property rights in unrestricted domains are similar. Given the commonality of these problems, it follows that any comprehensive solution to the problems encountered between domain names and intellectual property rights would be most effective if applied in such a way as to recognize the global nature of the Internet and the global presence given by a domain name registration. The concept of a tax haven is well known. A ccTLD may be operated in such a way as to become an intellectual property piracy haven; that is, it may be administered outside the recognized system of international protection for intellectual property and, thereby, increase transaction costs for the enforcement of intellectual property rights and reduce the efficiency of the international intellectual property system.

43. WIPO recognizes that the recommendations contained in this Report are intended to apply only to the gTLDs. It also recognizes the international nature of the Internet and offers the recommendations contained in the present Report also for the consideration of those administrators of ccTLDs that wish to take cognizance of the responsibility that follows from

the global presence given by a domain name registration. In response to the specific request of certain administrators of ccTLDs, Annex VIII contains detailed guidance on which recommendations in the present Report WIPO considers are potentially useful to ccTLDs, in order to ensure a comprehensive and efficient solution to the problems arising out of the interface between domain names and intellectual property rights. It is, obviously, for the administrators of the ccTLDs to consider whether or not they wish to adopt any of those recommendations.

## THE SUBMISSION OF THE WIPO REPORT

44. The present Report will, in accordance with the mandate conferred upon WIPO, be submitted to the Board of the Internet Corporation for Assigned Names and Numbers (ICANN) for its consideration. The Report will also be submitted to the Member States of WIPO for their consideration.

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<sup>1</sup> David N. Townsend, “Regulatory Issues for Electronic Commerce: Briefing Report,” Report to the International Telecommunication Union 8<sup>th</sup> Regulatory Colloquium, 1998, page 8; Global Internet Project, *Internet Foundations: Breaking Technology Bottlenecks*, at <http://www.gip.org>, page 4.

<sup>2</sup> See World Information Technology and Services Alliance (WITSA), *Digital Planet—The Global Information Economy* (October, 1998), page 21, which reports that the United States of America accounted for 61.9 per cent of Worldwide Internet Hosts.

<sup>3</sup> Global Internet Project, *op. cit.*, page 1.

<sup>4</sup> *Ibid.*

<sup>5</sup> WITSA, *op. cit.*, page 20.

<sup>6</sup> “Internet addresses have no fixed location. They are purely conceptual. There is no central office. The routers which direct packets to the packet address at rates between 100,000 and 500,000 a second can know only the next logical point in a routing table and which outbound circuit is available to carry the packet. Packets are free to traverse the globe on countless circuits to geographically indeterminate end points. The technology provides assurance that the packets are reassembled in the right order and are very likely not corrupted by data errors.” John R. Mathiason and Charles C. Kuhlman, “International Public Regulation of the Internet: Who Will Give You Your Domain Name?” (New York University, March 1998) at <http://www.intlmgmt.com/domain.html>.

<sup>7</sup> See <http://wipo.isi.edu/in-notes/rfc1591.text>. A number of other RFCs have also provided guidance for the administration of the DNS.

<sup>8</sup> The attribution of a country code to a domain by IANA entailed no recognition of the status of the territory designated by the country code. As stated in RFC 1591, “The IANA is not in the business of deciding what is and what is not a country.”

<sup>9</sup> Statistics from Netnames Ltd., at <http://www.netnames.com>.

<sup>10</sup> See <http://www.gtld-mou.org/draft-iahc-recommend-00.html>. The Policy Oversight Committee (POC) submitted a comment on WIPO RFC-1 urging that all of its work should be made available for consideration in the WIPO Process and by the Panel of Experts: Comment of Policy Oversight Committee (July 15, 1998 – RFC-1); see also International Association for the Protection of Industrial Property, Group Reports Q143:

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Internet Domain Names, Trademarks and Trade Names, XXXVII<sup>th</sup> Congress, Rio de Janeiro, 1998, at paragraphs 1.13 – 1.15 (Yearbook 1998/VI).

<sup>11</sup> The RFC, the Green Paper and comments received in response to those documents are available at <http://www.ntia.doc.gov>.

<sup>12</sup> See [http://www.ntia.doc.gov/ntiahome/domainname/6\\_5\\_98dns.htm](http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm).

<sup>13</sup> The Department of Commerce of the United States of America and ICANN have recently entered into a Memorandum of Understanding with the intention of coordinating the on-going transition of the management of the DNS; see <http://www.ntia.doc.gov/ntiahome/domainname/icann-memorandum.htm>.

<sup>14</sup> See ICANN's website at <http://www.icann.org/statement.html>.

<sup>15</sup> See [http://www.icann.org/policy\\_statement\\_html](http://www.icann.org/policy_statement_html).

<sup>16</sup> See <http://wipo2.wipo.int>.

<sup>17</sup> "The World Intellectual Property Organization is expected to submit to ICANN final recommendations concerning intellectual property issues in mid-1999. ICANN's consideration of those recommendations may result in some modifications to these policies."

<sup>18</sup> The list of selected companies is available at <http://www.icann.org/icann-pr2/apr99.htm>.

<sup>19</sup> Such approval was given at the meeting of the Assemblies of Member States in September 1998; see documents A/33/4 and A/33/8.

<sup>20</sup> See Annex II.

<sup>21</sup> See Annex II.

<sup>22</sup> See Annex II.

<sup>23</sup> See Annex III.

<sup>24</sup> See Annex III.

<sup>25</sup> See Comment of European Community and its Member States (November 3, 1998 – RFC-2); Comment of Mr. Philip Sheppard of European Brands Association (AIM) (Brussels Consultation – 1998); Comment of Ms. Sally Abel of International Trademark Association (San Francisco Consultation). These comments are available on the website of the WIPO Process. References in the footnotes to comments are not intended to be exhaustive.

<sup>26</sup> See Comment of Domain Name Rights Coalition (November 6, 1998 – RFC-2); Comment of Electronic Frontier Foundation (November 6, 1998 – RFC-2); Comment of Mr. R.A. Reese (San Francisco Consultation). It may be noted that the protection of property and, specifically, of intellectual property is also recognized in the major international instruments of human rights: see Article 27(2), *Universal Declaration of Human Rights* (1948); Article 15, *International Covenant on Economic, Social and Cultural Rights* (1966).

<sup>27</sup> Para. 36 of the Interim Report.

<sup>28</sup> See Comment of Bell Atlantic (February 26, 1999 – RFC-3); Comment of the International Intellectual Property Alliance (March 12, 1999 – RFC-3); Comment of Mr. Elliot Noss of Tucows Interactive Limited (Toronto Consultation); Comment of Mr. Amadeu Abril i Abril of the Council of Registrars (Brussels

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Consultation – 1999); see also Comments of Network Solutions on ICANN proposed by-laws changes, at <http://www.icann.org/comments-mail/comment-so/msg00075.html>.

<sup>29</sup> See Comment of Mr. Anthony van Couvering of the International Association of Top-Level Domains (March 19, 1999 – RFC-3); Comment of Mr. Keith Gymer (Brussels Consultation – 1999); Comment of Mr. Mathias Kerber of Singapore Telecom (Singapore Consultation).

<sup>30</sup> See Comment of the Brazilian Steering Committee (March 10, 1999 – RFC-3); Comment of Government of Sweden, National Post and Telecom Agency (March 12, 1999 – RFC-3); Comment of Mr. Paul Kane of the Internet Computer Bureau (Brussels Consultation – 1999); Comment of Mr. William Black of Nominet UK (Brussels Consultation – 1999).

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## 2. AVOIDING DISJUNCTION BETWEEN CYBERSPACE AND THE REST OF THE WORLD: PRACTICES DESIGNED TO MINIMIZE CONFLICTS ARISING OUT OF DOMAIN NAME REGISTRATIONS

45. It is a truism that things happen quickly on the Internet. The increase in the number of persons desiring to have a recognized and easily located presence on the Internet is but one example. The estimated number of domain name registrations has increased from approximately 100,000 at the start of 1995 to about 7.2 million at the present time.

46. The DNS was designed for its own internal purposes: to ensure connectivity in a technically coherent manner and to do so in a way which was simple and easy for human users to understand and use. Over the same period as the DNS has demonstrated its outstanding success in achieving its design objectives, however, it has become a victim of its own success as the applications of the Internet have expanded into all spheres of activity and as enterprises and persons have begun to include their domain names in the standard identification apparatus that they use for the purposes of business and social communication.

47. In addressing the way in which to deal with the consequent conflicts that have arisen between domain names and other recognized forms of identifiers that are protected by intellectual property, the great majority of commentators in the WIPO Process have considered that the starting point should be the avoidance, rather than the resolution, of conflicts. Insofar as practical, an endeavor should be made to avoid having two autonomous systems that live in ignorance of each other—the DNS in cyberspace, and the intellectual property system of identifiers as developed before the arrival of the Internet.

48. It seems clear that the two systems have hitherto operated without sufficient attention to each other. Up until the date of this Report, in the open gTLDs, users could be assured of a simple, fast and relatively inexpensive process for the registration of a domain name on a first-come, first-served basis. There has been no requirement that the applicant justify use of a particular name; no verification process for any contact details provided; no provision for the settling of disputes when they arise; and no requirement that any payment be tendered and confirmed before the domain name holder begins to use the name. These registration practices have led to instances of registrations that may be considered to be abusive.<sup>31</sup>

49. On the other hand, the same practices have played a very positive role in establishing low entry barriers—making domain name registration fast and easy, thereby encouraging the rapid growth of the Internet,<sup>32</sup> new entrepreneurial uses of websites, and fostering the acceptance by businesses and consumers of the Internet as a vital new medium for an expanding digital marketplace. In endeavoring to avoid disjunction between the DNS and existing intellectual property rights, therefore, care must be exercised not to impede unduly the functionality of a low cost and highly efficient system with proven successes.

50. In Chapter 2 of the WIPO Interim Report published in WIPO RFC-3, draft recommendations were made on a number of domain name registration practices designed to

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reduce the disjunction between the DNS and intellectual property rights and thus to minimize resulting conflicts. The draft recommendations were made for the purpose of soliciting further discussion and initiating further consultation before being finalized.

51. In general, the comments that WIPO has received support the draft recommendations in the Interim Report. The approach of establishing best practices to reduce tension was endorsed by the vast majority of commentators. The differences of opinion that emerged did not concern this general approach, but rather the details of the implementation of the approach. The greatest differences of opinion concerned specifically the question of the provision of contact details by domain name applicants and the availability of such contact details. Here, as indicated below, there was a broad division of opinion between, on the one hand, those who considered the continued unrestricted availability of contact details to be essential for the suppression of deliberate violations of intellectual property rights, as well as for the support of other recognized public policies such as the avoidance of fraudulent commercial practices, consumer protection and the protection of minors, and, on the other hand, those who emphasized the multifunctional nature of the Internet and who feared that the continued unrestricted availability of contact details would facilitate the invasion of privacy and the harassment of political dissidents, with a consequent erosion of civil liberties.

52. The large measure of support for the approach of introducing practices designed to reduce tension between the DNS and intellectual property rights has been reflected in the adoption of many of the practices recommended in the WIPO Interim Report in ICANN's Statement of Registrar Accreditation Policy of March 4, 1999.

53. In the ensuing part of this Chapter, the draft recommendations of the Interim Report are re-visited in light of the comments received on that Interim Report. References are included as to the way in which the draft recommendations have been taken up in ICANN's Statement of Registrar Accreditation Policy. The final recommendations are divided into three parts:

- best practices for registration authorities;
- measures to deal with inaccurate and unreliable information; and
- the problem of uniqueness: technical measures for coexistence of similar names.

## BEST PRACTICES FOR REGISTRATION AUTHORITIES<sup>33</sup>

### Formal Domain Name Registration Agreement

54. The domain name registration agreement defines the rights and responsibilities of the registration authority, on the one hand, and the domain name applicant, on the other hand. It is through the terms of this contract that certain practical measures can be introduced to alleviate some of the problems that have arisen from the interface between Internet domain names and intellectual property rights. In the WIPO Interim Report, it was recommended that the contractual relationship between a domain name registrant and a registration authority be fully reflected in an electronic or paper registration agreement.

55. Commentators expressed broad support for this recommendation.<sup>34</sup>

56. Certain commentators<sup>35</sup> pointed out that the legal framework governing the validity of electronic contracts was not fully developed throughout the world. Some jurisdictions have moved to ensure that the validity of electronic contracts is specifically recognized through legislation,<sup>36</sup> but the swiftness of the advent of electronic commerce is such that legal certainty is not uniform throughout the world. It is the intention of ICANN to enhance the geographical availability of domain name registration services.<sup>37</sup> It would be desirable to ensure that, where the validity of electronic contracts is uncertain in the jurisdiction of an accredited registrar, the registration agreement is reflected in a paper document, since, as indicated below, this agreement will serve as the basis on which registrars may take certain actions in respect of a domain name registration (for example, if the policy is adopted as recommended below, cancelling a registration because of false or unreliable contact details).<sup>38</sup>

*57. It is recommended that the contractual relationship between a domain name registrant and the registrar in open gTLDs be fully reflected in an electronic or, where it is not certain that electronic contracts are legally enforceable in the jurisdiction of the registrar, paper registration agreement.*

#### Contact Details of Domain Name Holders

58. As indicated above, the collection and availability of contact details concerning domain name registrants was the area of the draft recommendations of the WIPO Interim Report that generated the greatest division of opinion. Few commentators did not recognize the complexity of striking an appropriate balance between the various interests involved. The divergences of opinion related not to the non-recognition of opposing interests, but to the weight to be attached to those interests.

59. One body of opinion placed greater weight on the importance of contact details,<sup>39</sup> in the context of a borderless and powerful medium, as a means, if not the only means, of translating public policies recognized in the world outside the Internet to the virtual world. They emphasized the difficulty of enforcement on the Internet brought about by its global character, the lack of a central point of authority and control and the fact that transactions and other interaction between persons take place without personal contact and often across distances that span national borders. They favored, in general, the collection and, ultimately, the availability of accurate and reliable contact details as a condition of presence on, and participation in, the medium through a domain name registration.

60. The opposing body of opinion tended to place greater weight on the potential of the Internet as a means of social communication and political expression that offered unparalleled opportunities for promoting civil liberties. Whether viewed from the perspective of the

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collection or the availability of contact details, they considered anonymity in relation to a domain name registration to be a legitimate choice that should be provided or preserved.<sup>40</sup>

61. We do not consider that any valid analogy exists for the issues posed by this question. Some argued that anonymity is permitted with respect to telephone listings and that this provided an appropriate precedent for a domain name registration. We do not consider the situations to be comparable. A telephone number facilitates connectivity with one other person, unless a group consents to dial into, or by linked to, a conference call. The telephone is a unimedium. A domain name gives global connectivity and allows for multimedia transmissions.

62. Both of the two general perspectives have validity and draw upon sound foundations in international and national law and policy in the world outside the Internet. It is the Internet that causes their collision to be dramatic and that requires difficult choices to be made.

63. As signalled in the WIPO Interim Report, we consider that the choices are made less difficult, although never easy, by breaking down the larger dichotomy of publicity and anonymity into a series of smaller issues that can offer some accommodation of the various interests falling either side of the larger dividing line. Those smaller issues are the collection of contact details by registration authorities as a condition of registration; the scope of information concerning contact details that should be collected; the availability of contact details; the possibility of a non-commercial, use-restricted gTLD as a way of meeting concerns for anonymity as a safeguard to civil liberties; and other safeguards against misuse of publicly available contact details.

### The Collection of Contact Details

64. In the WIPO Interim Report, it was recommended that the domain name registration agreement contain a requirement that the domain name applicant provide certain specified contact details. The collection (as opposed to the availability) of contact details by registrars is the least controversial aspect of the discussion on contact details. We consider that it is essential for the legitimate protection and enforcement of intellectual property rights, as well as for many other public policies recognized in the law, that contact details be collected. Without accurate and reliable contact details, the task of assigning responsibility for activities on the Internet is vastly complicated. Other means of assigning responsibility for activities on the Internet do exist. Where it is sought to enforce a criminal law, for example, the apparatus of the State can be activated to use tracing and other measures to determine the origin of activities, although, even here, the cross-border nature of the Internet complicates the task. In respect of civil law enforcement, however, the task of activating the apparatus of the State to identify responsibility for activities is more difficult.

65. ICANN's Statement of Registrar Accreditation Policy adopts the draft recommendation in the WIPO Interim Report and requires registrars to oblige domain name applicants to provide accurate and reliable contact details.<sup>41</sup>

*66. It is recommended that the provision of accurate and reliable contact details be a condition of registration of a domain name imposed by the domain name registration agreement.*

### Scope of Contact Details to be Provided

67. In the WIPO Interim Report, it was recommended that the domain name applicant should provide accurate and reliable contact details consisting of its name; postal address; e-mail address; telephone number; facsimile number (if available); and, where the applicant is an organization, association or corporation, the name of an authorized person for contact purposes. Most commentators<sup>42</sup> agreed that these data represented the appropriate scope of contact details. ICANN's Statement of Registrar Accreditation Policy requires registrars to obtain from domain name applicants these data, as well as certain technical contact information which is beyond the scope of consideration for the purposes of intellectual property protection. Three items relating to contact details, however, gave rise to differences of opinion.

68. The first item was the nature of the postal address required to be supplied. Some commentators, particularly those representing small business, considered that a post office box should constitute a sufficient post address, without reference to a street location. Others considered that the street location was necessary, especially for service of process (initiation of litigation), and stated that experience indicated that postal addresses consisting of post office boxes were often used by those who deliberately infringed intellectual property rights.<sup>43</sup> ICANN's Statement of Registrar Accreditation Policy leaves open this question, specifying merely that a postal address must be provided.<sup>44</sup> Since voice telephone and facsimile numbers are to be provided, and since a street address can be as easily misrepresented as a post office box, we consider that the requirement of a street address is unnecessary, especially in view of the large number of small enterprises operating their businesses with the use of a post office box.

69. The second item was the possibility of requiring the domain name applicant to designate an agent for the service of process. In the WIPO Interim Report, it was stated that such requirement seemed unnecessarily burdensome for the large majority of bona fide domain name applicants and that the provision of accurate and reliable contact details appeared to be a sufficient safeguard of the interests of intellectual property owners without the need for requiring further legal formalities at the stage of registration. Most commentators agreed with this view, although some major organizations representing intellectual property owners maintained that the requirement of designating an agent for service of process would be useful. We do not consider that there is sufficient support for the latter view to change the draft recommendation that the designation of an agent for service of process should not be obligatory.

70. The third item concerned the possibility of allowing a domain name holder to remain anonymous on condition that it supplied the contact details of a designated agent or trusted third party instead. The WIPO Interim Report requested further comments on this possibility. Business groups and intellectual property owners almost universally opposed the idea.<sup>45</sup> Some commentators, however, considered that a pseudonymous registration should be allowed on condition that contact details are provided to a trusted third party.<sup>46</sup>

71. It was pointed out that there are a number of Internet Service Providers (ISPs) and other entities that provide the facility for persons wishing to remain anonymous to use sub-domains under a domain which the ISP operates. It was suggested that this possibility allows for an adequate safeguard of the interests of those persons who might fear violation of their civil liberties in having to supply contact details to a registrar.<sup>47</sup> We consider that the existence of this possibility makes it unnecessary to provide any separate facility for a domain name applicant to designate an agent whose contact details would be supplied instead of the contact details of the applicant. In the open gTLDs, since it is intended that registration services be available on a geographically widespread basis, the use of a designated agent could lead to abuses, since the agent could be located in a jurisdiction that is an intellectual property haven or is inaccessible to normal legal processes.

72. It is also noted that ICANN's Statement of Registrar Accreditation Policy recognizes the practice of ISPs in licensing domains to those that might wish to remain anonymous.<sup>48</sup> We endorse the approach adopted in ICANN's Policy in this respect, which requires an ISP that licenses the use of a domain to accept liability for harm caused by the use of the domain, unless it promptly discloses the identity of the licensee to any party providing reasonable evidence of such harm. An ISP licensing a domain thus accepts responsibility either for the harm caused by a licensee or for assisting third parties in remedying such harm.

*73. It is recommended that the domain name registration agreement contain a requirement that the domain name applicant provide accurate and reliable contact details consisting of:*

- the full name of the applicant;*
- the applicant's postal address, including street address or post office box, city, State or Province, postal code and country;*
- the applicant's e-mail address;*
- the applicant's voice telephone number;*
- the applicant's facsimile number, if available;*
- where the applicant is an organization, association or corporation, the name of an authorized person (or office) for*

*administrative or legal contact purposes.*<sup>49</sup>

### The Availability of Contact Details

74. The WIPO Interim Report recommended that contact details of all domain name holders should be made publicly available and requested further comments on the means of access to those contact details and, in particular, on whether access should be unrestricted or through a form of filter.

75. The majority of commentators considered that the public availability of contact details of domain name holders was a key to the enforcement of intellectual property rights and strongly opposed any restrictions on the availability of data concerning those contact details.<sup>50</sup> The majority of commentators also expressed themselves to be against filtered access to contact details,<sup>51</sup> arguing that filters would add an administrative burden without any commensurately greater protection of privacy. In addition, most commentators that addressed the point were opposed to any requirement of notifying a domain name holder of any search performed on a database containing the holder's contact details, considering such a requirement to be a way of shielding infringers and possibly obstructing intellectual property owners in defending their rights.<sup>52</sup> As noted above, however, certain commentators argued against the public availability of contact details on the grounds of the protection of privacy.<sup>53</sup>

76. It is noted that ICANN's Statement of Registrar Accreditation Policy requires accredited registrars to provide public access on a real-time basis (such as by way of a Whois service) to the contact details which it is recommended, above, be required to be provided by a domain name registrant.<sup>54</sup>

77. We consider that, for as long as the open gTLDs (.com, .net and .org) remain undifferentiated, in the sense that there is no use restriction on holders of registrations in those domains, the continued public availability of contact details is essential. The undifferentiated nature of the current open gTLDs means that any form of commercial activity can take place under a domain name registration in those gTLDs. In the commercial sphere, it is widely recognized that the publication of contact details is necessary for the responsible operation of a business.<sup>55</sup> It thus seems appropriate, in this context, that contact details of registrants be publicly available in order to ensure that there is a straightforward means of applying the developed body of law concerning commercial practices. In addition, we consider that this requirement should apply to any new gTLDs, unless and until a policy is developed for a non-commercial use-restricted domain. We do not recommend the creation of such a domain at this stage, but discuss further its potential below.

78. We consider that certain safeguards exist to protect those concerned about the invasion of civil liberties by the public availability of contact details. One such safeguard is, as mentioned above, the licensing of a domain from an ISP which accepts responsibility for harm done on its domain or for assisting in remedying such harm. Other safeguards are discussed below.

79. We make no recommendations concerning the nature of the searchable database in which contact details should be made publicly available. It is considered that this is an issue relating to technical coordination, which thus falls outside this scope of the WIPO Process and is for the consideration of ICANN in establishing relationships between registry administrators, registrars and itself. In addition, any policy on the nature of a searchable database needs to take into account technological developments and not condition those developments. We note only that, for the purposes of ensuring adequate protection of intellectual property rights (amongst other rights), all contact details of domain name holders in the open gTLDs should be publicly available in real time.

80. The contact details that should be made available are those which it is recommended above must be provided by a domain name holder. In accordance with the observations of certain commentators, it is also recommended that the date of the registration of a domain name should be made available together with those contact details. ICANN's Statement of Registrar Accreditation Policy requires, in this respect, that the expiration date of a registration be made available.<sup>56</sup> The availability of the date of registration is useful as a means of protecting the interests of both the domain name holder and any third party that considers its rights to have been violated. For example, the date of the registration of a domain name may indicate that the domain name holder has established use of a name before any corresponding use or registration of that name as a trademark by a third party. In addition, as discussed in Chapter 3, it is recommended that an indication appear that the domain name holder has voluntarily opted to submit to arbitration in respect of any intellectual property dispute arising out of the domain name registration, where this is the case.

*81. It is recommended that contact details of all holders of domain names in all open gTLDs be made publicly available in real time. It is further recommended that those contact details should consist of the data specified in paragraph 73 above, the date of registration of the domain name and, where applicable, an indication that the domain name holder has voluntarily agreed to submit to arbitration in respect of any intellectual property dispute arising out of the domain name registration.*

82. In the WIPO Interim Report, the importance of maintaining up-to-date contact details for domain name holders was recognized. It was pointed out that the currency of contact details could be verified at the time of re-registration of a domain name and that the

cancellation of a registration for failure to pay the re-registration fee after a second notice or reminder appeared to be a sufficient check on the currency of contact details. ICANN's Statement of Registrar Accreditation Policy, in this respect, obliges accredited registrars to require domain name holders to promptly update contact details during the term of the registration.<sup>57</sup> The Policy also provides that a domain name holder's wilful failure promptly to update information on contact details to the registrar shall constitute a material breach of the domain name registration agreement and be a basis for cancellation of the registration. The approach of ICANN on this question constitutes an improvement on the WIPO draft recommendations. In applying to wilful failure to update contact details, it provides an additional safeguard against those who might deliberately and in bad faith register domain names in violation of intellectual property rights and who might change contact details during the term of registration in order to avoid detection. This question is taken up again, below, in the section on the cancellation of registrations for false or inadequate information.

#### The Possibility of a Non-Commercial Use-Restricted Domain Where Anonymity May be Permitted

83. In the WIPO Interim Report, it was suggested that consideration be given to differentiation between commercial and non-commercial domains and to the application of differing registration conditions to any non-commercial domain.<sup>58</sup> It was suggested that such differentiation might provide a means of accommodating the interests of those concerned that the availability of contact details might lead to an erosion of civil liberties.

84. The reactions of commentators to this suggestion were mixed. Some found the approach to be constructive and considered that it might help in accommodating the conflicting legitimate interests of Internet users.<sup>59</sup> Many commentators were skeptical about the practicality of such a distinction.<sup>60</sup> Others were vehemently opposed to the introduction of non-commercial domains with relaxed registration conditions, particularly relating to contact details, and believed that such domains would operate as safe havens for predatory activities.<sup>61</sup>

85. We believe that this question requires further study and consultation and that its implications go beyond intellectual property protection, although intellectual property protection is one of the central issues involved in the question. We do not believe that the idea should be abandoned, but we suggest that ICANN consider initiating a further process on this question. Pending any such further process, the following preliminary observations are offered in respect of the issues involved in the question:

(i) Further consideration needs to be given to the way in which the distinction between commercial and non-commercial is conceptualized. The distinction between commercial and non-commercial is insufficiently precise as a basis for allowing anonymity. For example, the free and unauthorized distribution of proprietary software or copyrighted music or films is not a commercial activity and could take place in a non-commercial domain without violating a restriction against commercial activity in such a domain. However, the owners of software, music or films have a legitimate interest in being able to contact the

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registrants of domain names under which such unauthorized distributions take place, and anonymity would obstruct them from doing so. Instead of distinguishing between commercial and non-commercial, therefore, a better approach might be to envisage for any domain with different registration requirements that the uses or activities permitted in such a domain be carefully and precisely delineated by way of a series of use restrictions (for example, prohibition of any commercial activity, prohibition of any activity in violation of intellectual property laws, etc.).

(ii) The nature of the differences in registration conditions needs to be carefully considered and expressed. It would need to be decided what contact details should be provided by a domain name holder, under what circumstances and upon the basis of what information or evidence any contact details could be released, and to which class of persons.

(iii) The introduction of a use-restricted domain would change the nature of open gTLDs that has prevailed until now from one in which domain name holders choose themselves the domain that they consider to be appropriate without being bound to conform their activities to the description of the chosen domain, to one in which, at least for the use-restricted domain, holders would be bound to abide by restrictions on the type of activity in which they could engage in the domain. A mechanism for enforcing those use restrictions would need to be developed. In this respect, a take-down mechanism has been suggested, whereby, upon the production of evidence of violation of a use restriction, the registrar would be obliged to cancel or suspend the domain name registration. This mechanism requires, however, further consideration and elaboration in this context to ensure that it could not be used abusively to suppress legitimate activity.

(iv) The introduction of a use-restricted domain needs also to be considered in the context of ICANN's overall policy for differentiation in the gTLDs and for the introduction of new gTLDs.

*86. It is recommended that further consideration be given to the introduction of one or several use-restricted, non-commercial domains as a means of accommodating privacy concerns and that ICANN consider the possibility of initiating a separate process and consultation on this question.*

#### Other Safeguards Against Misuse of Published Contact Details—Proper Notice and Consent

87. Apart from the possibility of a non-commercial, use-restricted domain, the concerns of those who fear erosion of civil liberties through the continued public availability of contact details of domain name holders can be, to some extent, alleviated by limiting the purposes for which data on contact details can be processed.

88. It was recommended in the WIPO Interim Report that the domain name registration should make it clear that contact details are collected and made available only for a limited purpose.<sup>62</sup> Many commentators<sup>63</sup> considered such a requirement to be an essential safeguard, and ICANN's Statement of Registrar Accreditation Policy has adopted it<sup>64</sup> in requiring registrars to provide notice to each domain name holder stating the purposes for which data are collected from the applicant concerning natural persons and the intended recipients or categories of recipients of such data.

89. In the WIPO Interim Report, the limited purpose of the collection and availability of contact details was described as the purposes of the transaction of registration and of facilitating contact with the domain name holder where there is an allegation of infringement of an intellectual property right. A number of commentators argued that this description was too narrow, insofar as other legitimate reasons existed for seeking access to the contact details beyond the allegation of infringement of intellectual property rights (for example, a third party may wish to have the contact details of a domain name holder to explore the possibility of a voluntary transfer of the registration for consideration, or to explore cooperation in respect of a website). The objective of the limitation of purpose is to prevent practices that might constitute an unwarranted intrusion into the domain name holder's privacy, such as data mining, where an attempt is made to download significant parts of a database, spamming or unsolicited advertising. ICANN's Statement of Registrar Accreditation Policy does not delimit the purposes for which data may be collected and made available, but requires notification of the purposes that a registrar defines, and consent by the domain name applicant to those purposes. We endorse this approach, which emphasizes proper notice and consent as the safeguards to privacy.

90. *It is recommended that:*

*(i) contact details be collected and made available for limited purposes;*

*(ii) the domain name registration agreement describe and provide clear notice of the purposes of the collection and availability of contact details and the domain name applicant consent to collection and availability for such purposes; and*

*(iii) registrars adopt reasonable measures to prevent predatory use of data beyond the stated purposes in the domain name registration agreement, such as the mining of a database for contact details of domain name holders for use in advertising or sales promotion.*

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### Requirements of Use

91. The possibility of including in the domain name registration agreement a requirement that the applicant state that it has a bona fide intention to use the domain name was discussed in the WIPO Interim Report.<sup>65</sup> No recommendation for the inclusion of such a requirement was made in the Interim Report, because of the absence of agreed standards as to what constitutes use and the difficulty of verifying whether use has occurred. Further comments on the issue were requested.

92. Many commentators agreed that statements of use were of limited value in the context of the DNS.<sup>66</sup> Some representatives of the intellectual property community, however, believed that a requirement of a statement of intention to use, together with a representation that the domain name was not being registered for the sole purpose of re-sale, would help discourage domain name abuse.<sup>67</sup>

93. It is difficult to see how any requirement of a statement of intention to use or representation that a registration was not for the sole purpose of re-sale could be effectively enforced. Furthermore, there are circumstances in which it might be considered to be entirely legitimate to register a domain name and to hold it without “use” for an indefinite period. An individual might, for example, wish to register a domain name corresponding to his or her child’s name without intending that it be used until some future date. Rather than requiring that an intention to use be stated, we consider that evidence of registration without any use, particularly in relation to a number of domain names that correspond to the intellectual property rights of others, is pertinent for the purpose of assessing whether registrations should be cancelled because they are abusive. Non-use, especially coupled with offers to re-sell and other appropriate evidence, is better dealt with in the context of the administrative procedure for cancellation of abusive registrations discussed in the next chapter, than by encumbering the registration procedure.

*94. It is not recommended that the domain name registration agreement contain a statement of bona fide intention to use a domain name.*

### Payment for Registration

95. Several vices are perceived as flowing from the lack of rigor that has prevailed in enforcing the requirement of payment of the registration fee for a domain name. Non-enforcement of the requirement can lead to the hoarding of names which, by virtue of the first-come, first-served principle of registration, places the registrant in a position to offer the names for sale to others who might have rights or interests in the names. In the WIPO Interim Report, it was recommended that a domain name should not be activated by a registration authority unless it was satisfied that payment of the registration fee had been received.<sup>68</sup> This draft recommendation received the support of virtually all commentators.<sup>69</sup> It has also been reflected in ICANN’s Statement of Registrar Accreditation Policy, which, in its most recent

amended form, suggests that charge to a credit card or other mechanisms providing reasonable assurances of payment will be considered sufficient.<sup>70</sup>

*96. It is recommended that a domain name not be activated by the registrar unless and until it is satisfied that payment of the registration fee has been received.*

### Re-registration Fees

97. In the WIPO Interim Report it was recommended that domain name registrations be for a limited period and subject to the payment of a re-registration fee, and that failure to pay the re-registration fee within the time specified in a second notice or reminder should result in the cancellation of the registration.<sup>71</sup> There was wide support for this recommendation, which was perceived as a useful measure to ensure that registrations are maintained by those with an interest in maintaining an active site and to avoid the hoarding of registrations for speculative purposes.<sup>72</sup>

*98. It is recommended that all domain name registrations be for limited periods and be subject to the payment of a re-registration fee and that failure to pay the re-registration fee within the time specified in a second notice or reminder result in the cancellation of the registration.*

### Waiting Periods

99. The possibility of a waiting period prior to the activation of a domain name registration has been discussed throughout the whole period during which the re-organization of the DNS has been under discussion. The purpose of such a waiting period would be to allow those who oppose the registration of a domain name on the basis that it constitutes an infringement of their rights the opportunity to take measures to stop the activation of the domain name. A waiting period has, however, been perceived as being at odds with one of the great strengths of the Internet, namely, the speed with which activity can occur.

100. In the WIPO Interim Report, it was recommended that a waiting period should not be required prior to the activation of a domain name.<sup>73</sup> The clear majority of commentators agreed with this position.<sup>74</sup> A number of them emphasized that a waiting period would not only cause delay, but could also drive up the cost of the registration of domain names.

101. In the Interim Report, it was also suggested that the concerns of those who favored a waiting period could be addressed through an expedited alternative dispute-resolution procedure for suspension of a domain name registration. This possibility is discussed in the next chapter, which deals with dispute resolution.

*102. It is not recommended that waiting periods be required prior to the activation of the domain name.*

### Searches Prior to Registration

103. The WIPO Interim Report recommended that the performance of a prior search for potentially conflicting trademarks should not be a condition for obtaining a domain name registration.<sup>75</sup> Almost unanimously, commentators agreed with this recommendation, whether searches were to be required to be carried out by the registration authorities or by the domain name applicants themselves.<sup>76</sup> Particularly in an international context, the requirement of searches prior to the registration of a domain name was generally considered to be unrealistic and conducive to unnecessary delays in the registration process.<sup>77</sup>

104. At the same time, many commentators stressed the importance of encouraging voluntary domain name and trademark searches,<sup>78</sup> on the part of prospective domain name applicants, to verify that the domain name that they intend to register was unencumbered and did not infringe upon the intellectual property rights of any third party.<sup>79</sup> It was noted that a range of commercial and public search services existed for both domain names and trademarks.<sup>80</sup> These commentators urged the inclusion, in the domain name application, of language encouraging voluntary searches.

*105. It is not recommended that domain name registrations be made conditional upon a prior search of potentially conflicting trademarks, but it is recommended that the domain name application contain appropriate language encouraging the applicant to undertake voluntarily such a search.*

### Representations in the Domain Name Registration Agreement

106. The WIPO Interim Report recommended that the domain name registration agreement should contain a representation by the applicant that, to the best of its knowledge and belief, the registration of the domain name does not interfere with or infringe the intellectual property rights of another party and a representation that the information provided by the applicant is true and accurate.<sup>81</sup> The purpose of such representations is to alert domain name applicants to the possibility of conflicting rights of intellectual property owners and to contribute to the reduction of tension between domain name registrations and intellectual property rights.<sup>82</sup> The representations serve the ancillary purposes of protecting the registration authority from liability for contributory infringement and, where furnished inaccurately and in deliberate bad faith with knowledge of their inaccuracy, of providing a basis for liability or breach of contract on the part of the domain name holder.

107. This recommendation received broad support.<sup>83</sup> Certain commentators, however, were of the view that the representation would place an unreasonable burden on domain name registrants, since it was virtually impossible for them to verify on a worldwide basis whether a registration would be infringing.<sup>84</sup> We consider that this latter view does not take into account the nature of the representation. It is not an unqualified representation that a domain name registration does not infringe the intellectual property rights of others. It is a representation that the registration does not, to the best of the applicant's knowledge and belief, infringe the intellectual property rights of others.

108. ICANN's Statement of Registrar Accreditation Policy requires a representation from the domain name applicant that extends beyond the intellectual property rights of third parties.<sup>85</sup> It requires the applicant to represent that, to the best of its knowledge and belief, neither the registration nor the manner in which it is directly or indirectly used infringes the legal rights of a third party. We consider this formulation to be superior to the one contained in the WIPO Interim Report. We confine our final recommendation, however, to the scope of the WIPO Process, namely, intellectual property rights, while recognizing the additional concerns which ICANN is addressing in its broader formulation.

*109. It is recommended that the domain name registration agreement contain the following representations:*

*(i) a representation that, to the best of the applicant's knowledge and belief, neither the registration of the domain name nor the manner in which it is to be directly or indirectly used infringes the intellectual property rights of another party; and*

*(ii) a representation that the information provided by the domain name applicant is true and accurate.*

### Submission to Jurisdiction and to Alternative Dispute Resolution Procedures

110. Chapter 3 discusses the question of litigation and dispute resolution and makes certain recommendations in relation to each. Since these recommendations, if adopted, require implementation by agreement at the stage of the conclusion of the registration agreement, their consequence for the content of the registration agreement is recorded here.

*111. It is recommended that the registration agreement contain an agreement on the part of the domain name applicant to submit to the jurisdiction of particular courts, as detailed in*

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*Chapter 3, and to submit to the alternative dispute-resolution procedure detailed in Chapter 3.*

## MEASURES TO DEAL WITH INACCURATE AND UNRELIABLE INFORMATION

112. In the WIPO Interim Report, three measures were discussed as means of dealing with contact details that proved to be inaccurate and unreliable.

### Verification of Contact Details by the Registrar

113. The Interim Report recognized that registrars should not be burdened with the task of verifying in any comprehensive way the accuracy and reliability of the contact details of domain name holders, since this would be likely to lead to unnecessary additional time and cost in the registration process.<sup>86</sup> It requested, however, further comments on two automated devices for achieving a measure of verification: (i) the use of on-line data validation mechanisms in real time to ensure that a minimum of details were provided, and (ii) the automatic sending of an e-mail communication to the domain name applicant to verify the operational status of the e-mail address given by it.

114. These measures were considered by commentators to be useful and to reflect good practices for automated registration systems. Some commentators suggested further that the format of a US zip code could be automatically validated and correlated to the area codes provided for voice telephone and facsimile numbers, and that e-mails could be sent periodically to the accounts provided by domain name holders to verify their continued currency.<sup>87</sup>

115. We consider that the additional suggestions indicate that the range of automated solutions for data verification is extensive and is likely to evolve further. We therefore confine our recommendation to the encouragement of the use by registrars of such data verification procedures in the registration process.

*116. It is recommended that registrars should be encouraged to adopt reasonable automated procedures to verify data submitted by domain name applicants, such as on-line data validation mechanisms and the sending of a confirmation e-mail to the accounts provided by domain name applicants.*

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Requirement that Inaccurate and Unreliable Contact Details Constitute a Material Breach of the Domain Name Registration Agreement

117. In the Interim Report, it was pointed out that the purpose of requiring the provision of contact details would be frustrated if no sanction existed for the provision of inaccurate and unreliable information which did not permit contact to be established with the domain name holder. The appropriate sanction in such circumstances is the cancellation of the registration. In order to provide the basis for the imposition of this sanction, it was recommended that the domain name registration agreement contain an agreed term that inaccurate and unreliable information in the agreement should constitute a material breach of the contract and be a basis for cancellation of the domain name by the registrar.

118. Commentators broadly supported this recommendation.<sup>88</sup> ICANN's Statement of Registrar Accreditation Policy adopts the recommendation, with the additions that the wilful provision of inaccurate or unreliable information or the wilful failure promptly to update information shall constitute a material breach of the registration agreement and be a basis for cancellation of the registration.<sup>89</sup> We consider the addition relating to the failure to update information to be an improvement of the draft recommendation in the WIPO Interim Report. We think that the requirement that the provision of inaccurate or unreliable information, or the failure to update it, be wilful is, however, problematic. In the next section, it is recommended that a procedure should be available to cancel registrations where contact cannot be established with the domain name holder. We think that the efficiency of this procedure would be jeopardized if it were necessary to show that the inaccuracy or unreliability of information resulted from the wilful behavior of the domain name holder. We think also that the domain name holder is protected against abuse of this procedure and cancellation for merely clerical errors or oversights, since it is unlikely that clerical errors or oversights would cause all the information provided to be inaccurate or unreliable so that it was impossible to contact the domain name holder.

*119. It is recommended that the domain name registration agreement contain a term making the provision of inaccurate or unreliable information by the domain name holder, or the failure to update information, a material breach of the registration agreement and a basis for cancellation of the registration by the registration authority.*

Procedure for Cancellation of Registrations where Contact Cannot be Established

120. In the WIPO Interim Report, the means of implementing a sanction for breach of the domain name registration agreement through the provision of inaccurate and unreliable contact details were discussed. Two possibilities were considered: first, an adjudicated procedure in which an independent neutral would render a decision upon a complaint by an interested third party that the third party was unable to establish contact with a domain name

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holder because the contact details were inaccurate and unreliable; and, secondly, a notification procedure to the registrar, which, upon verification by the registrar of the inability to establish contact with the domain name holder, would cancel the registration.

121. The majority of commentators supported the notification and take-down procedure. Some commentators cautioned that it should be applied reasonably in order to avoid domain name holders being penalized through inadvertence (for example, during an absence on vacation).<sup>90</sup> We agree with these latter concerns, but consider that it will be a rare instance that all contact details are considered inaccurate and unreliable owing to vacation. Nevertheless, it is entirely appropriate that proper safeguards exist to ensure that the procedure is not abused.

122. It is considered that the procedure for cancellation of a domain name registration should be available only where a third party serves a notification upon the registrar alleging: (i) that the domain name registration infringes an intellectual property right; and (ii) that contact cannot be established with the domain name holder because the contact details are inaccurate and unreliable. The notification should include the following elements:

- The notification should be in writing and have an electronic or physical signature by the third party complainant;
- The notification should include the third party's own contact details, including name, postal address, voice telephone number, facsimile number and e-mail address;
- The notification should include a statement that the third party has a good faith belief that the registration and use of the domain name infringes its intellectual property right;
- The notification should identify the domain name and the contact details that were relied upon to attempt to contact the domain name holder;
- The notification should include a statement that the third party has made reasonable efforts over a reasonable period of time to contact the domain name holder using the contact details that were supplied by the domain name holder in the application (postal address, voice telephone number, facsimile number and e-mail address); and
- The notification should include a statement that the third party has a good faith belief that: (i) the contact details are inaccurate and unreliable, and (ii) no response from the domain name holder will be forthcoming within a reasonable period.

Upon receipt of the notification, the registrar should independently endeavor to contact the domain name holder using the contact details that have been supplied. If the registrar is

unable to establish contact within a reasonable period of time, the domain name registration should be automatically cancelled.

*123. It is recommended that a take-down procedure be implemented whereby, upon service of a notification by an interested third party containing the details set out in paragraph 122, above, and upon independent verification of the unreliability of the contact details in question, the registrar would be required to cancel the corresponding domain name registration.*

#### THE PROBLEM OF UNIQUENESS: TECHNICAL MEASURES FOR COEXISTENCE OF SIMILAR NAMES

124. For operational reasons, a domain name is a unique address. This characteristic creates the difficulty that common words that form part of marks can be coveted as domain names by a number of different persons or enterprises. The difficulty is exacerbated in undifferentiated domains, since similar marks with common elements can coexist in relation to different classes of goods or services without confusion, whereas only one of the owners may use the mark or the common element alone as a domain name in a large undifferentiated domain. Examples of such common elements are “national,” “united” or generic descriptions like “telecom.”<sup>91</sup>

125. There are several means that can be used to overcome the difficulty of uniqueness. Directory and listing services assist in ensuring that an interested person can locate the exact address that it is seeking, and many commentators supported the further development of such services.<sup>92</sup> The gateway or portal page is also a measure that finds widespread support.<sup>93</sup> Under such a gateway, a list of names using a common element is produced with links to the various addresses and information to distinguish the addresses and their owners from each other.<sup>94</sup> These measures are deployed under the INternet ONE system,<sup>95</sup> a directory service with a shared name depository, which enables entities sharing common elements in domain names to coexist on the Internet.

126. Measures which allow coexistence while providing users with the information to distinguish between the owners of the similar names represent a viable and useful way of reducing conflict. They are, however, voluntary measures that parties can choose as a means of resolving an intractable shared desire for the same name. They can also constitute a recommended solution for the consideration of such parties within the context of litigation or an alternative dispute resolution procedure such as mediation.

127. The WIPO Interim Report noted that there was resistance to making such measures compulsory.<sup>96</sup> No recommendation was made for their compulsory adoption. This position was broadly supported in the comments received on the Interim Report.<sup>97</sup> Many owners of

marks clearly wish to preserve their unique identity and do not wish to countenance sharing it, even through a portal, with another.

*128. It is not recommended that portals, gateway pages or other such measures be compulsory in the event of competing claims to common elements of an address, but users are encouraged to consider carefully the advantages of such measures as means of finding a solution to a good faith shared desire to use common elements of marks as domain names.*

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<sup>31</sup> See Comment of Government of India, Department of Industrial Development: Ministry of Industry (November 6, 1998 – RFC-2); Comment of International Intellectual Property Alliance (November 6, 1998 – RFC-2); Comment of Ms. Sally Abel of International Trademark Association (San Francisco Consultation); Comment of MARQUES (November 6, 1998 – RFC-2); Comment of Motion Picture Association of America (November 6, 1998 – RFC-2); Comment of Mr. Krishna of Andhra Pradesh Technology Services (Hyderabad Consultation); Comment of Ms. Shelley Hebert of Stanford University (San Francisco Consultation); Comment of Ms. Marilyn Cade of AT&T (Washington Consultation – 1998); Comment of Ms. Sarah Deutsch of Bell Atlantic (Washington Consultation - 1998); Comment of The Chanel Company (November 4, 1998 – RFC-2); Comment of Ms. Anne Gundelfinger of Intel (San Francisco Consultation); Comment of Mr. Neil Smith of Limbach & Limbach (San Francisco Consultation); Comment of Ms. Susan Anthony of MCI Worldcom (Washington Consultation – 1998); Comment of Viacom (October 1, 1998 – RFC-2). See also the discussion in Chapter 5.

<sup>32</sup> As of the date of this Report, there are more than 7,180,000 domain names registered, including approximately 4,500,000 in the top-level domain .com alone. New domain name registrations in all top-level domains are running at a rough average of over 21,000 per week. Further information and statistics about domain name registrations are available at the website of NetNames Ltd., (see <http://www.netnames.com>).

<sup>33</sup> “Registration authority” is used to refer to those entities that are involved in the day-to-day administration and management of certain portions of the domain name system (DNS), and in particular are concerned with: (i) the delegation or assignment of portions of the name space commonly known as the second-level (or sub-) domains of top-level domains, or (ii) registering domain names and dealing directly with domain name applicants. The term “registration authority” as used in this Report may encompass in certain contexts the “registry” and the “registrar,” as those terms are used in the White Paper. WIPO takes no position on the appropriate division of administrative and management responsibilities among the chain of authorities in the DNS, as this is a subject properly for ICANN’s consideration.

<sup>34</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of Markenverband (March 4, 1999 – RFC-3). The recommendation is also reflected in ICANN’s Statement of Registrar Accreditation Policy, in which it is provided that the registrar must require all domain name applicants to enter an electronic or paper registration agreement (See ICANN Statement of Registrar Accreditation Policy, Art. III.J.7 (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html)).

<sup>35</sup> See Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of AT&T (March 17, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

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<sup>36</sup> For general reference on this question, see Proposal of the Commission of the European Communities for the European Parliament and Council Directive *On Certain Aspects of Electronic Commerce in the Internal Market*, Ch.II (Establishment and Information Requirements) (Nov. 18, 1998, at <http://europa.eu.int/comm/dg15/en/media/elecomm/com586en.pdf>); United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce with Guide to Enactment (1996), with additional Article 5*bis* (adopted in 1998), at <http://www.un.or.at/uncitral/en-index.htm>.

<sup>37</sup> See ICANN Statement of Registrar Accreditation Policy, Art. IV (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>38</sup> As noted above, in 1996 UNCITRAL published a Model Law on Electronic Commerce. In addition to setting forth model provisions that can be used as a basis for the developing national law in relation to electronic contracts, the Model Law provides helpful guidance for those who wish to develop valid forms and procedures in relation to electronic agreements. See <http://www.un.or.at/uncitral/english/texts/electcom/ml-ec.htm>.

<sup>39</sup> See Comment of KPMG (March 23, 1999 – RFC-3); Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of American Society of Composers, Authors and Publishers and Broadcast Music, Inc. (March 14, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of MARQUES (March 12, 1999 – RFC-3).

<sup>40</sup> See Comment of Mr. Kurt Opsahl & Co-signatories (March 12, 1999 – RFC-3); Comment of Electronic Frontier Foundation (March 12, 1999 – RFC-3); Comment of Government of Sweden, National Post and Telecom Agency (March 12, 1999 – RFC-3); Comment of Center for Democracy and Technology (March 11, 1999 – RFC-3).

<sup>41</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.J.7.a (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>42</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of Markenverband (March 4, 1999 – RFC-3); Comment of MARQUES (March 11, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

<sup>43</sup> See Comment of Motion Pictures Association of America (March 18, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

<sup>44</sup> ICANN Statement of Registrar Accreditation Policy, Art. III.J.7.a (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>45</sup> See Comment of KPMG (March 23, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999); Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of AT&T (March 17, 1999 – RFC-3); Comment of American Society of Composers, Authors and Publishers and Broadcast Music, Inc. (March 14, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3); Comment of Singapore

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Network Information Center (February 25, 1999 – RFC-3); Comment of European Brands Association (AIM) (February 17 and 23, 1999 – RFC-3); Comment of Government of Hungary, Hungarian Patent Office (March 4, 1999 – RFC-3); Comment of Government of Switzerland, Swiss Federal Institute of Intellectual Property (February 26, 1999 – RFC-3).

<sup>46</sup> See Comment of Mr. Kurt Opsahl & Co-signatories (March 12, 1999 – RFC-3); Comment of Government of Republic of Korea, Korean Industrial Property office (March 11, 1999 – RFC-3).

<sup>47</sup> See Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3).

<sup>48</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III. J.7.a (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>49</sup> We assume that the relevant data for the primary and secondary nameservers are normally provided, not by the applicant, but by a technical company, such as the ISP. This information can be helpful in identifying an ISP that hosts or provides connectivity to the website operated by the domain name holder.

<sup>50</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of Government of Sweden, Swedish Patent and Registration Office (February 23, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of AT&T (March 17, 1999 – RFC-3); Comment of American Society of Composers, Authors and Publishers and Broadcast Music, Inc. (March 14, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of Brazilian Steering Committee (March 10, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

<sup>51</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of AT&T (March 17, 1999 – RFC-3); Comment of American Society of Composers, Authors and Publishers and Broadcast Music, Inc. (March 14, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of European Brands Association (AIM) (February 17 and 23, 1999 – RFC-3).

<sup>52</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of the International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3).

<sup>53</sup> See Comment of Government of Sweden, National Post and Telecom Agency (March 12, 1999 – RFC-3); Comment of Mr. Kurt Opsahl & Co-signatories (March 12, 1999 – RFC-3); Comment of MCI WorldCom (March 18, 1999 – RFC-3); Comment of Center for Democracy and Technology (March 11, 1999 – RFC-3).

<sup>54</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.D (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>55</sup> See e.g., Proposal of the Commission of the European Communities for European Parliament and Council Directive on *Certain Aspects of Electronic commerce in the Internal Market*, Ch. II (Establishment and Information Requirements) (Nov. 18, 1998), at <http://europa.eu.int/comm/dg15/en/media/elecomm/>

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*com586en.pdf*.

<sup>56</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.D.1.e (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>57</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.J.7.a (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>58</sup> Para. 284 of the Interim Report.

<sup>59</sup> See Comment of Government of Australia (March 30, 1999 – RFC-3); Comment of the European Community and its Member States (March 19, 1999 – RFC-3); Comment of Government of Sweden, National Post and Telecom Agency (March 12, 1999 – RFC-3); Comment of Government of Sweden, Swedish Patent and Registration Office (February 23, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of Domain Name Rights Coalition (March 10 and 20, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of Time Warner (March 13, 1999); Comment of America Online (March 12, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3); Comment of the European Brands Association (AIM) (February 17 and 23, 1999 – RFC-3).

<sup>60</sup> See Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of Electronic Frontier Foundation (March 12, 1999 – RFC-3); Comment of MARQUES (March 11, 1999 – RFC-3); Comment of Markenverband (March 4, 1999 – RFC-3); Comment of Singapore Network Information Center (February 25, 1999 – RFC-3).

<sup>61</sup> See Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of American Society of Composers, Authors and Publishers and Broadcast Music, Inc. (March 14, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3).

<sup>62</sup> Para. 55 of the Interim Report.

<sup>63</sup> See Comment of Patent and Trademark Institute of Canada (April 2, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3); Comment of MARQUES (March 11, 1999 – RFC-3); Comment of European Brands Association (AIM) (February 17 and 23, 1999 – RFC-3).

<sup>64</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.J.7.b (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>65</sup> Paras. 60 and 61 of the Interim Report.

<sup>66</sup> See Comment of Government of Hungary, Hungarian Patent Office (March 4, 1999 – RFC-3); Comment of Brazilian Steering Committee (March 10, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of MARQUES (March 11, 1999 – RFC-3).

<sup>67</sup> See Comment of Government of Switzerland, Swiss Federal Institute of Intellectual Property (February 26, 1999 – RFC-3); Comment of Patent and Trademark Institute of Canada (April 2, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

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<sup>68</sup> Para. 67 of the Interim Report.

<sup>69</sup> See Comment of Government of Australia (March 30, 1999 – RFC-3); Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of Government of Switzerland, Swiss Federal Institute of Intellectual Property (February 26, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of American Society of Composers, Authors and Publishers and Broadcast Music, Inc. (March 14, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of Markenverband (March 4, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

<sup>70</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.J.4 (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>71</sup> Para. 69 of the Interim Report.

<sup>72</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3). ICANN's Statement of Registrar Accreditation Policy also adopts the recommendation (see ICANN Statement of Registrar Accreditation Policy, Art. III.J.5 (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html)).

<sup>73</sup> Para. 75 of the Interim Report.

<sup>74</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of the International Trademark Association (March 12, 1999 – RFC-3).

<sup>75</sup> Para. 78 of the Interim Report.

<sup>76</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3).

<sup>77</sup> See Comment of Government of India, Department of Industrial Development: Ministry of Industry (November 6, 1998 – RFC-2); Comment of Government of the Republic of Korea, Korean Industrial Property Office: Ministry of Trade, Industry and Energy (November 16, 1998 - RFC-2); Comment of American Intellectual Property Law Association (November 6, 1998 - RFC-2); Comment of International Trademark Association (November 6, 1998 - RFC-2); Comment of MARQUES (November 6, 1998 - RFC-2); Comment

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of Mr. Maruyama of Japan Information Network Center (Tokyo Consultation); Comment of Mr. Axel Horns (September 18, 1998 - RFC-2).

<sup>78</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of Markenverband (March 4, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

<sup>79</sup> See, for example, Comment of Government of Australia, IP Australia: Department of Industry, Science and Resources (August 21, 1998 - RFC-1); Comment of American Intellectual Property Law Association (November 6, 1998 - RFC-2); Comment of Ms. Shelley Hebert of Stanford University (San Francisco Consultation).

<sup>80</sup> The database of trademark registrations under the Madrid system for the international registration of marks, administered by WIPO, is available in CD-ROM (ROMARIN) form, which is updated every four weeks. The database of United States trademark registrations is available at <http://www.uspto.gov/tmdb/index.html>. A database of Australian trademark registrations is available at <http://pericles.ipaustralia.gov.au/atmos/falcon.application-stard>. More readable databases of trademark registrations are becoming available on the Internet.

<sup>81</sup> Para. 53 of the Interim Report.

<sup>82</sup> See, for example, Comment of MCI Worldcom (November 9, 1998 - RFC-2); Comment of Mr. Jonathan Moskin (November 6, 1998 - RFC-2).

<sup>83</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of American Society of Composers, Authors and Publishers and Broadcast Music, Inc (March 14, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3); Comment of Markenverband (March 4, 1999 – RFC-3).

<sup>84</sup> See Comment of Government of Sweden, National Post and Telecom Agency (March 12, 1999 – RFC-3); Comment of Domain Name Rights Coalition (March 10 and 20, 1999 – RFC-3); Comment of Ms. Ellen Rony (March 8, 1999 – RFC-3); Comment of Mr. Milton Mueller (March 6, 1999 – RFC-3).

<sup>85</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.J.7.g (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>86</sup> Paras. 91 and 92 of the Interim Report.

<sup>87</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of the American Society of Composers, Authors and Publishers and Broadcast Music, Inc. (March 14, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3).

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<sup>88</sup> See Comment of Government of Sweden, Swedish Patent and Registration Office (February 23, 1999 – RFC-3); Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of American Society of Composers, Authors and Publishers and Broadcast Music, Inc. (March 14, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of MARQUES (March 11, 1999 – RFC-3); Comment of Markenverband (March 4, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

<sup>89</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.J.7.a (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>90</sup> See Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of MARQUES (March 11, 1999 – RFC-3); Comment of Ms. Ellen Rony (March 8, 1999 – RFC-3).

<sup>91</sup> See, for example, Comment of American Intellectual Property Law Association (November 6, 1998 – RFC-2); Comment of Domain Name Rights Coalition (November 6, 1998 – RFC-2).

<sup>92</sup> See, e.g., *Lockheed Martin Corporation v. Network Solutions, Inc.*, 985 F. Supp.949, 968 (C.D. Cal. 1997) (court commented favorably on the use of directories, stating “[t]he solution to the current difficulties faced by trademark owners on the Internet lies in this sort of technical innovation, not in attempts to assert trademark rights over legitimate non-trademark uses of this important new means of communication”).

<sup>93</sup> See Comment of American Intellectual Property Law Association (November 6, 1998 - RFC-2); Comment of Mr. Robert Connelly of Council of Registrars (CORE) (San Francisco Consultation); Comment of Institute of Trade Mark Agents (November 3, 1998 - RFC-2); Comment of Mr. Ole Jacobsen of Cisco Systems (San Francisco Consultation); Comment of Mr. Keith Gymer (Brussels Consultation – 1998); Comment of Ms. Carol Smith of Infoseek (San Francisco Consultation); Comment of Mr. Jonathan Moskin of Pennie & Edmonds LLP (November 6, 1998 - RFC-2).

<sup>94</sup> See, for example, <http://www.scrabble.com>.

<sup>95</sup> <http://www.io.io>.

<sup>96</sup> Comment of Government of Hungary, Hungarian Patent Office (Budapest Consultation); Comment of *Fédération Internationale des Conseils en Propriété Industrielle* (November 9, 1998 – RFC-2).

<sup>97</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3).

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### 3. RESOLVING CONFLICTS IN A MULTIJURISDICTIONAL WORLD WITH A GLOBAL MEDIUM: A UNIFORM DISPUTE-RESOLUTION POLICY

129. As indicated in the previous Chapter, there is widespread support for the adoption of a number of practices in the administration of domain name registrations as a means of reducing friction between such registrations and intellectual property rights. There also appears to be widespread support, however, for the view that those practices should not interfere with the functionality of the DNS as a cheap, high-speed, high-volume system for obtaining an Internet address. For this reason, as mentioned previously, such measures as requiring registration authorities to search applications against previously registered trademarks, which might reduce friction even further, attracted little or no support.

130. While the vast majority of domain names are registered in good faith for legitimate reasons, even with enhanced practices designed to reduce tension, disputes are inevitable. Not more than five years ago, before graphical Internet browsers became popular<sup>98</sup> and there was little or no commercial activity on the Internet, a trademark infringement stemming from the registration and use of a domain name was not regarded as a serious issue. As long as no significant business activity was taking place on the Internet, any potential for harm was offset by the near invisibility of the network – at least when compared to infringements in mainstream media such as television, the press and billboards. This changed, however, when business investments, advertising and other activities increased on the Internet, and companies began to realize the problems that may occur when a website using their trademark as a domain name was operated in an infringing manner without permission. Disputes have now become numerous, while mechanisms for their settlement, outside of litigation, are neither satisfactory nor sufficiently available.<sup>99</sup>

131. Intellectual property right owners have made it clear throughout the WIPO Process that they are incurring significant expenditures to protect and enforce their rights in relation to domain names.<sup>100</sup> Existing mechanisms for resolving conflicts between trademark owners and domain name holders are often viewed as expensive, cumbersome and ineffective. The sheer number of instances precludes many trademark owners from filing multiple suits in one or more national courts. Moreover, registration authorities have frequently been named as parties to the dispute in litigation, exposing them to potential liability and further complicating their task of running the domain name registration process.

132. Disputes over domain name registrations and intellectual property rights present a number of special characteristics:

(i) Because a domain name gives rise to a global presence, the dispute may be multijurisdictional in several senses. The global presence may give rise to alleged infringements in several jurisdictions, with the consequence that several different national courts may assert jurisdiction, or that several independent actions must be brought because separate intellectual property titles in different jurisdictions are concerned.

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(ii) Because of the number of gTLDs and ccTLDs and because each gives the same access to global presence, essentially the same dispute may manifest itself in many TLDs. This would be the case, for example, if a person sought and obtained abusive registrations in many TLDs of a name which was the subject of corresponding trademark registrations held throughout the world by a third party. In order to deal with the problem, the intellectual property owner may need to undertake multiple court actions throughout the world.<sup>101</sup>

(iii) In view of the ease and speed with which a domain name registration may be obtained, and in view of the speed of communication on the Internet and the global access to the Internet that is possible, the need to resolve a domain name dispute may often be urgent.<sup>102</sup>

(iv) A considerable disjunction exists between, on the one hand, the cost of obtaining a domain name registration, which is relatively cheap, and, on the other hand, the economic value of the damage that can be done as a result of such a registration and the cost to the intellectual property owner of remedying the situation through litigation, which may be slow and very expensive in some countries.

(v) The registration authority has often been joined in domain name disputes because of its role in the technical management of the domain name.<sup>103</sup>

133. Because of the special features of domain name disputes, considerable support has been expressed for the development of expeditious and inexpensive dispute-resolution procedures, which are comprehensive in the sense of providing a single means of resolving a dispute with multiple jurisdictional manifestations.<sup>104</sup> At the same time, discussions and consultations have revealed a natural level of discomfort in placing complete trust in a system which is new and which has the capacity to affect valued rights.<sup>105</sup> There has been, in consequence, in some quarters, a reluctance to abandon all possibilities of resort to litigation as a result of the adoption of new procedures, at least in the first stage before experience of a new system.

134. In the WIPO Interim Report, it was stated that, in considering options for dispute resolution, the draft recommendations of that report were guided by the overall consideration of finding a balance between, on the one hand, the preservation of the long-tried right to seek redress through litigation, and, on the other hand, the desire to proceed to develop a workable system that can fairly, expeditiously and cheaply resolve the new type of disputes that arise as a consequence of the arrival of the Internet. The majority of commentators found this formulation to be too broad insofar as the draft recommendations suggested that domain name applicants be required to submit to a mandatory administrative dispute-resolution procedure in respect of any intellectual property dispute arising out of the domain name registration.<sup>106</sup> In particular, those commentators considered, in relation to such a comprehensive procedure:

(i) that it might unfairly expose domain name applicants acting in good faith to costs in responding to complaints brought against them;

(ii) that it might lead to the harassment of domain name holders acting in good faith by trademark owners seeking to acquire a domain name that is being used in a way which did not infringe the trademark owner's rights ("reverse domain name hijacking");

(iii) that it would be preferable to commence a new procedure in a less ambitious way and with reference to disputes concerning the known and certain forms of offensive behavior, rather than with respect to all forms of disputes;

(iv) that, in opening the procedure to all forms of dispute, the Interim Report failed to address specifically the most egregious problem, namely, the problem of "cybersquatting" or deliberate, bad faith, abusive registrations of domain names in violation of others' rights;

(v) that, because of the lack of international harmonization in the application of trademark laws, it would be preferable, at least initially, to avoid mandatory submission to the procedure in respect of disputes over competing, good faith rights to the use of a name.

135. In view of the weight of opinion against mandatory submission to an administrative procedure in respect of any intellectual property dispute arising out of a domain name registration, the final recommendations of the WIPO Process contain two major changes in respect of the suggested administrative dispute-resolution procedure:

(i) First, the scope of the procedure is limited so that it is available only in respect of deliberate, bad faith, abusive, domain name registrations or "cybersquatting" and is not applicable to disputes between parties with competing rights acting in good faith.

(ii) Secondly, the notion of an abusive domain name registration is defined solely by reference to violations of trademark rights and not by reference to violations of other intellectual property rights, such as personality rights.

136. The discussion and the recommendations in the remainder of this Chapter are organized under the following headings:

- achievable amelioration to the use of court litigation as a means of resolving disputes;
- guiding principles in the design of the administrative dispute-resolution policy;
- mandatory administrative procedure for abusive registrations;
- the availability of voluntary arbitration; and
- the role of mediation.

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## COURT LITIGATION

137. Court litigation is governed by the civil law of sovereign States. The WIPO Process, which will result in recommendations to the private, not-for-profit corporation that will manage the DNS (ICANN), is not properly concerned with matters that fall within the purview of those civil laws, except insofar as those laws, in accordance with recognized international principles, leave open areas of choice.

### Preservation of the Right to Litigate

138. The first area of such choice, where the recommendations of the Process might have an influence, is the abandonment of the right to litigation in respect of a dispute, which is recognized in the majority of countries as the effect of agreeing to submit a dispute to arbitration. That effect of an arbitration agreement is recognized in the arbitration laws of countries and in the obligations assumed by more than one hundred countries by becoming party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention).<sup>107</sup> If submission to arbitration by domain name applicants in respect of any dispute relating to the domain name registration were, for example, to be a requirement of the domain name registration agreement, the effect would be to require the domain name applicant to abandon the right to litigate such a dispute if called to arbitration by the other party to the dispute. As mentioned above, however, the discussions and consultations in the WIPO Process indicated considerable reluctance to subscribe to such a solution, at least in the initial stage of the new management of the DNS.<sup>108</sup>

139. The WIPO Interim Report recommended that any dispute-resolution system alternative to litigation that might be adopted for domain name disputes should not deny the parties to the dispute access to court litigation. This recommendation met with the support of virtually all commentators.<sup>109</sup>

*140. It is recommended that any dispute-resolution system, which is alternative to litigation and to which domain name applicants are required to submit, should not deny the parties to the dispute access to court litigation.*

### Submission to Jurisdiction

141. A second area of choice, based on widely accepted principles, is the choice of submission to the jurisdiction of the courts in one or more locations for the resolution of a dispute. There has been broad support throughout the WIPO Process for requiring the domain name applicant to exercise such a choice in the domain name registration agreement in order to create greater certainty in relation to the venue in which litigation can be brought, and in order to ensure a venue in a country in which intellectual property rights are respected.<sup>110</sup>

142. While a submission to jurisdiction can create greater certainty, it should not have the effect of imposing the exclusive possibility of litigation in venues that are perhaps remotely connected to the allegedly infringing activity that is taking place through a domain name or to the location of the domain name applicant. Furthermore, a submission to jurisdiction by the domain name applicant should not inhibit a third party's freedom to seek to obtain jurisdiction over a domain name holder in any location where there may be an independent and sufficient nexus to support local jurisdictional requirements. On this basis, an agreement to submit to jurisdiction in a domain registration agreement should be without prejudice to the possibility of establishing jurisdiction under normally applicable law and should not exclude that possibility. The effect of an agreement to submit to particular jurisdictions in the domain name registration agreement would thus be to forgo the possibility of contesting the jurisdiction of courts over a dispute arising out of the domain name registration in those particular locations.

143. The question arises as to which locations ought to be so designated in the submission to jurisdiction by the domain name applicant in the domain name registration. Several possibilities have been mentioned in this respect, namely, the location of the registry, the location of the domain name database, the location of the registrar and the location of the "A" root server.<sup>111</sup> It is considered that the choice of appropriate venue should, on the one hand, strike the right balance between the interests of the domain name holder and any potential third party complainant, and, on the other hand, be consistent with fundamental concerns of fairness, which provide the foundation for existing jurisdictional principles.<sup>112</sup>

144. In the WIPO Interim Report, it was recommended that the domain name applicant should be required, in the domain name registration agreement, to submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of (i) the country of domicile of the applicant, and (ii) the country where the registration authority was located. Comments expressed on this recommendation were divided between those who considered that it did not go sufficiently far in attributing possible jurisdiction,<sup>113</sup> and those who considered that it was too extensive in attributing jurisdiction.<sup>114</sup> In the former category were those who considered that domain name applicants should also be required to submit to jurisdiction at the locations of the registry and of the "A" root server. Those in the latter category were concerned by the ambiguity of the expression "registration authority," a term used in the Interim Report to include both registrars and registries in deference to the decisions that ICANN was yet to take on the structure of registrar and registry services. Certain other commentators misread the recommendation, thinking that it sought to attribute exclusive jurisdiction to the locations of the domicile of the applicant and the registration authority, even where jurisdiction could be asserted and attributed on the basis of an independent nexus elsewhere.<sup>115</sup>

145. ICANN's Statement of Registrar Accreditation Policy contains a provision on jurisdiction that is substantially similar to the draft recommendations in the WIPO Interim Report. It requires domain name applicants to submit to the jurisdiction of the courts of the location (i) of the applicant's domicile, and (ii) of the registrar (as opposed to registration authority).<sup>116</sup>

146. We agree with the formulation in ICANN’s Statement of Registrar Accreditation Policy, subject to the reservation that, until such time as registrars are accredited on a widespread geographical basis, the submission to jurisdiction in the location of the registrar may work to the inconvenience of applicants located in countries distant from accredited registrars. This situation is, however, expected to be transient and short-lived. Moreover, such applicants always have the possibility of seeking a domain name registration in a ccTLD if they are uncomfortable with the requirement of submission to jurisdiction in the location of the registrar.

*147. It is recommended that the domain name applicant be required, in the domain name registration agreement, to submit, without prejudice to other potentially applicable jurisdictions, to the jurisdiction of the courts of:*

*(i) the country of domicile of the domain name applicant; and*

*(ii) the country where the registrar is located.<sup>117</sup>*

#### GUIDING PRINCIPLES FOR THE DESIGN OF THE ADMINISTRATIVE DISPUTE-RESOLUTION POLICY

148. While, as mentioned above, there is general agreement that the right to litigate a domain name dispute should be preserved, court litigation may have several limitations as a means of dealing with such disputes. In particular, because of the multijurisdictional character of many such disputes, court actions in several countries may be necessary in order to obtain an effective solution.<sup>118</sup> In addition, in some countries, the court system suffers from dysfunction, with the consequence that decisions cannot be obtained within a period of time which is commensurate with the speed with which damage can be done by virtue of an infringing domain name. As indicated above, the cost of litigation stands in stark contrast to the cost of obtaining a domain name registration. Finally, there is a possibility that, with a number of different courts in several countries being involved with domain name disputes, inconsistent decisions may be given or inconsistent principles concerning the relationship between domain names and intellectual property rights may emerge from such decisions.

149. In addition to the perceived limitations of litigation, a number of commentators have expressed dissatisfaction with current dispute-resolution policies in the gTLDs.<sup>119</sup> One of their important deficiencies results from their reliance on the ability of the parties to produce certain trademark certificates, without any review of the question of use of the domain name and alleged infringement. These policies are seen as not sufficiently allowing for the

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consideration of all legitimate rights and interests of the parties (which are not necessarily reflected in a trademark certificate), opening the door to unjust results, including for those who are not trademark owners.<sup>120</sup> In light of these difficulties, a substantial majority of commentators favored the adoption of a form of administrative dispute-resolution more suited to the proper review and consideration of the rights and interests of all parties involved in a dispute.<sup>121</sup>

150. Taking into account these perceived limitations of litigation and current dispute-resolution policies, as well as the comments expressed throughout the WIPO Process concerning the desirable features of the administrative procedure, the recommendations that follow in the remaining part of this Chapter concerning the administrative procedure have been based upon the following principles:

(i) The procedure should permit the parties to resolve a dispute expeditiously and at a low cost.

(ii) The procedure should allow all relevant rights and interests of the parties to be considered and ensure procedural fairness for all concerned parties.

(iii) The procedure should be uniform or consistent across all open gTLDs. If different procedures were available in different domains, there might be a danger of some domains, where procedures are weaker or do not lead to binding, enforceable decisions, becoming havens for abusive registrations. Uniform or consistent procedures, however, do not necessarily mean that the dispute-resolution service provider must be the same for all procedures.

(iv) As indicated above, the availability of the administrative procedure should not preclude resort to court litigation by a party.<sup>122</sup> In particular, a party should be free to initiate litigation by filing a claim in a competent national court instead of initiating the administrative procedure, if this is the preferred course of action, and should be able to seek a de novo review of a dispute that has been the subject of the administrative procedure.

(v) While it is desirable that the use of the administrative procedure should lead to the construction of a body of consistent principles that may provide guidance for the future, the determinations of the procedure should not have (and cannot have) the effect of binding precedent in national courts. It would be up to the courts of each country to determine what weight they wish to attach to determinations made under the procedure.

(vi) In order to ensure the speedy resolution of disputes, the remedies available in the procedure should be restricted to the status of the domain name registration itself and should not, thus, include monetary damages or rulings concerning the validity of trademarks.<sup>123</sup>

(vii) The determination resulting from the procedure should, upon notification, be directly enforced by the relevant registration authority by making, if necessary, appropriate changes to the domain name database.

(viii) Registration authorities should not be involved in the administration of the procedure,<sup>124</sup> other than by implementing determinations made in it (and, perhaps, by supplying any requested factual information about the domain name registration to the dispute-resolution neutral or tribunal).<sup>125</sup>

(ix) A decision by a court of competent jurisdiction, in a country that is party to the Paris Convention for the Protection of Industrial Property<sup>126</sup> or bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement),<sup>127</sup> which is at variance with a determination resulting from the procedure should, subject to the application of normal principles for the enforcement of judgements, prevail over the administrative determination.

151. Based on these principles, the remaining part of this Chapter recommends that:

(i) A uniform administrative procedure for the cancellation of bad faith domain names registered in deliberate abuse of trademark rights should be available in all open gTLDs.

(ii) Arbitration and mediation, each of which is described and discussed, have a role and should be considered as valuable procedures for the resolution of domain name disputes. However, for different reasons in respect of each procedure, it is recommended that neither should be a mandatory part of a dispute-resolution policy for registration authorities. Rather, they should be available for parties to choose on an optional basis, where they consider the circumstances of a dispute appropriate for the use of such procedures.

#### MANDATORY ADMINISTRATIVE PROCEDURE CONCERNING ABUSIVE REGISTRATIONS

152. The present section recommends that a mandatory administrative procedure be adopted uniformly across open gTLDs. It discusses the means of implementing the procedure, its desirable features and its administration.

153. The administrative procedure proposed is an adjudicatory procedure where the neutral decision-maker appointed for the dispute would have the power to impose a binding decision on the parties. The scope of the procedure would be limited to cases of abusive registrations (or cybersquatting), as defined below, and would not be available for disputes between parties with competing rights acting in good faith. The procedure would allow for a neutral venue in the context of disputes that are often international in nature, and would be conducted in accordance with procedural rules laws which take account of the various legal procedural traditions around the world. The procedure would not exclude the jurisdiction of the courts. A party would be able to pursue a claim in a national court, or seek the ruling of a national court in respect of matters that had already been submitted to the administrative dispute-resolution procedure. It is to be hoped, however, that with experience and time, confidence will be built up in the credibility and consistency of decisions made under the

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procedure, so that the parties would resort less and less to litigation. The decisions taken under the procedure would be made available publicly.

#### Uniform Availability of the Procedure in the Open gTLDs

154. In the WIPO Interim Report, it was recommended that the administrative dispute-resolution procedure should be available uniformly in all open TLDs. Subject to reservations concerning the scope of the procedure, which have been discussed above and are further dealt with below, this recommendation received wide support.<sup>128</sup>

155. Some commentators sought clarification as to the meaning of “uniform.” We mean the following in this respect:

(i) The procedure should be available in all open gTLDs. The possible adoption of the procedure in open ccTLDs is discussed in Annex VIII. At least in the open gTLDs, the non-availability of the procedure in any gTLD would lead to uneven protection for intellectual property rights and could cause any gTLD in which the procedure was not available to become a haven for predatory practices in respect of intellectual property rights.

(ii) The scope of the procedure and the procedural rules pursuant to which it is conducted should be the same in all open gTLDs. Again, differences in the scope of the procedure in the open gTLDs could lead to uneven protection for intellectual property rights.

156. We discuss below the means of implementing the procedure uniformly in the open gTLDs, where it is recommended that a uniform policy on administrative dispute-resolution be adopted by ICANN and that domain name applicants be required to submit to the administrative procedure under that policy. ICANN’s Statement of Registrar Accreditation Policy envisages the possibility of requiring domain name holders to submit to such a policy.<sup>129</sup>

*157. It is recommended that a policy to make available a uniform administrative dispute-resolution procedure be adopted for all open gTLDs.*

#### Mandatory Nature of the Procedure

158. In the WIPO Interim Report, it was recommended that the administrative procedure be mandatory in the sense that each domain name applicant would, in the domain name registration agreement, be required to submit to the procedure if a claim was initiated against it by a third party. If submission to the procedure were to be optional for applicants, it was considered that the adoption of the procedure would not result in significant improvement on the present situation, since those persons who register domain names in bad faith in abuse of the intellectual property rights of others would be unlikely to choose to submit to a procedure that was cheaper and faster than litigation, but would instead prefer to leave the legitimate

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owners of intellectual property rights with the possibility only of initiating court litigation, with its attendant costs and delays.

159. Most commentators supported the mandatory nature of the procedure,<sup>130</sup> although a number expressed a preference for a voluntary procedure. Furthermore, as signaled in the Interim Report, concerns were raised that mandatory submission to a comprehensive procedure covering all intellectual property disputes relating to a domain name registration might raise questions in certain jurisdictions regarding validity and enforceability, particularly in light of consumer protection laws, due process considerations and the fact that such a submission purports to create rights for a party who is not privy to the domain name registration agreement.

160. It is considered that concerns about the mandatory nature of the procedure can be greatly alleviated, if not removed entirely, by confining the scope of the procedure to abusive registrations or cybersquatting, as proposed in the next section of this Chapter. Since the procedure would apply only to egregious examples of deliberate violation of well-established rights, the danger of innocent domain name applicants acting in good faith being exposed to the expenditure of human and financial resources through being required to participate in the procedure is removed.

161. Since the procedure will apply only to abusive registrations or “cybersquatting,” we consider that it is essential that the procedure be mandatory. It is highly unlikely that those responsible for such activities would ever submit to the procedure on a voluntary basis.

*162. It is recommended that the domain registration agreement require the applicant to submit to the administrative dispute-resolution procedure whose scope is defined in the next section.*

### The Scope of the Administrative Procedure

163. The WIPO Interim Report discussed in detail the respective advantages and disadvantages of, on the one hand, applying the administrative procedure to any intellectual property dispute arising out of a domain name registration and, on the other hand, limiting the application of the procedure to clear cases of abusive registrations of domain names or “cybersquatting.” The description of those advantages and disadvantages will not be repeated here.

164. The views of commentators on the desirable scope of the administrative procedure were divided. Certain commentators favored the broad approach of opening the procedure to any intellectual property dispute with respect to a domain name registration.<sup>131</sup> In general, they favored the development of a body of administrative law that would, through the procedure, provide an effective international enforcement mechanism for intellectual property rights as an alternative to expensive and time-consuming multijurisdictional litigation.

165. The preponderance of views, however, was in favor of restricting the scope of the procedure, at least initially, in order to deal first with the most offensive forms of predatory practices and to establish the procedure on a sound footing. Two limitations on the scope of the procedure were, as indicated above, favored by these commentators.

166. The first limitation would confine the availability of the procedure to cases of deliberate, bad faith abusive registrations. The definition of such abusive registrations is discussed in the next section.

167. The second limitation would define abusive registration by reference only to trademarks and service marks. Thus, registrations that violate trade names, geographical indications or personality rights would not be considered to fall within the definition of abusive registration for the purposes of the administrative procedure. Those in favor of this form of limitation pointed out that the violation of trademarks (and service marks) was the most common form of abuse and that the law with respect to trade names, geographical indications and personality rights is less evenly harmonized throughout the world, although international norms do exist requiring the protection of trade names<sup>132</sup> and geographical indications.<sup>133</sup>

168. We are persuaded by the wisdom of proceeding firmly but cautiously and of tackling, at the first stage, problems which all agree require a solution. It was a striking fact that in all the 17 consultation meetings held throughout the world in the course of the WIPO Process, all participants agreed that “cybersquatting” was wrong. It is in the interests of all, including the efficiency of economic relations, the avoidance of consumer confusion, the protection of consumers against fraud, the credibility of the domain name system and the protection of intellectual property rights, that the practice of deliberate abusive registrations of domain names be suppressed. There is evidence that this practice extends to the abuse of intellectual property rights other than trademarks and service marks,<sup>134</sup> but we consider that it is premature to extend the notion of abusive registration beyond the violation of trademarks and service marks at this stage. After experience has been gained with the operation of the administrative procedure and time has allowed for an assessment of its efficacy and of the problems, if any, which remain outstanding, the question of extending the notion of abusive registration to other intellectual property rights can always be re-visited.

*169. It is recommended that the scope of the administrative procedure be limited to the abusive registration of domain names, as defined in the next section.*

#### The Definition of Abusive Registration (“Cybersquatting”)

170. Before considering in the next paragraph the definition of abusive registration that it is recommended be applied in the administrative procedure, some explanation should be given of the suggested terminology. In popular terms, “cybersquatting” is the term most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of

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rights in trademarks and service marks. However, precisely because of its popular currency, the term has different meanings to different people. Some people, for example, include “warehousing,” or the practice of registering a collection of domain names corresponding to trademarks with the intention of selling the registrations to the owners of the trademarks, within the notion of cybersquatting, while others distinguish between the two terms. Similarly, some consider “cyberpiracy” to be interchangeable with “cybersquatting,” whereas we consider that the former term relates to violation of copyright in the content of websites, rather than to abusive domain name registrations. Because of the elastic meaning of cybersquatting in popular terminology, we have therefore chosen to use a different term—abusive registration of a domain name—in order to attribute to it a more precise meaning.

171. The definition of abusive registration that we recommend be applied in the administrative procedure is as follows:

(1) The registration of a domain name shall be considered to be abusive when all of the following conditions are met:

(i) the domain name is identical or misleadingly similar to a trade or service mark in which the complainant has rights; and

(ii) the holder of the domain name has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is used in bad faith.

(2) For the purposes of paragraph (1)(iii), the following, in particular, shall be evidence of the registration and use of a domain name in bad faith:

(a) an offer to sell, rent or otherwise transfer the domain name to the owner of the trade or service mark, or to a competitor of the owner of the trade or service mark, for valuable consideration; or

(b) an attempt to attract, for financial gain, Internet users to the domain name holder’s website or other on-line location, by creating confusion with the trade or service mark of the complainant; or

(c) the registration of the domain name in order to prevent the owner of the trade or service mark from reflecting the mark in a corresponding domain name, provided that a pattern of such conduct has been established on the part of the domain name holder; or

(d) the registration of the domain name in order to disrupt the business of a competitor.

172. The cumulative conditions of the first paragraph of the definition make it clear that the behavior of innocent or good faith domain name registrants is not to be considered abusive. For example, a small business that had registered a domain name could show,

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through business plans, correspondence, reports, or other forms of evidence, that it had a bona fide intention to use the name in good faith. Domain name registrations that are justified by legitimate free speech rights or by legitimate non-commercial considerations would likewise not be considered to be abusive. And, good faith disputes between competing right holders or other competing legitimate interests over whether two names were misleadingly similar would not fall within the scope of the procedure.

173. We consider that the definition given in the preceding paragraph draws on solid foundations in international and national law and in case law.<sup>135</sup>

174. Insofar as international law is concerned, it is noted that both the Paris Convention for the Protection of Industrial Property, to which 154 States are party, and the TRIPS Agreement, by which 134 States are bound, establish obligations for the protection of trademarks. In addition, Article 10*bis* of the Paris Convention establishes an obligation to provide protection against unfair competition. It provides as follows:

“(1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

“(2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

“(3) The following in particular shall be prohibited:

1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.”

Article 10*ter*(1) of the Paris Convention requires contracting States to assure nationals of other contracting States “appropriate legal remedies effectively to repress all the acts referred to in Articles 9, 10, and 10*bis*.”

175. The case law which has developed in the application of national laws for the protection of trademarks and service marks and for protection against unfair competition also supports the prohibition of the predatory and parasitical practices that would be caught under the definition of abusive registration given above.

176. In applying the definition of abusive registration given above in the administrative procedure, the panel of decision-makers appointed in the procedure shall, to the extent necessary, make reference to the law or rules of law that it determines to be applicable in view

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of the circumstances of the case. Thus, for example, if the parties to the procedure were resident in one country, the domain name was registered through a registrar in that country and the evidence of the bad faith registration and use of the domain name related to activity in the same country, it would be appropriate for the decision-maker to refer to the law of the country concerned in applying the definition.

*177. It is recommended that:*

*(i) the merits of a complaint under the administrative procedure be decided in accordance with the definition of abusive registration of a domain name set out in paragraph 171, above; and*

*(ii) in applying the definition of abusive registration, the panel of decision-makers shall, to the extent necessary, apply the law or rules of law that it determines to be appropriate in view of all the circumstances of the case.*

### Implementation of the Procedure

178. It is suggested that the administrative procedure be implemented through the adoption by ICANN of a Policy on Dispute Resolution for Abusive Domain Name Registrations. The suggested Policy is set out in Annex IV.

179. At the level of individual domain name holders, as mentioned above, the Policy would be implemented through the domain name registration agreement, which would require the domain name holder to submit to the administrative procedure if a complaint for abusive registration is brought against the holder by a third party.

### Procedural Rules

180. The procedure would be conducted in accordance with procedural rules, which are set out in Annex V. The aim of such rules is twofold: (i) to ensure due process or fairness in the conduct in the procedure so that each party has an equal and adequate opportunity to present its case; and (ii) to inform the parties how the procedure will be conducted, what they will be required to do, when they will be required to do it and what the powers of the decision-maker are. Thus, procedural rules will deal typically with the documentation that the parties are expected to produce, the time limits within which they must produce it, who the decision-maker will be and how he or she will be appointed, what remedies may be granted by the decision-maker and who will supervise the administration of the procedures.

181. The procedural rules are designed to be international, in the sense that they take account of differing legal procedural traditions; simple to follow, since domain name applicants will be required to submit to them; and uniformly applicable, regardless of the dispute-resolution service provider that administers the procedure. The main features of the rules, which take into account the comments made on the discussion of those features in the WIPO Interim Report, are described in the ensuing paragraphs.

#### Remedies Available under the Procedure

182. It has been apparent throughout the WIPO Process that there is a general desire to have a simple and efficient procedure. Moreover, the mandatory requirement that applicants submit to the procedure demands that domain name applicants should be able to understand easily the potential consequences of their submission to the procedure.

183. For these reasons, it seems appropriate that the remedies that could be awarded by the neutral decision-maker be limited to the status of the domain name registration itself and actions in respect of that registration.<sup>136</sup> In other words, monetary damages to compensate for any loss or injury incurred by the owner of an intellectual property as a result of a domain name registration should not be available under the procedure. Such a restrictive approach to remedies would underline the nature of the procedure as an administrative one, directed at the efficient administration of the DNS, which is intended to be complementary to other existing mechanisms, whether arbitration or court procedures. The approach would also accommodate the preferences of a number of commentators for an ADR procedure that was compatible with available judicial remedies.

184. An approach in which remedies were limited to that status of the domain name registration would mean that the remedies available under the procedure would be the cancellation of the domain name registration and its transfer to the third party complainant. Broad support was expressed in favor of these remedies in the comments received by WIPO.<sup>137</sup>

185. The Interim Report requested comments on whether the decision-makers in the procedure should have the power to order other measures concerning the status of the domain name registration that might remove the grounds of the dispute, such as the modification of the domain name registration, re-assignment of the domain name to a different TLD, or the maintenance of a gateway or portal page or other indexing mechanism. Although several commentators were in favor of vesting power in the decision-makers to impose such remedies,<sup>138</sup> most commentators were opposed to such power, considering that such measures might affect the broader business interests and strategies of the parties involved in the dispute and, thus, require careful consideration.<sup>139</sup> While decision-makers could always recommend such alternative measures to the parties involved, they should be implemented only pursuant to voluntary agreement.

186. The question of the initial payment of the costs of the proceedings is discussed below. The ultimate responsibility for the payment of costs is an important control mechanism in

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relation to the procedure, particularly since the procedure would be limited to cases of abusive registration. If the procedure were available at no cost, frivolous and groundless actions, or actions designed to harass a party, would be encouraged. Similarly, if responsibility for the payment of costs always rested with the complaining party, there would be no disincentive for a bad faith applicant to proceed to try its luck with an abusive registration of a domain name. It is considered, therefore, that the decision-maker should have the discretion, in the decision, to allocate responsibility for payment of the costs of the procedure (which are detailed below) to the winning party, after consideration of all the circumstances of the case. (This discretion would also allow the decision-maker to allocate the costs among the parties in accordance with some other appropriate apportionment.)<sup>140</sup>

187. A number of commentators expressed anxiety about the power of the decision-maker to allocate costs to the winning party. Since the scope of the procedure is now limited to cases of abusive registration, we expect that the power to allocate costs will be broadly supported.

*188. It is recommended that the remedies available under the administrative procedure be limited to:*

*(i) the cancellation of the domain name registration;*

*(ii) the transfer of the domain name registration to the third party complainant;  
and*

*(iii) the allocation of the responsibility for payment of the costs of the proceedings.*

### Expedited Procedure for Suspension of a Domain Name

189. A number of commentators were in favor of the possibility of an expedited application under the administrative procedure, whereby a complainant could obtain a suspension of a domain name registration on short notice pending a final decision on the merits. We consider that the limitation of the scope of the administrative procedure to cases of abusive registration makes this possibility unnecessary. Instead, it is recommended below that all cases should be processed in an expedited manner within a short time frame. In addition, in keeping with the desires to commence the procedure on well-known and well-tried grounds and to have a simple, easily understood procedure, we think that it would be preferable not to add an additional sort of procedure, which might be confusing to domain name holders, at the outset.

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### Consolidation of Different Claims

190. A number of commentators indicated that one of the difficulties in dealing with domain name disputes was the sheer number of instances in which their rights may be allegedly violated.<sup>141</sup> For example, the trademark “INTEL” might be the subject of an allegedly infringing registration of the domain name “INTLE” or “INTTEL,” or any number of other minor variations producing the same phonetic result. The consequence is that, in order to protect the mark effectively, the owner is obliged to undertake a multiplicity of actions.<sup>142</sup>

191. One legal method for dealing with a multiplicity of similar actions is to permit the consolidation of such actions into one procedure. The question arises, however, as to the extent to which such consolidation should be permitted. Here, several points of reference could be considered in determining the scope of possible consolidation:

(i) the consolidation of all actions brought by the same complainant in respect of domain name registrations held by the same holder in the same TLD that are alleged to infringe the same or different trademark rights;

(ii) the consolidation of all actions brought by the same complainant in respect of domain name registrations held by the same holder in different TLDs that are alleged to infringe the same or different trademark rights; and

(iii) the consolidation of all actions brought by the same complainant in respect of domain name registrations held by different holders in the same or different TLDs that are alleged to infringe the same or different trademark rights.

192. The WIPO Interim Report recommended that the procedural rules provide for the possibility of consolidating, into one procedure, all claims by the same (or affiliated) party in respect of the same domain name holder where the claims relate to the alleged infringement of the same or different intellectual property rights through domain name registrations in any TLD. This recommendation received widespread support, particularly as a means of dealing efficiently with abusive registrations of domain names. Many commentators considered also that consolidation should be permitted in respect of claims against different domain name holders, provided that the complainant was the same party.<sup>143</sup> They drew attention to the fact that abusive registrations often target one mark or group of marks and that the registrations can be placed in the name of different individuals or companies which might be related in business dealings. We consider that this form of consolidation is difficult to achieve legally, since each respondent should legally have a full opportunity to distinguish its own case from that of legally separate persons. However, a de facto consolidation can be achieved by organizing for panels to determine cases in batches (for example, once a week or once a month, as the demand might dictate). Such a method of organizing panels would also have distinct cost advantages and is discussed below.

*193. It is recommended that the procedural rules for the administrative dispute-resolution procedure provide for the possibility of*

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*consolidating, into one procedure, all claims by the same party in respect of the same domain name holder where the claims relate to the alleged infringement of the same or different trademark or service mark rights through abusive domain name registrations in any open gTLD.*

### Relationship with National Courts

194. The relationship between the administrative procedure and the jurisdiction of the courts has been discussed in the previous sections of this Report. The recommendations made, in this regard, in the Interim Report were widely supported.

195. Several commentators sought clarification of the effect on the procedure if litigation were commenced after the initiation of the administrative procedure. We consider that the best approach in these circumstances is to leave the panel the discretion to decide, in light of the circumstances, whether to suspend the administrative procedure or to continue. The panel will be best placed to assess the impact of the initiation of the litigation. It may be, for example, that the litigation is commenced in a distant jurisdiction, with an arguably dubious nexus to the circumstances of the case, as a delaying tactic.

*196. It is recommended that:*

*(i) The availability of the administrative procedure should not preclude a complainant from filing a claim in the relevant national court instead of initiating the administrative procedure, if this is deemed to be a preferred course of action.*

*(ii) The determinations flowing from the administrative procedure would not, as such, have weight of binding precedent under national judicial systems.*

*(iii) The parties to a dispute should have the ability to go to the national courts to initiate litigation, even after the completion of the administrative procedure.*

*(iv) If a party initiates court litigation during the administrative procedure and the administrative claim is not withdrawn, the administrative panel shall have the discretion*

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*to consider whether to suspend the administrative procedure or to proceed to a determination.*

*(v) A decision by a court of competent jurisdiction, that is contrary to a determination resulting from the administrative procedure should, subject to the application of principles for the enforcement of judgments, override the administrative determination.*

### Time Limitation for Bringing Claims

197. The WIPO Interim Report recommended that a time bar to the bringing of claims in respect of domain names (for example, a bar on claims where the domain name registration has been unchallenged for a designated period of years) should not be introduced. It was considered that such a measure would not take into account that the underlying use of a domain name may evolve over time (with the consequence that the use of a domain name may become infringing through, for example, the offering for sale of goods of a different sort to those previously offered on the website); that any related intellectual property rights held by the domain name holder may lapse; and that a time bar would in any event be undesirable in cases of bad faith.

198. The comments received on this question by WIPO were addressed to an administrative procedure with comprehensive jurisdiction over all intellectual property disputes relating to domain name registrations. Since the scope of the procedure is now limited to cases of bad faith, abusive registrations, we consider that the interim recommendation should apply with more force. It is usual for time bars in legal proceedings not to be applicable to cases of bad faith.

*199. It is not recommended that claims under the administrative procedure be subject to a time limitation.*

### Length of Proceedings

200. Commentators universally viewed it as important that the administrative procedure be capable of providing determinations with speed and efficiency.<sup>144</sup> The nature of the Internet demands such characteristics of dispute-resolution procedures. For example, an abusive registration of a domain name may block another with the legitimate right to presence on the Internet under that domain name in respect of a product that is about to be launched or an international event that is about to occur.<sup>145</sup> Similarly, the damage that is being done by an

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abusive registration of a domain name may be extensive by virtue of global access to which the registration gives rise, so that it becomes urgent to limit that damage.

201. It is imperative, therefore, that the procedural rules for the administrative procedure be designed so as to ensure that decisions are taken in a timely manner. In the WIPO Interim Report it was recommended that final determinations on claims should be made within two months of the initiation of the procedure. Many commentators agreed with this time frame,<sup>146</sup> others considered that it was too long,<sup>147</sup> and yet others cautioned that all parties should be given adequate notice and time for preparation.<sup>148</sup>

202. We consider that the organization of panels so that cases can be determined in batches will greatly facilitate the efficiency with which determinations can be made. Such a method of organization would overcome delays produced by decision-makers in different locations considering cases at a differential rate and would focus panels on the task. On this basis, we recommend the indicative time limit for determinations in the next paragraph as a suggested maximum.

*203. It is recommended that the procedural rules provide for final determinations on claims to be made within forty-five days of the initiation of the procedure.*

#### Appointment of Decision-Maker

204. The quality of decisions emerging from the administrative procedure will depend in large part on the quality of the decision-makers appointed for cases. In this respect, the panel of neutral decision-makers maintained by dispute-resolution service providers will be an important reference point for the selection of those service providers that may be authorized to administer the procedure. The panel should include persons having appropriate experience in domain names, intellectual property rights (including all the issues that operate to place limitations on the scope of such rights), litigation and alternative dispute-resolution.

205. The Interim Report raised the question whether cases should be handled by a single decision-maker, or a panel of three persons. Varying views were expressed on the question, as is usual on this question, reflecting broadly concerns, on the one hand, for efficiency and speed, which favor a single decision-maker, and, on the other hand, for balance and breadth of experience, which favor a three-person panel.

206. Since the scope of the procedure is limited to cases of abusive registration, we consider a three-person panel to be appropriate, especially since the organization of panels to make determinations on batches of cases will permit cost savings and thus limit the extra cost that a multiple-person panel might otherwise cause.

*207. It is recommended that a panel of three decision-makers be appointed to conduct the procedure and make the determination.*

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208. The WIPO Interim Report recommended that the procedural rules should allow for party participation in the appointment of decision-makers, reflecting common practice in international arbitration proceedings. That recommendation was made, however, with a view to an administrative procedure with comprehensive jurisdiction for intellectual property disputes between parties acting in good faith. Since the scope of the procedure is limited to cases of bad faith, abusive registrations, we consider that party participation in the selection of decision-makers is inappropriate. In order to give some assurance to parties as to the quality of decision-makers, however, we encourage dispute-resolution service providers to publish the names and details of the qualifications and experience of the decision-makers who may be appointed to panels.

*209. It is recommended that the procedural rules for the administrative procedure provide for the appointment of the panel of decision-makers by the institution administering the procedure (dispute-resolution service provider). Such administering institutions are encouraged to publish on the Internet the list of persons who may be appointed to panels and details of their qualifications and experience.*

#### The Use of On-Line Facilities to Conduct the Procedure

210. Most commentators expressed interest in or enthusiasm for the use on-line facilities to conduct the administrative procedure.<sup>149</sup> Other commentators expressed hesitation about this possibility,<sup>150</sup> while a number underlined the need for adequate security and authentication features.<sup>151</sup>

211. The use of on-line facilities in the context of domain name disputes seems particularly appropriate for the following reasons:

(i) The Internet has created new opportunities for parties to communicate and to engage in transactions at great distance. At the same time, the potential for disputes arising out of such communications or transactions between parties that are physically remote from each other has been increased. On-line facilities can eliminate the barrier of distance.

(ii) Speed is equal to distance divided by time. The elimination of the barrier of distance by the Internet and the use of the Internet as the medium for resolving disputes will increase the speed with which the dispute-resolution process can be conducted.

(iii) Many domain name disputes may be capable of being resolved by reference to documents only, that is, without the necessity of hearing witnesses or receiving oral arguments in a physical hearing.

(iv) Since the dispute concerns domain names, assumptions can be made about the parties to the dispute having the requisite technical facilities to participate in the on-line resolution of the dispute.

(v) Some parties involved in domain name disputes may not have had significant exposure to legal proceedings and their attendant formalities. Enabling parties to initiate a claim (or to respond thereto) by accessing a website and completing electronic forms which guide them through the various stages of the process may be expected to reduce entry barriers to the administrative dispute-resolution procedure and make that procedure more accessible.

212. Recognizing that the use of on-line facilities causes some hesitancy, we would propose that secure on-line facilities be used to allow parties to file all pleadings in the procedure.

213. Several dispute-resolution service providers are working on the development of on-line systems for administering dispute resolution, as well as courts in a number of countries. The WIPO Arbitration and Mediation Center has developed such an on-line system, which is Internet-based. Digital communication tools have been designed to allow the parties to file requests by completing electronic forms and to exchange information on-line through secure channels. The parties and the decision-maker are able to communicate electronically also through audio and video facilities, where these are available to them. The system also includes such functions as automatic notifications, an electronic fee system, secure facilities for the on-line exchange and reading of documents, and back-end databases to support the logging and archiving of submissions.

*214. It is recommended that provision be made in the procedural rules for the secure electronic filing of all pleadings in cases.*

#### Enforcement and Publication of Determinations

215. Commentators in favor of an administrative policy for the resolution of domain name disputes universally supported the need for the determinations of the dispute-resolution procedure to be directly enforced.<sup>152</sup> The possibility of such direct enforcement exists through the registration authorities and, indeed, constitutes one of the major reasons why an administrative procedure could be made workable and efficient in respect of domain name disputes.

216. In order to implement the direct enforcement of determinations by registration authorities, it would be necessary to ensure that registration authorities agree to do so. ICANN's Statement of Registrar Accreditation Policy provides for adherence by registrars to any policy or procedure for dispute resolution established by ICANN.<sup>153</sup> In addition, it would

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be desirable to make explicit in the domain name registration agreement that the domain name applicant agrees, in submitting to the administrative procedure, that the procedure may determine the applicant's rights with respect to the registration of the domain name and that any determination made in the procedure may be directly enforced by the relevant registration authorities.

217. Direct enforcement of determinations by registration authorities would, however, be subject to a contrary order from a court with jurisdiction over the registration authority. In this connection, several commentators were of the opinion that there should be a minimum period of time between the issuance of the administrative determination and its implementation by the registration authorities, in order to provide a losing party with the opportunity to file suit in a national court to suspend implementation of the determination and ultimately to obtain a reversal. A period of seven days is proposed for this purpose. If, however, no court order is obtained during this time, the decision would be communicated to the registration authority to take immediate effect and continue to have such effect, unless and until a contrary order is given to the registration authority by a court of competent jurisdiction.

218. Several commentators also expressed concern about the threat of litigation being brought against the registration authorities that would implement any changes to the status of a domain name.<sup>154</sup> To minimize this concern, domain name registration agreements should make clear, in addition to the terms noted in the paragraphs above, that the applicant agrees that the relevant registration authorities (e.g., the registrar, registry administrator and registry) shall have no liability for acting in accordance with their enforcement responsibilities in relation to the administrative procedure.

219. Several commentators were of the view that efforts should be made to promote the development of a body of persuasive precedents concerning domain name disputes through the administrative dispute-resolution procedure. It was considered that such a body of precedents would enhance the predictability of the dispute-resolution system and contribute to the development of a coherent framework for domain names.<sup>155</sup> To this end, it would be desirable that all determinations resulting from the administrative dispute-resolution process be made publicly available by being posted on a website.

220. *It is recommended that:*

(i) *registration authorities agree to implement determinations made under the administrative-dispute resolution policy, such implementation taking effect seven days after the issuance of the administrative determination;*

(ii) *the domain name registration agreement contain a provision that, in submitting to the administrative*

*dispute-resolution procedure, a domain name applicant agrees that the procedure may determine the applicant's rights with respect to the registration of the domain name and that any determination made in the procedure may be directly enforced by the relevant registration authorities;*

*(iii) the domain name registration agreement contain a provision that the applicant agree that the registration authorities shall have no liability for acting in accordance with their enforcement responsibilities in relation to the administrative procedure; and*

*(iv) the determinations made under the administrative dispute-resolution procedure be published on a website.*

### Appeals

221. The Interim Report requested further comments on whether a centralized appeal process from determinations in the administrative process should be established. While a number of commentators were in favor of incorporating appeal procedures in the administrative mechanism, the majority were not.<sup>156</sup> As the administrative procedure in any event would allow the parties to resort to the national courts after the issuance of a determination, an appeal process would be redundant and unnecessarily complicated for a procedure that is meant to be as streamlined and efficient as possible.

*222. It is not recommended that a centralized appeal process from determinations in the administrative procedure be established.*

### Costs

223. The administrative procedure will entail the following elements: (i) an administration fee to be paid to the institution administering the process (the dispute-resolution service provider); (ii) the fee to be paid to the panel of decision-makers; and (iii) the expenses that may be incurred in relation to the proceedings (e.g., telecommunication charges, etc.).

224. The fee for the panel will be the most significant cost component. It is imperative for the quality of the determinations resulting from the process that the decision-makers have the required degree of expertise and experience. Furthermore, it is important to engage the decision-maker's professional responsibility, as he or she will be taking important decisions

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affecting the rights and interests of the parties. The organization of meetings for processing batches of cases, however, will enable these fees to be spread over a number of cases.

225. It is suggested that the administration and decision-maker's fees should be set freely by the dispute-resolution service providers that may be mandated to administer the procedure. Allowing the institutions to set their own rates should stimulate competition and ultimately benefit the public.

226. In general, in alternative dispute-resolution proceedings, parties are normally expected to advance an equal share of the anticipated costs of the proceedings. This practice may not be the most appropriate approach, however, for the administrative procedure. Under this procedure, the domain name holder would submit to the procedure through a standard clause in the domain name registration agreement. It may be difficult in these circumstances to require the holder to advance, at the outset of the procedure, what may be viewed as a substantial sum of money. It is, therefore, proposed that the third party complainant should be required to pay the initial administration fee, as well as the full advance payment of the fees allocated for the panel and any anticipated expenses. However, as recommended above, the panel would have discretion, in the determination, to decide on the allocation of these costs of the procedure among the parties in light of all the circumstances of the dispute and the result. Such costs should not, however, include any attorney's fees that the parties may incur in participating in the procedure.

227. *It is recommended that:*

*(i) dispute-resolution service providers should be free to determine the level of their administration fee and the fee payable to the panel; and*

*(ii) the third party complainant should be required to pay, at the commencement of the procedure, the administrative fee and an advance on the other costs of the procedure, with the decision-maker having the power to decide, in the determination, on the allocation of ultimate responsibility for that fee and those costs among the parties.*

### Dispute-Resolution Service Providers

228. It will be necessary to designate, in the clause providing for submission to the administrative dispute-resolution procedure in the domain name registration agreement, the administering authority or dispute-resolution service provider. It is suggested that a list of several well known and well respected institutions be designated in the domain name registration agreement. The institutions to feature on such a list must be chosen on the basis

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of: (i) the international character of the institution; (ii) the quality of the list of neutrals or decision-makers maintained by the institution and, in particular, whether it contains persons with appropriate experience in respect of domain names, intellectual property and technical matters concerning the Internet; (iii) the likelihood that the institution will continue to be available to offer its services; and (iv) the facilities that the institution provides for the on-line administration of disputes.

## THE AVAILABILITY OF VOLUNTARY ARBITRATION

229. Arbitration is a private adjudicatory procedure, modeled on court litigation, in which the arbitrator has the power to impose a binding decision on the parties in respect of the dispute submitted to arbitration. The procedure is conducted in accordance with procedural rules established by the dispute-resolution service provider (the arbitration center) and under the supervisory guidance of the courts in respect of the arbitration procedure and its relationship to the law.

230. Arbitration takes place within a well-established international legal framework. Under that framework, the law recognizes the choice of parties to submit a dispute to arbitration as excluding the jurisdiction of the court in respect of the dispute. The arbitral award (the decision of the arbitrator) is not just binding, but also final, in the sense that the courts will not entertain an appeal on the merits of the dispute. Arbitral awards are enforceable relatively easily internationally by virtue of the New York Convention.

231. In arbitration, the parties may choose the applicable law pursuant to which the merits of the dispute will be decided. Their freedom of choice may be limited by certain mandatory laws that cannot be excluded (for example, parties cannot exclude the application of criminal law that might be applicable). If the parties fail themselves to choose the applicable law, the arbitrator will designate and apply the appropriate applicable law. It is possible, even common, for several applicable laws to be applied depending on the circumstances of the dispute (for example, where several different national trademarks are in question, questions relating to those trademarks will be assessed in accordance with the respective national laws under which the trademarks have been registered).

232. Arbitration has a number of distinct advantages in the context of domain name disputes. It provides a single procedure for resolving multijurisdictional disputes (as opposed to recourse to several different national court actions). It is a procedure that has been developed to be international, taking into account the various legal traditions around the world. It is also a procedure which offers the parties the choice of a neutral venue, language and law, so that neither is necessarily favored by familiarity with its own local laws, institutions and customs, as may be the case in national litigation involving a foreigner. Arbitration offers the parties more autonomy in the choice of procedures and laws, as well as in their choice of the arbitrator or decision-maker, than litigation. It also offers a comprehensive solution, in that the arbitrator is typically empowered to grant the interim and final remedies that are available under the law.

233. In WIPO RFC-2, comments were requested on the desirability of making arbitration a mandatory feature of a dispute-resolution policy in the sense that domain name applicants would be required, in the domain name registration agreement, to submit to arbitration in respect of any disputes concerning the domain name if called upon to do so by a third party complainant. Commentators expressed three reservations concerning arbitration as a mandatory procedure.<sup>157</sup> First, the effect of arbitration in excluding resort to the courts was, as mentioned above, not generally favored. Secondly, the finality of the arbitration award caused hesitation. And thirdly, the normal feature of arbitration as a confidential procedure between the parties to a dispute in which the award is not published, unless the parties agree to such publication, was considered disadvantageous in the present context. It was felt that consistency in decision-making and the development of appropriate principles for the resolution of domain name disputes was of great importance and militated in favor of the publication of ADR decisions wherever possible.

234. The WIPO Interim Report thus recommended that submission to arbitration by a domain name applicant should not be mandatory. However, in view of the advantages of arbitration, it recommended that a provision should be included in the domain name registration agreement allowing applicants to submit, on an optional basis, to arbitration in respect of any dispute in relation to the domain name. Most commentators supported this recommendation.

*235. It is recommended that the domain name registration agreement contain a provision for a domain name applicant to submit, on an optional basis, to arbitration in respect of any dispute in relation to the domain name.*

236. It is necessary, in a clause submitting to arbitration, to designate the procedural rules in accordance with which the arbitration will be conducted. The designation of such rules also determines who the administering authority or dispute-resolution service provider will be. In this respect, commentators expressed the view that, since one of the advantages of arbitration is the choice that it allows to parties, there should not be one exclusive dispute-resolution service provider. On the other hand, it is to be noted that there are well over one hundred arbitration centers around the world and, for the sake of providing some guidance to applicants, as well as for consistency in decision-making, it might be desirable to limit the available range of arbitration centers that may be designated in the domain name registration agreement to a selected list of dispute-resolution service providers. The choice of the institutions that would feature on that list is for a party other than WIPO to decide, since the WIPO Arbitration and Mediation Center acts as a dispute-resolution service provider. The choice could be made by registrars (which would allow local languages to be used) or by registrars upon advice from ICANN. It is suggested that the choice be made taking into account: (i) the international character of the arbitration center, that is, whether it offers services for international or purely local disputes; (ii) the rules of the arbitration center; (iii) the quality of the list of neutrals or arbitrators maintained by the arbitration center and, in particular, whether it contains persons with appropriate experience in respect of domain

names and intellectual property; and (iv) the continuity of the arbitration center, in the sense that the center must be in existence at a later date when called upon to administer a dispute.

237. Many domain name disputes may be capable of being resolved by reference only to documents; that is, it may often not be necessary to hear witnesses or to receive oral arguments in a physical hearing. This feature, coupled with the fact that domain name disputes arise out of the use of the Internet, makes it appropriate to consider the possibility of conducting an arbitration procedure on-line. The features of an on-line system for dispute-resolution, and its advantages, are discussed above, where a positive recommendation is made for the consideration of the use of on-line facilities for the administrative procedure for cancellation of abusive registrations.

238. The same considerations concerning the possibilities of conducting an on-line procedure apply to arbitration. In particular, given that parties to a dispute may be located in different parts of the world, it is considered that an on-line procedure should also be particularly advantageous as a means of containing the costs of the dispute-resolution procedure in the context of arbitration.<sup>158</sup>

*239. It is recommended that the clauses in the domain name registration agreement, which provide for an applicant to submit, at its option, to arbitration, envisage that the arbitration procedure take place on-line.*

## THE ROLE OF MEDIATION

240. Mediation is an extension of direct negotiations between parties to a dispute in which a neutral third party acts as intermediary to facilitate those negotiations and assists in finding a solution that is satisfactory to both parties. It is a non-binding procedure in two senses: (i) the parties are not obliged to remain engaged in the procedure, but may leave it at any stage; and (ii) the mediator, as a facilitator, has no decision-making power and, thus, cannot impose a decision on the parties. Since mediation is not an adjudicative procedure, but a process for obtaining a negotiated settlement acceptable to both parties, there is no applicable law in accordance with which the dispute is decided. The parties are free to choose their own reference points for reaching a mutually acceptable solution, which, typically, will include their commercial interests, the legal merits of the case, and the cost of resort to other means of resolving the dispute.

241. Mediation has undoubtedly some potential applications and advantages in the context of domain name disputes.<sup>159</sup> It is especially well suited to domain name disputes which involve intractable legal issues. For example, there might be a domain name registration held by a person who owns an identical trademark in one country, while there is another party with an identical trademark registered in another country. Similarly, there might be a domain name consisting of the initials of the name of a corporation that is well known in one country, while there is another corporation with the same initials to its name that is well known in another

country. In each of the foregoing situations, it is envisageable that each of the parties might bring a successful action in its own jurisdiction (that is, the jurisdiction in which it has a trademark registration or in which its business operations are located). The procedure of mediation may, in these circumstances, be an attractive way of resolving the dispute, since the process of facilitating negotiations can give rise to a creative solution which satisfies the commercial interests of both parties, but which cannot necessarily be imposed by law (e.g., a gateway page shared by the parties could be agreed upon).

242. There is a significant disadvantage, however, to mediation in the context of domain name disputes. It is a procedure that relies upon the good faith engagement of both parties for success. Since it is non-binding and either party can abandon the procedure at any stage, it is of little or no value in disputes concerning bad faith abusive registrations where it is unlikely that the holder of the abusive registration will cooperate.

243. Given that the utility of mediation may be limited to good faith disputes where there are serious interests on each side, it was recommended in the WIPO Interim Report that it would not be desirable to incorporate mediation as part of a mandatory dispute-resolution policy for domain name disputes. Mediation is always available for parties to choose, in the same way that they might choose to negotiate directly, without the assistance of a mediator, in order to find a solution to a dispute. Including specific reference to the possibility of mediation in the domain name registration agreement might unnecessarily complicate the agreement or confuse applicants. We confirm this recommendation in the present Report.

*244. While parties with good faith disputes are encouraged to consider the advantages of mediation as a means of resolving the dispute, it is not recommended that a submission to mediation, whether optional or mandatory, be incorporated in the domain name registration agreement.*

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<sup>98</sup> Netscape Communications Corporation, which provided the first widely used commercial Internet browser, was founded in April 1994 by Dr. James H. Clark and Marc Andreessen, who created the NCSA Mosaic software whose graphical user interface simplified Internet navigation (see <http://home.netscape.com/company/about/backgrounder.html#market>).

<sup>99</sup> See the discussion in Chapter 5.

<sup>100</sup> See Comment of Ms. Shelley Hebert of Stanford University (San Francisco Consultation); Comment of Ms. Marilyn Cade of AT&T (Washington Consultation – 1998); Comment of Ms. Sarah Deutsch of Bell Atlantic (Washington Consultation – 1999); Comment of Ms. Anne Gundelfinger of Intel (San Francisco Consultation); Comment of Ms. Susan Anthony of MCI Worldcom (Washington Consultation – 1998); Comment of Mr. Gregory Phillips of Johnson & Hatch for Porsche (San Francisco Consultation); Comment of Viacom (October 1, 1998 – RFC-2); Comment of Mr. Nils Montan of Warner Bros. (San Francisco Consultation).

<sup>101</sup> In order to avoid this possibility, a significant number of trademark owners have registered their mark as a domain name in many TLDs around the world. The cost of so doing is relatively inexpensive (under

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US\$10,000) but the practice has been criticized by some commentators in the WIPO Process as unnecessarily clogging the name space.

<sup>102</sup> This may be particularly true in view of the possible increased popularity of the connected website and the tendency of users to cache, bookmark and hypertextlink frequently used Internet addresses.

<sup>103</sup> Cf. Lockheed Martin, 985 F. Supp. at 967 (Network Solutions, Inc. (NSI) was joined as defendant because it had registered the domain names in question. The court found that NSI was not liable, *inter alia*, because its acceptance of domain name registrations “is connected with their technical function to designate computers on the Internet, not with their trademark function to identify the source or goods and services”).

<sup>104</sup> See Comment of American Intellectual Property Law Association (November 6, 1998 – RFC-2); Comment of International Intellectual Property Alliance (November 6, 1998 – RFC-2).

<sup>105</sup> See Comment of Government of Hungary, Hungarian Patent Office (Budapest Consultation); Comment of Mr. Griffith Price of American Intellectual Property Law Association (Washington Consultation – 1998); Comment of Ms. Anne Gundelfinger of Intel (San Francisco Consultation).

<sup>106</sup> See Comment of Government of Australia (March 30, 1999 – RFC-3); Comment of Government of Sweden, Swedish Patent and Registration Office (February 23, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 - RFC-3); MCI WorldCom (March 19, 1999 – RFC-3); Comment of Government of United States of America, Office of Advocacy, US Small Business Administration (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of Domain Name Rights Coalition (March 10 and 20, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of Mr. Jonathan Weinberg (March 12, 1999 – RFC-3); Comment of CommerceNet (March 12, 1999 – RFC-3); Comment of the International Trademark Association (March 12, 1999 – RFC-3); Comment of Ms. Ellen Rony (March 8, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

<sup>107</sup> This list of contracting States to the New York Convention is available on the website of the United Nations, <http://www.un.org>.

<sup>108</sup> See Comment of European Community and its Member States (November 3, 1998 – RFC-2); Comment of Government of Hungary, Hungarian Patent Office (Budapest Consultation); Comment of American Intellectual Property Law Association (November 6, 1998 – RFC-2); Comment of Ms. Anne Gundelfinger of Intel (San Francisco Consultation).

<sup>109</sup> See, for example, Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3).

<sup>110</sup> See, for example, Comment of Mr. Gregory Phillips of Johnson & Hatch for Porsche Cars (San Francisco Consultation).

<sup>111</sup> Cf. the United States White Paper, which recommended that domain name holders should “agree to submit infringing domain names to the jurisdiction of a court where the “A” root server is maintained, where the registry is domiciled, where the registry database is maintained, or where the registrar is domiciled.”

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<sup>112</sup> In a recent case, *Porsche Cars North America, Inc et al. (E.D.Va. 1999)* (see <http://www.mama-tech.com/pc.html>), the plaintiff is claiming the Virginia Court has jurisdiction over disputes involving domain name holders resident in other States of the United States or in foreign countries on the basis of the argument that the claims are initiated against the domain names themselves rather than the domain name registrants (an *in rem* proceeding) (pending).

<sup>113</sup> See Comment of KPMG (March 23, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999- RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

<sup>114</sup> See Comment of Government of Sweden, National Post and Telecom Agency (March 12, 1999 – RFC-3); Comment of Mr. Jonathan Weinberg (March 12, 1999 – RFC-3); Comment of Government of United States of America, Office of Advocacy, US Small Business Administration (March 12, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of Domain Name Rights Coalition (March 10, 1999 – RFC-3); Comment of Mr. Kurt Opsahl & Co-signatories (March 12, 1999 – RFC-3).

<sup>115</sup> See, for example, Comment of European Brands Association (AIM) (February 17 and 23, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

<sup>116</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.J.7.h (March 4, 1999), at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>117</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.J.7.h at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>118</sup> See Comment of *Fédération Internationale des Conseils en Propriété Industrielle* (November 9, 1998 - RFC-2); Comment of Mr. Griffith Price of American Intellectual Property Law Association (Washington Consultation – 1998); Comment of Mr. Gregory Phillips of Johnson & Hatch for Porsche (San Francisco Consultation).

<sup>119</sup> See the discussion in Chapter 5.

<sup>120</sup> See Comment of MARQUES (November 6, 1998 – RFC-2); Comment of Domain Name Rights Coalition (November 6, 1998 – RFC-2); Comment of Electronic Frontier Foundation (November 6, 1998 – RFC-2); Comment of Mr. Scott Evans of International Trademark Association (Washington Consultation – 1998).

<sup>121</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 - RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3); Comment of Singapore Network Information Center (February 25, 1999 – RFC-3); Comment of European Brands Association (AIM) (February 17 and 23, 1999 – RFC-3).

<sup>122</sup> See Comment of *Fédération Internationale des Conseils en Propriété Industrielle* (November 9, 1998 – RFC-2); Comment of Mr. Griffith Price of American Intellectual Property Law Association (Washington Consultation – 1998); Comment of Mr. Gregory Phillips of Johnson & Hatch for Porsche (San Francisco Consultation).

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<sup>123</sup> See Comment of Government of Sweden, National Post and Telecom Agency (November 6, 1998 – RFC-2); Comment of Mr. Nils Montan of Warner Bros. (San Francisco Consultation).

<sup>124</sup> See Comment of European Community and its Member States (November 3, 1998 – RFC-2); Comment of American Intellectual Property Law Association (November 6, 1998 – RFC-2); Comment of *Fédération Internationale des Conseils en Propriété Industrielle* (November 9, 1998 – RFC-2); Comment of Mr. Amadeu Abril I. Abril of the Council of Registrars (CORE) (Brussels Consultation – 1998); Comment of Dr. Willie Black of Nominet UK (Brussels Consultation – 1998); Comment of Mr. Pavan Dugall of the Cyber Law Association (Hyderabad Consultation); Comment of Ms. Ellen Rony (San Francisco Consultation).

<sup>125</sup> RFC 1591, Section 4 (1), provides that in “case of dispute between domain name registrants as to the rights to a particular name, the registration authority shall have no role or responsibility other than to provide the contact information to both parties.”

<sup>126</sup> The list of States Party to the Paris Convention for the Protection of Industrial Property is given in Annex X.

<sup>127</sup> The list of States Party to the World Trade Organization (WTO) and bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is given in Annex XI.

<sup>128</sup> See, e.g., Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of Motion Pictures Association of America (March 18, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3).

<sup>129</sup> See ICANN Statement of Registrar Accreditation Policy, Art. III.J.7.i, at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>130</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of Government of France (March 18, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of Motion Picture Association of America (March 18, 1999 – RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of AT&T (March 17, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3).

<sup>131</sup> See Comment of the *Fédération des syndicats de producteurs de Châteauneuf-du-Pape* (March 24, 1999 – RFC-3).

<sup>132</sup> See the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

<sup>133</sup> *Ibid.*

<sup>134</sup> See Comment of the *Fédération des syndicats de producteurs de Châteauneuf-du-Pape* (March 24, 1999 – RFC-3).

<sup>135</sup> This note contains a listing of authorities illustrating the development of law in the area of domain names registration and use, and related allegations of trademark infringement.

See, British Telecommunications Plc. v. Virgin Enterprises Ltd., J. Sainsbury plc, Ladbroke Group Plc. v. One in a Million Ltd. and Ors., (Court of Appeal, Civil Division, 23 July 1998) (see <http://www.nic.uk/news/oiam-appeal-judgement.html>) (court affirmed the grant of an injunction to prevent use of

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domain names by the defendant for a fraudulent purpose); Panavision International, L.P. v. Toeppen No. 97-55467 (9th Cir. April 1998) (court determined that registration of others' trademarks as domain names, followed by attempts to sell them, constitutes 'commercial use' under United States Law); Toys R'Us, Inc. v. Eli Abir and Web Site Management, (1997, U.S. Dist. LEXIS 22431 (1997)) (court granted an injunction on the grounds of trademark infringement, to prevent the defendants' use of the domain name "toysareus.com," including to solicit international business or seeking to sell the domain name to foreign purchasers for use in foreign markets).

See Brookfield Communications, Inc., v. West Coast Entertainment Corporation, CV-98-09074-CRM (9th Cir. April 22, 1999); Washington Speakers Bureau, Inc. v. Leading Authorities, Inc., E.D. VA, No. 98-634-A, February 2, 1999 (court held that the defendant's domain name "washington-speakers.com," constituted a colorable imitation of the plaintiff's trademark, "Washington Speakers Bureau," such that it was likely to confuse consumers as to the source or sponsorship of the defendant's business); Cardservice International, Inc. v. McGee, (950 F. Supp 737 (E.D. Va. 1997) (court found trademark infringement to have occurred where one entity registered a domain name which was misleadingly similar to another trademark, in order to trade off the goodwill in the trademark); Epson, District Court of Dusseldorf (34 191/96, April 4, 1997) (court held that even though the domain name holder had not used the name "epson.de" for e-mail or a web page, there was a concrete risk that he would do so later and stated that, to establish a likelihood of confusion, it was irrelevant what kind of products or services were offered on the web site, because the products to be compared were the web sites as such, regardless of the content of the web site); Sté Coopérative Agricole Champagne Céréale c/ J.G., (TGI de Versailles, Ord. Référé., April 14, 1998) (see [http://www.legalis.net/legalnet/judicaire/tgi\\_versailles\\_0498.htm](http://www.legalis.net/legalnet/judicaire/tgi_versailles_0498.htm)) (Tribunal found that the use of the *dénomination sociale* of a company by another entity working in the same field created a risk of confusion); Commune d'Elancourt c/ Loic L., TGI de Versailles, Ord. Référé., October 22, 1998, (see [http://www.legalis.net/legalnet/judicaire/tgi\\_versailles\\_0498.htm](http://www.legalis.net/legalnet/judicaire/tgi_versailles_0498.htm)) (Tribunal found that a site named "Elancourt Bienvenue à Elancourt" caused confusion with the site of the City of Elancourt "Ville d'Elancourt", and ordered the individual to cease using the former denomination); Yahoo!Inc. v Akash Arora & Anor., High Court of New Delhi, February 19, 1999 (I.A., No.10115/1998 in Suit No.2469/1998) (court passed judgment in favor of the owners of the search engine Yahoo, against the registration and use by another entity of the domain name "Yahooindia.com").

See Planned Parenthood Federation of America, Inc. v. Richard Bucci, d/b/a Catholic Radio, 1997, U.S. Dist. LEXIS 3338 (1997) (court granted an injunction against the use of a domain name similar to the trademark of the Planned Parenthood organization, after balancing the interest in protection of free speech and the right to make political statements, against the likelihood of confusion from the use of a domain name).

See Citroen, District Court of Frankfurt, January 7, 1997 (2-06 0 711/96) (court granted a preliminary injunction to prevent an entity that did not own the trademark from registering "citroen.de" as a domain name); Honda, District Court of Frankfurt, April 4, 1997, (2/06 0 194/97) (court granted a preliminary injunction against an entity that had registered "honda.de" as a domain name); Heidelberg, Munich District Court, 1996, CR 353 (court stated that a computer company's use of the name "heidelberg.de" caused confusion and harmed the interests of the City of Heidelberg, and that the fact that the City of Heidelberg could use an alternate domain name was irrelevant because the domain name holder had no legitimate right to the name "Heidelberg"); *c.f.* case of Pitman Training, Ltd. v. Nominet UK, [1997] F.S.R. 797 (see <http://www.nic.uk/news/index.html>) (court, in a dispute over the right to use the domain name "pitman.co.uk," considered the competing legitimate interests of two companies trading under the name "Pitman" in different jurisdictions and determined the dispute on the basis of the first-come, first-served principle).

See Oggi Advertising, Ltd. v. McKenzie and Ors, CP147/98, (unreported, Baragwanath J., High Court of Auckland, June 5, 1998) (see <http://aardvark.co.nz/n357.htm>) (court ordered the reassignment of a domain name on the basis that the defendant had conspired to pass off its goods as the plaintiff's, appropriate the plaintiff's reputation and prevent the plaintiff from exploiting its intellectual property).

See Tractebel, Court of Appeal of Brussels, April 1, 1998 (see [http://www.droit-technologie.org/articles/domain\\_name\\_grabbing\\_arret.pdf](http://www.droit-technologie.org/articles/domain_name_grabbing_arret.pdf)) (court held that the registration of a domain name by a third party, thereby preventing the owner of the trade name from registering its corresponding domain name, constituted an act of unfair competition).

See also International Association for the Protection of Industrial Property, Group Reports Q143: Internet Domain Names, Trademarks and Trade Names, XXXVII<sup>th</sup> Contress, Rio de Janeiro, 1998 (Yearbook 1998/VI).

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<sup>136</sup> See Comment of Government of Sweden, National Post and Telecom Agency (November 6, 1998 – RFC 2); Comment of Mr. Nils Montan of Warner Bros. (San Francisco Consultation).

<sup>137</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of the International Trademark Association (March 12, 1999 – RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3).

<sup>138</sup> See Comment of Government of Australia (March 30, 1999 – RFC-3); Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of Government of the Republic of Korea, Korean Industrial Property Office (March 11, 1999 – RFC-3); see also *Conseil d'Etat, Section du rapport et des études, Internet et les Réseaux Numériques*, study adopted by *l'Assemblée Générale du Conseil d'Etat* on July 2, 1998, page 11, para. 2.4, in which the French Conseil d'État suggested that a decision-maker should have the power to impose a solution that might make use of such measures.

<sup>139</sup> Comment of Government of Sweden, Swedish Patent and Registration Office (February 23, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3); Comment of Government of Hungary, Hungarian Patent Office (March 4, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3).

<sup>140</sup> It is a standard feature in the rules of international dispute-resolution service providers that the decision-maker is vested with discretion to apportion costs between the parties in the light of the circumstances and the outcome of the dispute.

<sup>141</sup> See Comment of Porsche Cars (Washington Consultation – 1998).

<sup>142</sup> See Comment of Ms. Anne Gundelfinger of Intel (San Francisco Consultation); Comment of International Intellectual Property Alliance (November 6, 1998 - RFC-2); Comment of Ms. Shelley Hebert of Stanford University (San Francisco Consultation); Comment of Ms. Sarah Deutsch of Bell Atlantic (Washington Consultation – 1998); Comment of Mr. Amadeu Abril I. Abril of the Council of Registrars (CORE) (Brussels Consultation – 1998); Comment of Ms. Ellen Rony (San Francisco Consultation).

<sup>143</sup> See Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of America Online (March 12, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of British Telecommunications (March 19, 1999 – RFC-3); MCI WorldCom (March 19, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3).

<sup>144</sup> See Comment of Government of Sweden, Swedish Patent and Registration Office (February 23, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of Ms. Sarah Deutsch of Bell Atlantic (Washington Consultation – 1998); Comment of Mr. Neil Smith of Limbach & Limbach (San Francisco Consultation).

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<sup>145</sup> See Comment of Motion Picture Association of America (November 6, 1998 - RFC-2); Comment of Viacom (October 1, 1998 - RFC-2).

<sup>146</sup> See Comment of Government of Sweden, Swedish Patent and Registration Office (February 23, 1999 – RFC-3); Comment of International Trademark Association (March 12, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of KPMG (March 23, 1999 – RFC-3); Comment of Ms. Sarah Deutsch of Bell Atlantic (Washington Consultation – 1998); Comment of Mr. Neil Smith of Limbach & Limbach (San Francisco Consultation).

<sup>147</sup> See Comment of International Intellectual Property Alliance (March 12, 1999 – RFC-3).

<sup>148</sup> See Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3).

<sup>149</sup> See, e.g., Comment of Government of Switzerland, Swiss Federal Institute of Intellectual Property (November 4, 1998 - RFC-2); Comment of European Community and its Member States (March 19, 1999 – RFC-3); Comment of the International Trademark Association (March 12, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of Motion Pictures Association of America (March 18, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3); Comment of Ford Motor Company (March 20, 1999 – RFC-3); Comment of *Fédération Internationale des Conseils en Propriété Industrielle* (November 9, 1998 - RFC-2); Comment of Institute of Trade Mark Agents (November 3, 1998 - RFC-2); Comment of Mr. Pavan Duggal of the Cyberlaw Association (Hyderabad Consultation). In the United States White Paper (Section 8), it was also noted that most commentators in that process “favored creation of an on-line dispute resolution mechanism to provide inexpensive and efficient alternatives to litigation for resolving disputes between trademark owners and domain name registrants.”

<sup>150</sup> See Comment of Singapore Network Information Center (February 25, 1999 – RFC-3); Comment of Government of Hungary, Hungarian Patent Office (March 4, 1999 – RFC-3); Comment of MARQUES (March 11, 1999 – RFC-3).

<sup>151</sup> Comment of British Telecommunications (March 19, 1999 – RFC-3); Comment of International Chamber of Commerce (March 18, 1999 – RFC-3); Comment of AT&T (March 4 and 17, 1999 – RFC-3); Comment of Time Warner (March 13, 1999 – RFC-3); Comment of Bell Atlantic (February 26, 1999 – RFC-3).

<sup>152</sup> See, e.g., Comment of Institute of Trade Mark Agents (November 3, 1998 - RFC-2).

<sup>153</sup> ICANN Statement of Registrar Accreditation Policy, Art. III.k, at [http://www.icann.org/policy\\_statement.html](http://www.icann.org/policy_statement.html).

<sup>154</sup> Comment of Deutsche Telekom (March 5, 1999 – RFC-3); Comment of Brazilian Steering Committee (March 10, 1999 – RFC-3); Comment of Council of Hungarian Internet Providers (March 12, 1999 – RFC-3).

<sup>155</sup> See Comment of American Intellectual Property Law Association (November 6, 1998 - RFC-2); Comment of Mr. Gregory Phillips of Johnson & Hatch for Porsche (San Francisco Consultation).

<sup>156</sup> See the following for several comments in favor of an appeal mechanism: Comment of Government of the Republic of Korea, Korean Industrial Property Office (March 11, 1999 – RFC-3); Comment of Government of Australia (March 30, 1999 – RFC-3); Comment of European Internet Service Providers Association (March 12, 1999 – RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 – RFC-3); Comment of MCI WorldCom (March 19, 1999 – RFC-3).

<sup>157</sup> See Comment of Government of Switzerland, Swiss Federal Institute of Intellectual Property (November 4, 1998 – RFC-2); Comment of American Intellectual Property Law Association (Washington

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Consultation – 1998); Comment of the New Zealand Internet Registry (Domainz) (November 18, 1998 – RFC-2).

<sup>158</sup> See Comment of *Fédération Internationale des Conseils en Propriété Industrielle* (November 9, 1998 – RFC-2); Comment of Mr. Pavan Duggal of the Cyberlaw Association (Hyderabad Consultation).

<sup>159</sup> See, e.g., Comment of Ms. Susan Anthony of MCI Worldcom (Washington Consultation – 1998).

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#### 4. THE PROBLEM OF NOTORIETY: FAMOUS AND WELL-KNOWN MARKS

245. Fame brings with it attention in many forms, amongst them imitation, by those who wish to benefit from its perceived advantages; association, on the part of those who wish to share in its perceived benefits; and criticism, by those who wish to question the status given to the one who enjoys fame. Not surprisingly, therefore, on the open and efficient medium of communication that the Internet is, fame attracts attention and provokes various forms of reactions.

246. In the commercial area, fame is most often manifested in reputation, and reputation is most often attached to the expression of identity of the enterprise: its trademarks. Famous and well-known marks have been the special target of a variety of predatory and parasitical practices on the Internet. The consultations held throughout the WIPO Process and the submissions made in them have confirmed the singular nature of these predatory and parasitical practices with respect to famous and well-known marks.<sup>160</sup>

247. Because of the special attention that fame attracts, famous and well-known marks have for a long time been considered in intellectual property laws to warrant special protection, over and above that accorded to other, ordinary marks. That special protection is well established in widely accepted international agreements on the multilateral level.

248. In the WIPO Interim Report, it was recommended that the international norms for the protection of famous and well-known marks should be given expression in the DNS through a mechanism whereby the owner of a famous or well-known mark could obtain an exclusion prohibiting any third party from registering the mark as a domain name.

249. The proposed mechanism for exclusions was widely supported in the commercial and intellectual property sectors as an appropriate means of reflecting established international principles in the DNS. Many commentators from these sectors viewed exclusions as an indispensable safeguard in relation to the expansion of the DNS through the addition of new gTLDs. They feared the repetition of the experience of the last five years, in which the owners of famous and well-known marks have had to invest large amounts of human and financial resources in defending their marks against abusive domain name registrations.<sup>161</sup>

250. On the other hand, a number of commentators opposed having any mechanism for exclusions. They regarded exclusions as extending the protection accorded to famous and well-known marks and feared the erosion of the DNS through the removal of large numbers of names from its ambit. They considered that the owners of famous and well-known marks had sufficient resources to defend their interests without a systemic mechanism for that purpose.<sup>162</sup>

251. In this Final Report, WIPO maintains the essence of the recommendations contained in the Interim Report, namely, that a mechanism for granting exclusions to famous and

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well-known marks should be established. The basis for the final recommendations and their details are set out in the remainder of this Chapter.

## INTERNATIONAL PROTECTION OF FAMOUS AND WELL-KNOWN MARKS

252. The international protection of famous and well-known marks is recognized in two multilateral treaties: the Paris Convention for the Protection of Industrial Property (the Paris Convention), to which 154 States are party,<sup>163</sup> and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), by which 134 States are bound.<sup>164</sup>

253. The protection of famous and well-known marks in the Paris Convention is provided for in Article *6bis*, section (1) of which provides as follows:

“The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.”<sup>165</sup>

254. Four features of the protection provided for in Article *6bis* of the Paris Convention may be noted:

(i) The protection accorded to famous and well-known marks is a protection against the registration and use of a trademark that constitutes a reproduction, imitation or translation, liable to create confusion, of a well-known or famous mark or an essential part of such a mark.

(ii) The protection in Article *6bis* extends only to trademarks, that is marks that are used in respect of goods, and does not extend to service marks which are used in respect of services. By virtue of the Trademark Law Treaty (TLT), however, the provisions of the Paris Convention relating to trademarks are extended to service marks.<sup>166</sup> The TLT was concluded only in 1994 and, while an increasing number of States are manifesting their interest in becoming party to the TLT,<sup>167</sup> at the present date only 22 States are party to it.

(iii) The protection extends to registration or use in respect of identical or similar goods. This feature is usually known as the “principle of specialty,” a principle of trademark law under which protection for a trademark extends only to the same or similar goods as are covered by the registration or use of the trademark.

(iv) Article *6bis* is silent on what constitutes a well-known mark. The appreciation of whether a mark is well known is left to the “competent authority” of the country where the illegitimate registration or use occurs.

255. The provisions of Article *6bis* of the Paris Convention are confirmed and extended by the TRIPS Agreement. Article 16.2 and 16.3 contain the following provisions:

“2. Article *6bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

“3. Article *6bis* of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.”

256. Three features of Article 16.2 and 16.3 of the TRIPS Agreement may be noted:

(i) Article 16.2 builds on the work of the TLT in extending the protection of Article *6bis* of the Paris Convention to famous and well-known service marks.

(ii) Article 16.2 of the TRIPS Agreement provides a non-exhaustive guide to the competent authorities of countries in appreciating whether a mark is well known. In this respect it provides that, in “determining whether a trademark is well known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.”

(iii) Article 16.3 of the TRIPS Agreement provides for protection that extends beyond the normal protection under the principle of specialty. It provides for the protection under Article *6bis* of the Paris Convention to apply to goods and services which are not similar to those in respect of which a trademark is registered on two conditions: first, that the use of the allegedly infringing mark in relation to those other goods or services would indicate a connection between those other goods or services and the owner of the famous mark, and, secondly, that the interests of the owner of the famous mark are likely to be damaged by such use. This extended protection reflects a distinction that is made in many national laws between, on the one hand, famous marks, which represent that class of well-known marks that are so famous that they require protection against infringing use in respect of any goods or services, and, on the other hand, well-known marks, which require protection against

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infringing registration or use in respect of the same or similar goods or services for which the well-known mark is registered or used. The terminology and practice relating to this distinction differ somewhat around the world.<sup>168</sup> For this reason, in this Chapter, except where a distinction is deliberately made, the collective term “famous and well-known marks” is used, since it is in any case agreed that well-known marks are the subject of a special form of international protection.

#### THE IMPLEMENTATION OF PROTECTION FOR FAMOUS AND WELL-KNOWN MARKS IN CYBERSPACE

257. In considering how the international protection for famous and well-known marks can be given expression in respect of domain names, there are four areas of conceptual difficulty that need to be borne in mind.

258. First, it is to be noted that the provisions of the Paris Conventions and the TRIPS Agreement are directed at the protection of famous and well-known marks against the registration or use of other infringing marks. Domain names, of course, are not the same thing as marks and are used for many purposes other than the identification of a producer or seller of goods or services. They are, however, also used as a means of identifying goods and services with the producer or seller of those goods and services.

259. Secondly, the protection of famous and well-known marks under the Paris Convention and the TRIPS Agreement extends to those countries where the competent authority considers that the mark is famous or well-known. Where is where in a gTLD?

260. Thirdly, while there is an international obligation to accord protection to famous and well-known marks, there is not an established treaty definition of what constitutes such a mark. It is left to the appreciation of the competent authority in the country where protection is asserted. As noted, however, Article 16.2 of the TRIPS Agreement provides some guidance as to the criteria that such a competent authority must take into account in forming its appreciation. In addition, such criteria have been developed in national case law and regulatory practices and decisions around the world.

261. Fourthly, while the protection of famous marks has increasingly been implemented at the national level by laws directed at prohibiting any use of famous marks by third parties that dilutes the integrity and reputation of such marks, the protection of well-known marks exists often only in respect of the registration or use of a confusingly similar mark in relation to the same goods or services as those for which the well-known mark is registered or used. At the present time, the gTLDs are largely undifferentiated. Insofar as some differentiation does exist, there is no enforcement mechanism to ensure that those who have registered domain names in open gTLDs confine their use of the domain name to the broad purposes of the gTLD.<sup>169</sup> Thus, one can have a domain name registered in .com without undertaking any commercial activity, or a domain name registered in .net while undertaking commercial

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activity that is completely unrelated to the provision of Internet or network services. There is a lack of connection between the **underlying** theoretical foundations of differentiation in the registration and use of trademarks and differentiation in the registration and use of domain names, since differentiation is intended to serve a different purpose in each case.

262. We consider that the administrative procedure in respect of bad faith, abusive registrations of domain names, which was discussed in the previous chapter, should provide an efficient means for suppressing many of the predatory and parasitical practices to which famous and well-known marks are subject. The administrative procedure is, however, rightly available to all and does not give expression to the separate international protection that already exists for famous and well-known marks. The ensuing part of this Chapter addresses two mechanisms designed for this purpose, which seek to take into account the conceptual problems in implementing protection for famous and well-known marks discussed above and the comments received throughout the WIPO Process. The two mechanisms are:

(i) a mechanism for obtaining and enforcing an exclusion of the use of a famous or well-known mark; and

(ii) an evidentiary device for ensuring that the protection afforded by an exclusion can be extended to misleadingly similar, as well as the same, domain name registrations.

#### MECHANISM FOR EXCLUSION OF FAMOUS AND WELL-KNOWN MARKS IN OPEN gTLDs

263. The main thrust of the two bodies of opposing views on the establishment of an exclusive mechanism is summarized above. The preponderance of views favored the establishment of the mechanism and, both for this reason and because it seems correct in principle that famous and well-known marks are recognized in international law as being subject to special protection, the recommendation in favor of the mechanism is being maintained. We also consider that it could be highly economically wasteful, in view of the experience in the existing open gTLDs over the past five years, to add new open gTLDs without any safeguard against the grabbing or the squatting of famous and well-known marks by unauthorized parties in those new open gTLDs. Nevertheless, there were two comments or criticisms that were frequently voiced by the opponents of an exclusion mechanism that, in the interests of transparency and fairness in the Process, need to be articulated and addressed.

264. The first such comment stems from the fear of the erosion of the domain name space.<sup>170</sup> Here, some commentators expressed anxiety about the lowering of standards for obtaining an exclusion over time, with the result that exclusions would be granted for less than famous or well-known marks and that the total number of exclusions would be in the tens of thousands. These commentators pressed for quantitative limitations on exclusions in order to give assurances against the erosion of the domain name space. Two such quantitative limitations were, in particular, suggested.

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265. The first was a suggested quantitative threshold number of trademark registrations around the world which would need to be shown in order to qualify for the right to request an exclusion. For example, an applicant could be required to show 50 trademark registrations in order to be able to proceed with an application for an exclusion.

266. While we sympathize with the desire to ensure that standards for assessing whether a mark is famous or well-known are not lowered, we consider a quantitative entry criterion in terms of numbers of registrations to be wrong in principle. A mark is famous or well-known because of its notoriety or reputation, not because of the number of countries in which it is registered. It is for this reason that both the Paris Convention and the TRIPS Agreement establish protection for well-known marks whether or not they are registered in the country in which the protection is asserted. A mark may be famous or well-known even if not registered in numerous countries. A mark may also not be famous or well-known even if registered in over 100 countries of the world.

267. Criteria for the assessment of whether a mark is famous or well-known are given below. One of those criteria is the “duration and geographical area of any registrations, and/or applications for registration, of the mark, to the extent that they reflect use or recognition of the mark.” It is considered that this criterion (in conjunction with the other criteria) deal appropriately with the role of numbers of registrations: they are one of the indications to be taken into account in assessing notoriety and reputation, not a fixed standard.

268. The second quantitative limitation suggested was in the form of a quota of exclusions that could be granted. For example, the quota might be established at 2,000 and no more than that number of exclusions could be granted. The quota might be reviewed from time to time in light of experience.

269. We appreciate that the absence of a single list of famous and well-known marks causes apprehension as to the number of such marks. But we consider that a quota could operate in an entirely arbitrary manner. The selection of the level of the quota would, for a start, be arbitrary. The level could work arbitrarily against marks which become suddenly famous, whose owners might be prejudiced by the previous filling of the quota. Such marks do exist. If the mention of a so-called “lifestyle” drug which received great publicity in the last two years, or the mention of a very popular website associated with the sale of books, brings a name automatically to the mind of the reader, these might be examples. Furthermore, rather than control the standard for assessing famous or well-known marks, we think that a quota may have the opposite effect: it might cause a rush on the part of all and sundry to obtain an exclusion rapidly before the quota is filled and prompt a deluge of applications.

270. The second comment frequently voiced by opponents of exclusions was that exclusions extended the existing protection available for famous and well-known marks; that, in other words, they created new law.<sup>171</sup> The main basis for this argument seems to be that the “protection” afforded by an exclusion extends across an undifferentiated space. As mentioned above, our view is not that exclusions extend such protection, but that they give expression to it in the DNS.

271. Protection for well-known marks, however, affixes, in the first place, to infringing marks that are used in respect of the same goods or services as those for which the well-known mark is registered or used. By virtue of Article 16.3 of the TRIPS Agreement, and corresponding provisions in national laws, it extends beyond similar goods or services to other goods or services provided that the use of the infringing mark in relation to those other goods or services would indicate a connection between those goods or services and the owner of the famous mark, and provided that the interests of the owner of the famous mark are likely to be damaged by such use. An exclusion for a famous or well-known mark would constitute a form of protection that applies more broadly than simply protection for the goods or services in relation to which a well-known mark is registered or used. This consequence seems unavoidable while the open gTLDs are undifferentiated as to activity, or, at least, for as long as any differentiation is not practically enforced.

272. A further basis for the criticism that exclusions would extend existing protection might be that the gTLDs are not geographically specific and that an exclusion thus operates across an undifferentiated physical space, whereas protection for famous and well-known marks exists only in those jurisdictions in which they are famous or well-known. On the other hand, a domain name registration gives global access, including in all those places where a mark is famous or well-known.

273. These are difficult questions. If they were to be resolved on a case-by-case basis, the assessment of the activities, if any, performed on a website would give an answer to the questions whether a domain name registration of a famous or well-known mark indicates a connection between goods or services dealt with on the website and the owner of the mark, whether the interests of the owner are thereby damaged, and whether the integrity or reputation of the mark is thereby adversely affected. An exclusion assumes an answer to those questions or, at least, suggests that the potential for action created by a domain name registration is too dangerous, in the light of experience of the use of that potential, to allow.

274. We consider that the best safeguards against the fears of the opponents of exclusions are twofold. First, discipline and rigor in relation to the criteria for assessment of entitlement to an exclusion, which are discussed below, are required on the part of all and, particularly, the panels which will be responsible for that assessment and the owners of marks. It must be understood that not any mark will qualify. Secondly, in view of the undifferentiated geographical space of the gTLDs, it is considered that, in order to qualify for an exclusion, a mark should be famous or well-known across a widespread geographical area and across different classes of goods and services. The policy that may ultimately be adopted in relation to the structure of any new gTLDs may require a review of the last point. To take one example, if 500 new gTLDs were created (and it is not suggested that this is a possibility), the degree of differentiation and the means, if any, of enforcing compliance with domain descriptions (such as “com” or “net”) may warrant that exclusions be granted also to marks that are only well-known for goods or services corresponding to those domain descriptions. This is not the case at the moment, however.

*275. It is recommended that a mechanism be established before the introduction of any new*

*open gTLDs whereby exclusions can be obtained and enforced for marks that are famous or well-known across a widespread geographical area and across different classes of goods and services.*

#### Brief Description of the Mechanism for Exclusions

276. It is suggested that the mechanism should function by way of administrative panels of experts, appointed from time to time, in response to applications from the owners of allegedly famous or well-known marks, to make determinations on whether an exclusion should be granted in respect of a particular mark in some or all open gTLDs. As indicated below, it is suggested that the administration of the panels be centralized. An internationally representative list of persons who would serve on the panels should be drawn up and the names and qualifications of those persons should be published. In response to a particular application, an ad hoc panel of three persons from the list would be appointed to make the determination. The costs of the procedure, in both instances, would be borne by the applicant for the exclusion, since it is the applicant that stands to gain the benefit of an exclusion and, thus, the expression in the domain name space of the special protection afforded to the applicant's famous or well-known mark. An exclusion would be granted in respect of either some or all open gTLDs and would be granted indefinitely. However, third parties would be free to apply to have an exclusion cancelled in respect of any of the gTLDs for which it was granted (for example, if an exclusion were granted for all open gTLDs, it is conceivable that a third party might prove a legitimate interest in being able to register a domain name, as an exception to the general exclusion, in one particular gTLD). In the case of applications brought by third parties to cancel an exclusion, it is suggested that the costs of the procedure be borne by that third party. The exclusion would be granted only in relation to a string that is identical to the famous or well-known mark. Furthermore, the exclusion mechanism would apply only to new open gTLDs. Finally, exclusions that are granted under the mechanism would not have any retroactive effect, i.e., if a party had registered a string as a domain name in relation to which an exclusion is later granted to another party, the first party's domain name would remain unaffected by the exclusion (but the other party could seek to obtain its cancellation through the administrative dispute-resolution procedure). These proposed features have received wide support among the commentators favoring the establishment of an exclusion mechanism.

#### Implementation of the Mechanism

277. In order to implement the mechanism for obtaining and enforcing exclusions, it would be necessary for a policy to be adopted by ICANN allowing for such exclusions and providing, through the chain of contractual authorities from ICANN to registration authorities, for the direct enforcement by registration authorities of any exclusion granted under the mechanism.

278. *It is recommended that:*

(i) *ICANN adopt a policy providing for a mechanism for obtaining and enforcing exclusions in open gTLDs for famous and well-known marks; and*

(ii) *Registration authorities agree, in the chain of contractual authorities from ICANN, to implement determinations made for exclusions of famous and well-known marks in gTLDs.*

#### Procedural Considerations

279. The mechanism for obtaining and enforcing exclusions for famous and well-known marks should have the same characteristics as the administrative procedure insofar as the procedure should be expeditious, conducted, as far as possible, on-line and lead to determinations that are directly enforced within the DNS. There are, however, three differences from the administrative procedure that should be adopted with respect to the mechanism for obtaining and enforcing exclusion for famous and well-known marks:

(i) Since the potential result of the mechanism (an exclusion), as opposed to the result of the administrative procedure, affects third parties (indeed, all users of the domain name space would be prevented from registering a domain name corresponding to the exclusion), it is considered that notice of an application for an exclusion and the determination should be made publicly available by being posted on a website.

(ii) Again, since the potential result of the mechanism affects all users of the domain name space, provision should be made in the mechanism for the participation of any third party with a legitimate interest (for example, a competing interest in the use of the name) in the proceedings. Such participation could take the form of allowing an interested third party to file a submission in favor of or against the granting of an exclusion.

(iii) In contrast to the recommendation concerning competition in dispute-resolution service providers for the administrative procedure, it is considered that there are distinct advantages in centralization of the administration of the mechanism for obtaining and enforcing exclusions for eligible famous and well-known marks. It would be of advantage to interested users of the domain name space to be able to access one website where information about all actions concerning applications for exclusions and all information on exclusions granted or refused is available. Consistency in decision making will be of paramount importance and, in this respect, there seems to be an advantage in the maintenance of a published, centralized list of well-qualified decision-makers, as opposed to allowing different lists of decision-makers to determine whether exclusions should be granted. WIPO would,

consistently with its mandate, be available to provide the centralized administration of the mechanism.

280. *It is recommended that the mechanism for obtaining and enforcing exclusions provide for:*

(i) *publication of any application for an exclusion and all determinations on a centralized website;*

(ii) *the maintenance of a published list of well-qualified decision-makers and the appointment of ad hoc panels of three persons from that list to make determinations in respect of any particular application;*

(iii) *the participation of interested third parties in proceedings on an application for an exclusion; and*

(iv) *the centralized administration of the procedure.*

#### Relationship of Determinations to the Status of Marks Outside Cyberspace

281. In the WIPO Interim Report, it was recommended that determinations on granting or refusing exclusions of famous and well-known marks should be made only for the purposes of the efficient administration of the DNS. Any determination to grant or refuse an application for an exclusion, therefore, should carry no implication for the status of the mark that is the subject of the application as a famous or well-known mark more generally. Determinations would thus not be binding either on national or regional industrial property offices or on national courts. This recommendation received wide support among commentators.<sup>172</sup>

282. *It is recommended that determinations on applications for exclusions for famous or well-known marks should have no binding effect on national or regional industrial property offices or national courts in their implementation of international norms for the protection of famous and well-known marks.*

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Criteria for Making Determinations

283. As mentioned above, international norms provide for the protection of famous and well-known marks, but leave the appreciation of what constitutes such a mark to the competent national authority. The TRIPS Agreement, in Article 16.2, advances this situation by requiring competent national authorities that are bound by the TRIPS Agreement to take into account, in the assessment of whether a mark is well-known, “the knowledge of the trademark in the relevant sector of the public, including knowledge in the [country] concerned which has been obtained as a result of the promotion of the trademark.”

284. Work on the determination of a list of factors that should be taken into account in determining whether a mark is well-known has been undertaken under the auspices of WIPO over the past several years in a Committee of Experts on Well-Known Marks and, more recently, in the successor to that body, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (the WIPO SCT). At its last meeting, in March 1999, the WIPO SCT adopted the following list of factors as the recommended non-exhaustive criteria to be considered in determining whether a mark is well known:<sup>173</sup>

“(a) In determining whether a mark is a well-known mark, the competent authority shall take into account any circumstances from which it may be inferred that the mark is well known.

“(b) In particular, the competent authority shall consider information submitted to it with respect to factors from which it may be inferred that the mark is, or is not, well known, including, but not limited to, information concerning the following:

- “1. the degree of knowledge or recognition of the mark in the relevant sector of the public;
- “2. the duration, extent and geographical area of any use of the mark;<sup>174</sup>
- “3. the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;<sup>175</sup>
- “4. the duration and geographical area of any registrations, and/or any applications for registration, of the mark, to the extent that they reflect use or recognition of the mark;
- “5. the record of successful enforcement of rights in the mark, in particular, the extent to which the mark was recognized as well known by courts or other competent authorities; and
- “6. the value associated with the mark.”

285. The list of non-exhaustive factors in paragraph (b) in the preceding text was drawn up with reference to well-known marks in general and without particular reference to problems encountered through domain name registrations. In order to accommodate the specificities of the protection of famous and well-known marks in relation to domain names, it is suggested that a further factor be added to the list given in the preceding paragraph:

“7. evidence of the mark being the subject of attempts by non-authorized third parties to register the same or misleadingly similar names as domain names.”

286. The foregoing list of factors were recommended, in the WIPO Interim Report, as the basis on which decisions on applications for exclusions of famous or well-known marks should be taken. This recommendation was well received by those commentators who favored a mechanism for exclusions.<sup>176</sup> Certain of them, however, considered that they were too judicial in nature and that simpler, quantitative measures capable of easy administrative application would be preferable.<sup>177</sup> We consider, however, that careful consideration needs to be given to determinations on exclusions, which will have effect indefinitely, even if this means that the processing time for applications for exclusions is slowed as a consequence.

*287. It is recommended that decisions on applications for exclusions of famous or well-known marks in open TLDs be taken on the basis of all the circumstances of the application and, in particular, the non-exhaustive list of factors set out in paragraph 284, above, together with the further factor set out in paragraph 285 above.*

#### EVIDENTIARY PRESUMPTION RESULTING FROM AN EXCLUSION

288. As a means of giving expression to the protection of famous and well-known marks, exclusions suffer from an important limitation. They provide protection only for the exact name of the famous or well-known mark. They are thus not effective against close phonetic and spelling variations of the famous or well-known mark that are registered as domain names in bad faith in an endeavor to benefit from the reputation of the famous or well-known mark.<sup>178</sup> In respect of such close variations, the owner of the famous or well-known mark would be obliged, even after obtaining an exclusion, to resort to either litigation or the administrative procedure in order to seek to cancel or otherwise remedy the damage being done by the close variation that is registered as a domain name.

289. In order to reduce the impact of this limitation, the WIPO Interim Report recommended that consideration be given to the introduction of an evidentiary presumption resulting from the granting of an exclusion which would operate in claims brought under the administrative procedure by the holder of the exclusion against the holders of domain names that were allegedly identical or misleadingly similar. The presumption would work in the following way. The holder of an exclusion for a famous or well-known mark would be required, in any

administrative dispute-resolution procedure initiated by it, to show: (i) that a domain name was identical or misleadingly similar to the mark that is the subject of the exclusion; and (ii) that the domain name was being used in a way that was likely to damage the interests of the owner of the mark that was the subject of the exclusion. Upon such a showing, the burden of proof in the procedure would shift to the domain name registrant to justify that its registration of the domain name was in good faith and to show why that registration should not be cancelled. If the domain name registrant were unable to make such a showing, the registration would be cancelled. The evidentiary presumption would be available in respect of any gTLD in which an exclusion had been obtained.

290. Commentators who were in favor of the exclusion mechanism supported this recommendation. Those who opposed exclusions viewed the proposal as an illustration of the way in which the rights of trademark owners would be extended to the detriment of other Internet users, for example, those exercising rights of free speech. Since it is now proposed that the scope of the administrative procedure be limited to cases of abusive registration, we consider that the interests of those exercising recognized rights of free speech are not likely to be affected in any way adversely by the evidentiary presumption. It is recalled that the definition of abusive registration of a domain name, which it is recommended, above, be applied in the administrative procedure, requires that the holder of a domain name have “no rights or legitimate interests” in respect of the domain name before the registration of the domain can be considered abusive.

*291. It is recommended that the granting of an exclusion give rise to an evidentiary presumption, in favor of the holder of an exclusion, in the administrative procedure in such a way that, upon showing that the respondent held a domain name that was the same as, or misleadingly similar to, the mark that was the subject of an exclusion and that the use of the domain name was likely to damage the interests of the holder of the exclusion, the respondent would have the burden of justifying the registration of the domain name.*

#### OTHER FORMS OF EXCLUSIONS

292. Two comments were submitted on the WIPO Interim Report by intergovernmental organizations, which are specialized agencies of the United Nations, that request that certain classes of names and abbreviations be assimilated to famous and well-known marks and eligible for exclusions in the open gTLDs.

293. The first comment was submitted by the International Telecommunication Union (ITU), which pointed out that the names and acronyms of a number of intergovernmental

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organizations had been registered as domain names by speculators. Numerous variations of “United Nations” have, for example, been registered by third parties, and the domain names *itu.com* and *wipo.com* had also been registered and were being offered to sale by the same party.

294. The need for protection of the names and acronyms of international intergovernmental organizations from unauthorized commercial exploitation is recognized internationally in Article 6*ter* of the Paris Convention for the Protection of Industrial Property and through the TRIPS Agreement. Article 6*ter* of the Paris Convention requires the 154 countries party to that Convention “to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without the authorization by the competent authorities, either as trademarks or as elements of trademarks,” of the abbreviations and names of international intergovernmental organizations, where these have been communicated to WIPO.

295. The second comment was submitted by the World Health Organization (WHO), which has the constitutional mandate to develop, establish and promote international standards with respect to biological, pharmaceutical and similar products. Pursuant to WHO resolution 3.11 on Nonproprietary Names for Pharmaceutical Substances (adopted in May 1950 by the Third World Health Assembly), the Organization collaborates closely with national nomenclature committees to select a single, nonproprietary name of worldwide acceptability for each active substance used in pharmaceutical preparations. In this regard, WHO has been made responsible for selecting and promoting the protection of International Nonproprietary Names (INN) for Pharmaceutical Substances, in coordination with national authorities worldwide.

296. The underlying reason for ensuring that no party can claim any proprietary rights in INNs is to protect the safety of patients by allowing them to identify a specific pharmaceutical substance under one single, globally available name. After their selection, INNs are adopted by the national authorities of WHO Member States, which means that such INNs may not, in principle, be registered as trademarks. INNs are published in the following official languages: English, French, Latin, Russian and Spanish.

297. Although – as opposed to trademarks – INNs are in the public domain, WHO considers it important that their free availability is used exclusively for its intended purpose in the public interest, i.e., for the identification of a specific pharmaceutical substance. The Organization is therefore concerned to learn that – like trademarks – INNs have been registered as domain names.

298. The predatory or parasitical use of the names or acronyms of international intergovernmental organizations as domain names is clearly offensive to the States that have established those organizations. Where the domain name is used as an identifier for commercial purposes, it offends the policy upon which Article 6*ter* of the Paris Convention is based, which is to prohibit the use of those organizations’ names or acronyms as trademarks or elements of trademarks.

299. The predatory or parasitical use of INNs as domain names offends a carefully established public health and safety policy by attributing to the domain name holders rights

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that are increasingly akin to proprietary rights, since the registrations of domain names are effectively bought and sold through transfer agreements.

300. We consider that there are two ways of dealing with the problem. The first way would be through the extension of the exclusion mechanism. In the case of the names and acronyms of international intergovernmental organizations, the exclusion mechanism would seem appropriate, especially since litigation in the courts of one particular member country is not, in general, considered appropriate as a means of enforcing a treaty-established status. In order to avoid the attribution of any form of proprietary rights to INNs, the exclusion mechanism could also be appropriate for INNs.

301. The second way of dealing with the problem would be through the extension of the definition of abusive domain name registration to include abuse of the names and acronyms of international intergovernmental organizations and of INNs.

302. We consider that both possible solutions warrant very serious consideration. It is recognized that it is outside the scope of the present WIPO Process to recommend an immediate solution, since the terms of reference of that Process, in their relevant part, were directed at dispute resolution for intellectual property violations and a mechanism for protecting famous and well-known marks. We believe that the questions should, however, be the subject of further reflection and consultation by ICANN with a view to achieving a suitable solution, especially before the introduction of any new gTLDs which would be likely to compound existing problems.

*303. It is recommended that ICANN initiate a process designed to address the problem of the abusive registration of the names and acronyms of international intergovernmental organizations and of International Nonproprietary Names (INNs) before the introduction of any new gTLDs.*

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<sup>160</sup> See discussion in paragraphs 318 to 320 of Chapter 5.

<sup>161</sup> See Comment of Bell Atlantic (February 26, 1999 - RFC-3); Comment of Government of Japan, Ministry of International Trade and Industry of Japan and Japanese Patent Office (March 3, 1999 - RFC-3); Comment of International Trademark Association (March 12, 1999 - RFC-3); Comment of America Online (March 12, 1999 - RFC-3); Comment of United Parcel Service of America (March 12, 1999 - RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 - RFC-3); Comment of Time Warner (March 13, 1999 - RFC-3); Comment of AT&T (March 4 and 17, 1999 - RFC-3); Comment of International Chamber of Commerce (March 18, 1999 - RFC-3); Comment of Motion Picture Association of America (March 18, 1999 - RFC-3); Comment of European Community and its Member States (March 19, 1999 - RFC-3); Comment of British Telecommunications (March 19, 1999 - RFC-3); Comment of MCI WordCom (March 19, 1999 - RFC-3); Comment of Ford Motor Company (March 20, 1999 - RFC-3); Comment of KPMG (March 23, 1999). However, see also Comment of Government of Sweden, Swedish Patent and Registration Office (February 23, 1999 - RFC-3); Comment of Government of Hungary, Hungarian Patent Office

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(March 4, 1999 - RFC-3); Comment of Markenverband (March 4, 1999 - RFC-3); Comment of MARQUES (March 11, 1999 - RFC-3); Comments of Patent and Trademark Institute of Canada (April 2, 1999 - RFC-3); Comment of Government of Australia (March 30, 1999 - RFC-3).

<sup>162</sup> See Comment of Singapore Network Information Center (February 25, 1999 - RFC-3); Comment of Mr. Milton Mueller (March 6, 1999 - RFC-3); Comment of Ms. Ellen Rony (March 8, 1999 - RFC-3); Comment of Italian Naming Authority (March 8, 1999 - RFC-3); Comment of Ms. Jessica Litman (March 8, 1999 - RFC-3); Comment of CommerceNet (March 12, 1999 - RFC-3); Comment of Mr. Jonathan Weinberg (March 12, 1999 - RFC-3); Comment of Government of Sweden, National Post and Telecom Agency (March 12, 1999 - RFC-3); Comment of Domain Name Rights Coalition (March 10 and 20, 1999 - RFC-3).

<sup>163</sup> The list of States party to the Paris Convention is given in Annex X.

<sup>164</sup> The list of States bound by the TRIPS Agreement is given in Annex XI.

<sup>165</sup> Article 6*bis* also contains the following two provisions:

“(2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.

(3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.”

<sup>166</sup> See Article 16.

<sup>167</sup> In 1998, ten States became party to the TLT.

<sup>168</sup> See Frederick W. Mostert, *Famous and Well-Known Marks* (Butterworths, 1997), pages 19 to 21 and the authorities cited therein.

<sup>169</sup> See Network Solutions, Inc. Frequently Asked Questions: “Who can register a .com, .NET, .ORG domain name?” at <http://www.internic.net/faq/tlds.html>.

<sup>170</sup> See, for example, Comment of Ms. Ellen Rony (March 8, 1999 - RFC-3) and Comment of Mr. Jonathan Weinberg (March 12, 1999 - RFC-3).

<sup>171</sup> See Comment of Mr. Milton Mueller (March 6, 1999 - RFC-3); Comment of Ms. Ellen Rony (March 8, 1999 - RFC-3); Comment of Ms. Jessica Litman (March 8, 1999 - RFC-3); Comment of Mr. Jonathan Weinberg (March 12, 1999); Comment of Domain Name Rights Coalition (March 10 and 20, 1999 - RFC-3).

<sup>172</sup> See Comment of Bell Atlantic (February 26, 1999 - RFC-3); Comment of International Trademark Association (March 12, 1999 - RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 - RFC-3); Comment of Time Warner (March 13, 1999 - RFC-3); Comment of AT&T (March 4 and 17, 1999 - RFC-3); Comment of International Chamber of Commerce (March 18, 1999 - RFC-3); Comment of European Community and its Member States (March 19, 1999 - RFC-3); Comment of British Telecommunications (March 19, 1999 - RFC-3); Comment of MCI WorldCom (March 19, 1999 - RFC-3); Comment of KPMG (March 23, 1999 - RFC-3).

<sup>173</sup> See Article 2(1) in document SCT/2/3 (February 12, 1999). Notes on the definition are also available in the document.

<sup>174</sup> According to the WIPO SCT, the term “use” should cover use of a mark on the Internet; see Note 2.6 of SCT/2/3 (February 12, 1999).

<sup>175</sup> According to the WIPO SCT, this includes advertising on the Internet; see Note 2.7 of SCT/2/3 (February 12, 1999).

<sup>176</sup> See Comment of International Trademark Association (March 12, 1999 - RFC-3); Comment of America Online (March 12, 1999 - RFC-3); Comment of American Intellectual Property Law Association (March 12, 1999 - RFC-3); Comment of Time Warner (March 13, 1999 - RFC-3); Comment of AT&T (March 4 and 17, 1999 - RFC-3); Comment of European Community and its Member States (March 19, 1999 - RFC-3); Comment of MCI WorldCom (March 19, 1999 - RFC-3); Comment of KPMG (March 23, 1999 - RFC-3).

<sup>177</sup> See Comment of International Chamber of Commerce (March 18, 1999 - RFC-3); Comment of British Telecommunications (March 19, 1999 - RFC-3).

<sup>178</sup> See Comment of International Intellectual Property Alliance (November 6, 1998 - RFC-2); Comment of Motion Picture Association of America (November 6, 1998 - RFC-2); Comment of Ms. Shelley Hebert of Stanford University (San Francisco Consultation); Comment of Ms. Marilyn Cade of AT&T (Washington Consultation – 1998); Comment of The Chanel Company (November 4, 1998 - RFC-2); Comment of Ms. Anne Gundelfinger of Intel (San Francisco Consultation); Comment of United Parcel Service of America (March 12, 1999 - RFC-3); Comment of Time Warner (March 13, 1999).

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5. NEW GENERIC TOP-LEVEL DOMAINS:  
SOME CONSIDERATIONS FROM THE PERSPECTIVE OF  
INTELLECTUAL PROPERTY

304. The final term of reference of the WIPO Internet Domain Name Process is to evaluate the effects of adding new gTLDs and related dispute-resolution procedures on trademark and intellectual property holders, such evaluation being informed also by studies conducted by independent organizations.<sup>179</sup>

305. The recent history of the question of adding new gTLDs goes back to May 1996, when Dr. Jon Postel proposed in an Internet-Draft the creation of up to 50 domain name registries, each of which would have the exclusive right to register domain names in up to three new top-level domains, for a total of 150 potential new top-level domains.<sup>180</sup> A revised draft in June 1996<sup>181</sup> received the approval of the Internet Society's (ISOC) Board of Trustees, and the work in this area was soon thereafter taken up by the International Ad Hoc Committee (IAHC). The IAHC, which was organized at the initiative of ISOC and IANA, issued a final report, as noted earlier, on February 4, 1997, calling for the creation of seven new top-level domains.<sup>182</sup>

306. In January 1998, in its Green Paper,<sup>183</sup> the United States Government, through the Department of Commerce and the National Telecommunications and Information Administration (NTIA), sought, in cooperation with IANA, to scale down expectations to five new gTLDs, which would be introduced during the transition period for privatizing the management of Internet names and addresses. Comments on the Green Paper from the international community ultimately led the United States Government to conclude in its White Paper that it would not recommend the immediate implementation of new gTLDs, but that this decision should be left to the new, globally representative corporation to be based on international input.<sup>184</sup>

THE DIVERSITY OF VIEWS AND PERSPECTIVES

307. It is not a secret that the questions of whether, how and when new gTLDs should be added have attracted a diversity of views, if not sharply divided views. At one end of the spectrum, certain Internet constituencies have maintained that the Internet should be an open system and that, at least in principle, any person should be able to introduce a new top-level domain, leaving the market to be the ultimate arbiter of its success. At the other end of the spectrum, some stakeholders have expressed strongly the view that no new gTLDs should be added, at least at this stage. Among the reasons in support of this latter position is a belief that there is currently no demonstrated need for additional name space and that adding new gTLDs will aggravate intellectual property problems and create consumer confusion. Proponents of this position also maintain that the availability of approximately 250 under-utilized country code domains should in any event provide the necessary space for additional

growth, and that it may be more constructive to adopt measures to encourage use of these country code domains, rather than to dwell upon the need for new gTLDs.

308. Still others have taken a position that falls between the two described in the preceding paragraph. They observe that the Internet has experienced enormous growth precisely because few restrictions have been imposed on new initiatives, and that it would be misguided to ignore this when considering the introduction of new gTLDs. At the same time, those tending to this view recognize that the Internet has now developed into the central medium for electronic commerce, while at the same time being a diversified global medium supporting instantaneous communications and a wide range of other applications. They believe that it would be imprudent to expand suddenly and drastically the name space, as it would be impossible to foresee the consequences of such action. Instead, they suggest that the need for reliability and stability requires that the generic name space be expanded at a controlled pace, which allows the opportunity to observe the effects of such expansion and to draw appropriate conclusions that will serve to guide long-term policy.

309. One of the explanations for the diversity of views held in relation to the question of the creation of new gTLDs is the diversity of issues involved in developing a coordinated policy on that question and, consequently, the diversity of perspectives that may be brought to bear on it. The differentiation of the generic name space can be an instrument for many policy objectives.

310. In addition to the intellectual property perspective, there are technical, commercial, marketing and other legal ways of viewing the question:

(i) The technical perspective is apparent in the critical need for the DNS to continue to work with operational accuracy, stability, robustness and efficiency. A number of commenters in the on-going discussions have reflected this point as a first principle: do no harm.<sup>185</sup> While some in the Internet engineering community believe that the DNS can support an unlimited number of top-level domains without encountering problems, others have noted that an immediate large increase in the number of gTLDs may lead into technically unknown territory.<sup>186</sup> In this general context, the recently announced participation of five companies to act as registrars in the initial testbed phase of the new competitive Shared Registry System (SRS) for the .com, .net and .org domains represents an effort to assess, under controlled conditions, the reliability and robustness of the SRS technology used to allow multiple registrars to accept registrations in the existing open gTLDs.

(ii) The commercial perspective has focused on questions of competition and other commercial considerations. The move to introduce new gTLDs was, at least in part, motivated by the desire to increase competition in gTLD registration activities. The situation in which one entity acted on an exclusive basis as the registration authority for the most commercially successful gTLDs was viewed as requiring attention in this regard.<sup>187</sup> Others, however, have urged that creating new business opportunities for a new set of registration authorities is not a sufficient reason for creating top-level domains. In any event, competition is now being introduced, as mentioned above, through the participation of competing registrars in the existing open gTLDs.

(iii) The marketing perspective has focused on the role of top-level domains in sending signals to the Internet user (e.g., .com denotes the premier international commercial space). This perspective is not limited to the gTLDs. Certain ccTLDs, owing to their associated ISO 3166 country code, are being marketed and used very much like de facto gTLDs.<sup>188</sup> This trend merits careful monitoring. The ability of certain TLDs to transmit signals effectively to Internet users is a characteristic that distinguishes the functionality of a top-level domain from the classifications used in traditional trademark systems. While trademark classes are administrative devices which, as such, are not used as marketing tools, top-level domains play a more active role for the intellectual property owner and the Internet user. Any policy on the introduction of new gTLDs must take this into account and appropriately consider that certain top-level domains may be deemed more valuable than others, in line with their respective market-signaling power.

(iv) A variety of legal perspectives, in addition to intellectual property, have also entered into the picture, for example, competition law, consumer protection law, privacy law and the protection of minors. It has, for example, been suggested that differentiation in the generic name space might be used as a means of controlling activities considered harmful to minors.

311. As the WIPO Interim Report noted, in view of the variety of issues and perspectives involved in the formation of a policy on the creation of new gTLDs, it goes without saying that the intellectual property perspective is not the only one to be taken into account. In considering the formulation of recommendations concerning the addition of new gTLDs, therefore, the approach has been adopted of assessing what the past experience of intellectual property owners has been in relation to problems encountered in the current gTLDs, and using that experience as a basis for recommending how the particular interests of intellectual property owners can be accommodated within an overall policy on the creation of new gTLDs.

#### ILLUSTRATIONS OF PROBLEMS ENCOUNTERED BY HOLDERS OF INTELLECTUAL PROPERTY RIGHTS IN EXISTING gTLDs

312. Numerous comments and extensive testimony were provided at the regional consultations throughout the WIPO Process on the nature and extent of the problems encountered by intellectual property owners in respect of domain names. A number of illustrations of such problems are provided in this section. It is recognized that much of the evidence presented was anecdotal in nature and that few comprehensive analyses supported by empirical evidence are available.<sup>189</sup> Nonetheless, the widely held view in the trademark community, based on the many experiences of those who have participated in the WIPO Process, is that the problems encountered are extensive, particularly for the owners of famous and well-known marks, and that these problems have been growing, in part because of increased activity in the country code domains.<sup>190</sup> A summary of those experiences is given in the next paragraphs.

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### Lack of Visibility of the Full Extent of Problems

313. A significant number of disputes apparently never rise to the level of being reported. A large proportion may remain unresolved, or may be resolved informally pursuant to a settlement between the parties. A study commissioned by MARQUES, the Association of European Trade Mark Owners, for the purposes of the WIPO Process, found that 85 percent of those participating had experienced infringement on the Internet of their own or their clients' intellectual property. Moreover, 60 percent of those responding had negotiated for the purchase of their domain name through informal means. The same study concluded that a large number of cases simply remain unresolved. An additional comprehensive study was undertaken by the International Association for the Protection of Industrial Property (AIPPI). Published in May 1998, the study contains reports from the numerous national groups of the AIPPI that have focused, in particular, on the problems of the confusion that has arisen as a result of the interface between domain names and trademarks, and on how domain names can, when used in particular ways, infringe the rights of mark owners.<sup>191</sup>

314. This latter point was also emphasized by speakers at WIPO's regional consultations. One commenter indicated that "for each reported case, Panavision, Spice Girls, Burger King, British Telecom, there are a myriad of others that have to be resolved outside the court room, but at significant cost to the companies and to the consumers who buy their brand of products."<sup>192</sup> As to the informal means by which the problems are often resolved, another speaker stated that:

"There is a fair market in cyberpirated marks. When I was in private practice, representing a client with many well-known famous trademarks for consumer products that you and I use everyday, the client was approached by a cyberpirate who said 'I will sell this to you for 4000 dollars.' The client's marketing department wanted that name and they wanted it now and they said 'OK, I can have it now for 4000 dollars or I can have it way later for God knows how much you are going to charge me.' So, from a business point of view, it is easier to just engage in the private transaction and pay the 4000 dollars."<sup>193</sup>

### Focus on Clear Cases of Abuse

315. It would appear from the comments that the priority concern of the trademark community does not relate to conflicts between parties who claim to have competing legitimate rights in the name (for example, different companies with the same trademark in different product lines or operating in different areas of the world), but focuses on cases of clear abuse, often directed at famous and well-known marks. Owners of such marks have indicated that, in some cases, they are confronted with hundreds of such instances at any given time. A speaker at one regional consultation stated that "in less than a year, we have already had 579 matters in the existing gTLDs."<sup>194</sup> Another alluded to similar experiences:

“We are encountering the same kind of volume that others are encountering and that is cases in the volume of 15 to 20 per month. In one particular case, someone registered ‘ATTT.com,’ which linked to a pornographic site. While this area may seem perhaps obscure to some, it is taken very seriously by those of us who have the brand recognition of the commercial players that are in this room... Among the other examples are the registration of ‘AT-T.com,’ ‘ATTT.net,’ ‘ATTworldnet.net,’ ‘ATTwirelesservices.com,’ ‘ATTcellular.com,’ ‘ATTweb.com,’ ‘ATTonline.com,’ ‘ATTnetwork.net,’ ‘ATTTCI.com, .net, .org,’ it goes on and on. We do think that it is important so, when we talk about volume, we think it is there and increasing...”<sup>195</sup>

316. Another speaker representing a large corporation explained that they had been confronted by “several hundred Internet domain names that have been registered throughout the world using Porsche or a variation of Porsche [and that] the variations on domain names using Porsche is virtually endless, and is limited only by one’s imagination.” Some of the domain names in question were registered under the registrant name “Misspellers Rescue Company.”<sup>196</sup>

317. Emphasizing the gamesmanship that is sometimes involved, still another speaker stated: “I probably have to send claim letters out and pursue people on a majority of the motion picture titles that we are coming out with and we have recently confirmed that there are growing numbers of people who watch the MPAA [Motion Picture Association of America], so that they can register domain name sites as soon as the MPAA registers our titles, which is months and months before those movies appear.”<sup>197</sup>

#### Predatory and Parasitical Practices

318. One clear source of the problems has been those persons who register domain names that are identical or similar to trademarks, with a view to selling them at a profit to the trademark owner. As a variation of this practice, one speaker explained: “One of the more interesting twists on speculation however was an offer within the past year...to purchase domain names containing well-known trademarks of our direct competitors. We were not interested, of course, but passed on the information to our competitors...”<sup>198</sup> Other persons have registered domain names that are identical or similar to trademarks in order to create the false impression that the owner of the mark in some way endorses the goods or services the third party offers:

“In this instance the direct competitor has registered as domain names a slight, de minimis, non-substantive variation of several of our well-known and heavily advertised trademarks. These domain names are connected to the competitor’s website advertising directly competitive services. A consumer viewing the competitor’s website has no way of knowing that the services offered at that site are not our services.”<sup>199</sup>

319. Another speaker similarly testified that “[she has] received innumerable calls from such users, who are just confused on how they are to use the Internet to find our sites because they are misdirected so regularly.”<sup>200</sup>

320. Still others have registered domain names not to cause any confusion regarding the source or origin of the goods or services offered, but in an effort to attract increased traffic to their own websites to tarnish the reputation of a mark. Certain persons have also made it a practice to register domain names corresponding to trademarks in order to hoard them, thus intentionally frustrating the trademark owner's desire to reflect its mark in a domain name. The following example was presented at a regional consultation as an egregious example of the actual problems encountered:

“In this particular instance I am referring to use of a second-level domain name for a porn[ographic] site where the domain name is made up of another's trademark, usually a well-known one, sometimes with an extremely minor variation on, or a misspelling of, the well-known mark... The current examples I have brought today are three domain names that currently are active. They are the [www.intle.com](http://www.intle.com) domain name; as you can see the l and the e are transposed, the [www.pentium2.com](http://www.pentium2.com) domain name and the [pentium3.com](http://pentium3.com) domain name... The third one is...not only a porn site but a cybersquatter. You come to the first page of [pentium3.com](http://pentium3.com) and you are instructed to click here ‘to see some fine ass nude celeb photos.’ If you do click there, it takes you to those photos. The other place that you can click on the front page indicates that the domain is for sale, ‘please click here for details,’ at which point you get to a page that...says ‘hello, you seem to have an intuitive mind like me. Just imagine how many hits this page will have when Pentium ships their new P III chips sometime next year. I am already getting 30 hits with no promotion at all. I am getting offers left and right for this site, so right now I am going to the highest bidder format. Current highest bid is \$9,350...’ So, he is basically soliciting bids for the site on a theory that, when Intel ships Pentium III next year, this would become a very valuable site to Intel.”<sup>201</sup>

#### Need for Improvement in Registration Practices

321. Domain name registration practices in the gTLDs appear to have caused the occurrence of some of these problems. The relative ease with which the activity in question can occur, the frequent inability to identify the party at its source, the volume of abusive practices, the ubiquitous nature and the increasing globalization of Internet use together are claimed to challenge the ability of trademark owners to effectively police and enforce their rights. As explained by one speaker:

“In my opinion, in the past several years, there has really been an inordinate amount of time, energy and money spent by my company keeping the domain name register clear of names registered by others incorporating our famous trademarks... I know, for example, that in my legal budget in 1998 I am spending more money on Internet-related issues than I am on consumer products piracy in the United States, and that really is unbalanced in my view.”<sup>202</sup>

322. The lack of reliable contact details often is highlighted as a major obstacle in the resolution of the problem:

“As a trademark owner, [we have] the responsibility to track down domain name registrants one by one to assert [our] trademark rights. And here I would add...that we often do find that the registrant's information that is provided on Whois through Internic is completely unreliable. In many cases when I, personally, called those telephone numbers they don't get answered, they are inactive, they are out of service, etc. E-mail addresses are likewise very hit-and-miss on that activity. And that is the source of information that we have to rely on. So, if that information is inaccurate, then our next step would have to be to hire a private investigator to go and actually seek out that individual or that entity and try to find them. Once we have done that, the next step is to file individual challenges with Internic with the results and timing of those challenges being very uncertain. And again, we have to do this one by one by one. The proliferation of these registrations, which are now averaging several per week, mean that staff time and legal costs required to pursue these infringements are growing exponentially while the array of activities engaged in by infringers increases almost daily.”<sup>203</sup>

### Resort to Defensive Practices

323. While numerous instances have been brought to WIPO's attention where trademark holders, particularly owners of famous and well-known marks, have been the victim of domain name abuse, a number of other commentators have observed that trademark holders have resorted to defensive practices that those commentators find undesirable. This may occur in situations where a trademark holder, relying on its trademark registrations, seeks to interfere with the rights of a domain name holder who obtained the domain name under legitimate circumstances and does not use it in a way that would justify a claim of trademark infringement or dilution.<sup>204</sup> It has been argued that the potential for consumer confusion has been ostensibly absent in some cases because of sectoral or geographical differences between the operations under a domain name and those under the trademark. Several commentators have stated that these sorts of practices, which have come to be called “reverse domain name hijacking,” have detrimental effects on individuals and small business.

324. Some of the instances in which such domain name hijacking is alleged to have occurred include challenges to the following domain names: epix.com, cds.com, ajax.com, dci.com, ty.com, earth.com, juno.com, and, involving non-commercial domain name holders, pokey.org and veronica.org.<sup>205</sup> In one case, *Roadrunner v. Network Solutions*, the holder of the domain name “roadrunner.com,” a small Internet-based business, resorted to legal action to defend its right to use the domain name after it was challenged by the owners of the registered trademark “Road Runner.”<sup>206</sup> Commentators have emphasized the need for the domain name system to accommodate the diverse nature of the Internet's users—who may register domain names for commercial, as well as political and social purposes<sup>207</sup>—and to ensure individuals' freedom of communication.<sup>208</sup> These conflicts may be seen as a consequence of the global reach of the Internet, where the rights of a trademark holder in one territory must coexist with the legitimate rights of other trademark holders or Internet users, employing the same or similar names, in different jurisdictions and for different uses.<sup>209</sup>

325. Commentators have also emphasized that the suspension, transfer or cancellation of a domain name held by a small business owner could irrevocably damage its commercial interests.<sup>210</sup> In this connection, evidence was put forward of the growing reliance of small businesses on the commercial advantages of the Internet.<sup>211</sup> Testimony was also given regarding alleged unfair business practices involving demands upon domain names.<sup>212</sup> A number of commentators emphasized the need to ensure that any recommended administrative dispute-resolution procedure would not allow potential reverse domain name hijackers to expose small businesses to unjustified threats of proceedings<sup>213</sup> that might impose such high costs or risks of drastic remedies that they are coerced into relinquishing their domain names:

“One dispute was recently brought to my attention. A small Internet provider has received a domain name challenge from another company that is located on the other side of the United States and it is in a completely different business. They have already spent \$40,000 to defend themselves and the case hasn't even gone to trial yet. I am talking about a company with six employees. Now, if my company, when I had six employees and had about 1,000 customers, struggling to keep up the growth, having to decide daily between paying our employees and buying new equipment, had then to face such a challenge, we would probably just have gone under.”<sup>214</sup>

326. Concerns about the inadvertent impact on small businesses and individuals are one of the factors that has been considered in revising the recommendation in the WIPO Interim Report so as to restrict the scope of the administrative procedure to cases of bad faith, abusive domain name registrations. However, one outcome of this limitation is that domain name holders may continue to be threatened by court proceedings and will be unable to use the efficient and inexpensive administrative procedure to protect their domain names against such alleged reverse domain name hijackers.

327. Some of the same commentators also disapprove of the practice by certain trademark holders of registering their marks in all top-level domains, thereby frustrating any third party's legitimate desire to use the same name in one of the domains for unrelated or non-commercial purposes. A speaker at a regional consultation gave the following example:

“...if we take [name].com, '[name]' is for some unknown reason registered in all ccTLDs. Now, if one is wanting to contact the [company], you will use the domain [name].com. I see no benefit in [the company] effectively registering in all ccTLDs. Because what they are doing effectively is blocking out potentially other legitimate companies who have a right to trade under the name...from their national TLDs and possibly the new gTLDs.”<sup>215</sup>

#### International Scope of Problems

328. The problems encountered are not confined to the United States of America, but occur also in other regions and are likely to increase with the expanding use of the Internet around

the world. A speaker at the regional consultation in India stated that “[In India], cases have been reported where domain names similar to prominent trademarks or names of famous personalities, like Amitabh Bachan, Sunil Gavaskar and so on, are usurped by Internet users as domain names.”<sup>216</sup> Another speaker at the same consultation further stated:

“[E]ven in a country like India, which has just begun its journey on the information superhighway, we have already begun to encounter things like ‘Internet Property Auction.’ Names sites have already been picked up and resold to the original owners, including BJP, which is the ruling party in India today, Srivansan, Times of India, VHP, ABCL, Tata, ONGC,... ITC Hotels Ltd, Welcome Net Ltd, ...State Bank of India and a host of other corporates, which reads like a Who's Who. The minimum auction bid here is stated as US\$1500, ...and the time of closing of the bid is five days thereafter—it is May 12, 12.00hrs GMT.”<sup>217</sup>

#### Dissatisfaction with Current gTLD Dispute-Resolution Policies

329. Network Solutions Inc. (NSI) has a Domain Name Dispute Policy<sup>218</sup> to be applied to disputes between domain name registrants and third parties. While some commentators have expressed satisfaction with the NSI Policy as a means of providing swift and effective relief for trademark owners, others believe it is flawed in several important respects.

330. One of the major difficulties alluded to by commentators results from what is perceived as the Policy’s overly “mechanical” approach to the resolution of disputes. The Policy relies heavily on the ability of the parties to produce certain trademark certificates in support of their respective positions, without any review of the use of the domain name and alleged infringement. As such, it is stated that the Policy does not sufficiently allow for the consideration of all legitimate rights and interests of the parties (which are not necessarily reflected in a trademark certificate).<sup>219</sup> This concern has been emphasized, in particular, by those who are not trademark owners and who believe that the Policy represents an unwarranted extension of trademark rights, as it may grant a complainant the effect of a preliminary injunction without requiring it to show a likelihood of success on the merits.

331. NSI understandably wishes to avoid situations where it would have to decide upon disputes by weighing all the relevant facts and circumstances, thereby assuming the role of a de facto arbiter or judge. This underscores the need for courts or independent neutrals to resolve disputes instead of the registration authorities themselves, and illustrates well the limits of any active involvement that such authorities should have in the resolution of domain name disputes.

332. Another problem raised concerning the NSI Policy is the requirement that a complainant must produce a trademark registration that is identical to the second-level domain name subject to the dispute. This has resulted in what has been described by commentators as frustrating situations where the NSI Policy could not be relied upon to obtain relief for trademarks that are virtually, but not perfectly, identical to the domain name. For instance, the owner of the trademark consisting of the word “CHANEL BOUTIQUE”

accompanied by the CC monogram could not apply the NSI Policy against a person who had registered the string chanel-boutique.com.<sup>220</sup> Similarly, the owner of the mark “PLAYSTATION” faced the same problem in connection with the domain name playstations.com.<sup>221</sup>

333. Even when the NSI Policy applies, the result that it offers is to place the domain name on “hold.” Consequently, a trademark owner who has obtained relief under the Policy is still required to resort to court or arbitration to obtain the cancellation or transfer of the domain name. This two-tiered approach adds a further level of complexity to the dispute resolution process and, by insisting on a court decision or arbitral award for the final disposition of the case, requires a complainant to expend significant resources to resolve what are often simple cases of manifest abuse.

#### REGISTRATION PRACTICES AND PROCEDURES IN COUNTRY CODE TOP-LEVEL DOMAINS

334. In addition to continuing efforts to identify problems in the existing gTLDs, the WIPO Interim Report suggested that it would be useful to attempt to identify how practices in the ccTLDs are influencing the protection of intellectual property rights. In December 1997, a point was reached where more domain names were registered by organizations or individuals based in countries other than the United States of America than by the same entities located in that country.<sup>222</sup> This internationalization of the Internet is also reflected in the increasing number of domain name registrations in the country domains. While the public in the United States of America has made only limited use of “.us” and, instead, has universally favored the gTLDs, users in other countries have availed themselves to a much larger degree of the opportunities offered by the ccTLDs.<sup>223</sup> At the time of publication of the Interim Report, out of a total of more than 4,800,000 domains registered worldwide, over 1,400,000 were registered in the ccTLDs, with “.de” (Germany), “.uk” (United Kingdom) and “.dk” (Denmark) containing the largest numbers.<sup>224</sup> Now, just four months later, there are approximately 1,860,000 registrations in the ccTLDs,<sup>225</sup> and it is expected that the pace of registrations in these domains will continue to increase.

335. The differing approaches taken with regard to the management of the name space in the ccTLDs, and the related experience gained by the registration authorities, their clients and third parties, constitute a valuable source of information. With this in mind, WIPO has supplemented its consultations with a questionnaire directed to the administering authorities for 35 representative ccTLDs, which were selected on the basis of the number of their domain name registrations (both large and small) and their geographic representation. The questionnaire, which was sent out in January 1999, was intended to review the impact on intellectual property of the practices and procedures adopted by ccTLD registration authorities, and their experiences with any domain name disputes. The results obtained from responses to the questionnaire are set out in Annex IX and summarized in the ensuing paragraphs.

336. The survey revealed great diversity in the registration and operating practices of the participating ccTLDs. The responses also indicated that ccTLD administrators have had to develop practices on their own and that this has sometimes been a burden, particularly for the smaller ccTLDs and those in developing countries. In this respect, a number of registration authorities indicated they had expended considerable time and resources (e.g., the cost of legal services) to devise registration rules and procedures to address problems they had encountered.

337. Although virtually all of the participating ccTLDs (88 percent) indicated that they register names on a first-come, first-served basis, most (71 percent) also indicated that they operate “restricted” domains which impose limitations—such as the requirement of domicile, no transfer of a domain name registration, limiting the number of domains which any one applicant may register, or requiring official certification from a national authority—that, in effect, mitigate the potential problems arising from a first-come, first-served system. It was felt that these restrictions, as well as some of the procedural steps used, have created a regulated domain space that limits the potential number of registrations. Thus, some ccTLD administrators operating under such restrictions indicated that they are now in the process of revising their practices to establish a more open system, which might also lead to an increase in the occurrence of problems and disputes.

338. Other measures, such as using a formalized registration agreement, representing the accuracy of the information in the registration agreement and that the registration of the domain name does not infringe the intellectual property rights of a third party, were widely implemented by the administrators surveyed. It is notable that only 12 percent of the ccTLDs required payment of a fee before activation of a domain name registration, a practice that would go a long way towards preventing abuses. It is also notable that a majority of the ccTLDs (54 percent) indicated that they take steps, such as testing e-mail addresses on-line or requiring companies to present certifications of registration from the national authorities, to verify an applicant’s identity or that the contact details are correct. In addition, most of the ccTLDs (71 percent) require that such contact details must be kept up-to-date. Although 83 percent of the ccTLDs will make the contact details of registrants available in some circumstances, 46 percent of ccTLDs take some steps to protect confidentiality (such as contractual use undertakings). The use of indemnity statements and contractual undertakings by applicants is seen as an important underpinning for future action by registration authorities to rectify the register.

339. The questionnaire revealed that there is no coherent approach to dispute resolution among ccTLD administrators, although an informal conciliation role is often assumed in an effort to prevent disputes from escalating into litigation. The registration authorities indicated they are wary of becoming involved in dispute resolution and unaware of the full extent of the problems in their domains. At the same time, the implementation of remedies, such as cancellation or transfer, was viewed as an effective measure in almost all domains (with the notable exception of those domains (for example, .jp) where transfer is prohibited). Finally, it was observed that a number of ccTLDs operate an informal system of exclusions for famous marks within the ccTLD.

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## CONCLUSIONS, SUGGESTIONS AND REFLECTIONS

340. On the basis of the evidence presented so far in the WIPO Process, it may be concluded that intellectual property owners have experienced very considerable difficulties in ensuring the protection of their intellectual property rights in the existing gTLDs.

341. It is considered that the problems encountered by intellectual property owners in the existing gTLDs would be greatly ameliorated, without adverse impact upon legitimate practices, if:

- the recommendations made in Chapter 2 in relation to domain name registration procedures were adopted;
- an administrative procedure concerning abusive registrations of domain names, as recommended in Chapter 3, were adopted; and
- the measures recommended in Chapter 4 for the protection of famous and well-known marks were implemented.

342. We confirm the provisional recommendation in the WIPO Interim Report that, with these improved practices and procedures, not only would problems in the existing gTLDs be reduced significantly, but also it would be possible to contemplate the introduction of new gTLDs from an intellectual property perspective. However, such new gTLDs would need to be introduced in a slow and controlled manner in such a way that experience with the proposed improved practices and procedures can be monitored.<sup>226</sup> That experience will be the arbiter of whether the proposed improved practices and procedures do indeed result in a significant reduction of the problems that have been encountered by intellectual property owners.

*343. It is concluded that, on condition that the proposed improved practices for domain name registrations, the proposed administrative dispute-resolution procedure and the proposed measures for the protection of famous and well-known marks and for the suppression of abusive registrations of domain names are all adopted, new gTLDs can be introduced, provided that they are introduced in a slow and controlled manner which takes account of the efficacy of the proposed new practices and procedures in reducing existing problems.*

### Differentiation

344. In addition to reference to experience as a means of controlling any perceived harmful effects of introducing new gTLDs, as discussed above, consideration could also be given to

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differentiation as a means of accommodating both the interests of intellectual property owners and those of other constituencies in the addition of new gTLDs.

345. It is clear that many Internet constituencies highlight the importance of the Internet as a non-commercial communications network, and are therefore concerned that any overzealous implementation of measures proposed for the protection of intellectual property may result in significant limitations on other important rights and interests.

346. The WIPO Interim Report signaled that one approach to bridging the differences in views between those with differing conceptions of the use of the Internet might be to acknowledge the multi-dimensional use of the Internet (and domain names) by introducing a differentiation in the name space between commercial and non-commercial domains.<sup>227</sup> As indicated in Chapter 2 above, it is considered that this approach requires further reflection, elaboration and consultation. We add, at this stage, only that, if any non-commercial domain were introduced, the desirability of extending exclusions for famous and well-known marks to such a domain would also need to be carefully considered.

#### The Impact of New Navigational Measures

347. Current controversies regarding the DNS and trademarks find their origin in the mnemonic function of domain names. For the general public, easy-to-remember domain names are among the primary navigation tools for the Internet, as they permit direct and convenient access to websites.

348. Recent technological developments, however, may impact on the future relevance of domain names. Keyword systems, which have started to make their appearance, offer the potential to substantially reduce user reliance on domain names as Internet signposts. While various systems are available now, each with its own technical characteristics, they have one feature in common: to access a website, a user no longer needs to enter the site's domain name in the browser location or address field. Instead, a keyword may yield the same navigational result.<sup>228</sup>

349. Depending on their market acceptance, degree of use and navigational accuracy, keywords, in addition to domain names, may increasingly be relied upon to perform the function of locating businesses and their brands on the Internet. However, the same landrush mentality that applied to domain names may take hold in this area as well, as commercial and other interests seek to arrogate valuable keywords for themselves. The practices and procedures on the basis of which persons or organizations obtain keywords and the manner in which keyword systems operate may well cause difficulties similar to those now encountered in relation to domain names.

350. While some of the systems allow parties to share the same keyword,<sup>229</sup> other systems do not permit this.<sup>230</sup> The inability to share a keyword, similar to the DNS uniqueness requirement, may lead to conflicts between persons or enterprises coveting common words that form part of marks as keywords. Furthermore, the fact that certain systems allow generic

terms (such as “golf”, “car”, “book”)<sup>231</sup> to be employed as keywords may further complicate matters, as it undercuts the keyword’s core functionality, namely, the identification of a website with a reasonable degree of particularity. The grounds and procedures for the attribution of keywords may, if not properly conceived, lead to problems similar to those that have resulted from less than optimal domain name registration practices.<sup>232</sup>

351. Potential concerns are well illustrated by way of the following example. Several businesses, located in various regions of the world, have registered domain names with the common element “telecom” in each. The list includes SymmetriCom, Inc. (www.telecom.com), Telecom UK Ltd. (www.telecom.co.uk), TWX Telecommunications GmbH (www.telecom.de), Telecom s.r.l. (www.telecom.it), Telstra Corporation Ltd. (www.telecom.com.au) and Swisscom (www.telecom.ch). Nonetheless, some of the currently available keyword systems direct a user entering the keyword “telecom” only to the website of SymmetricCom, Inc., without any reference to the other companies.<sup>233</sup> Depending on how widely these particular systems are used, this may impact on the companies’ visibility on the Internet. Potential concerns in this respect are reinforced by the fact that certain keyword systems are incorporated into and interoperate with the most popular Internet browsers, further leveraging the marketing power of the keywords registered therein.

352. Only the future can tell to what extent the debate may shift from domain names to keywords, and market acceptance of keyword navigation systems will play a determining role in this respect. However, many of the same positions and arguments heard in the domain name controversy may resurface.<sup>234</sup>

[Annexes follow]

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<sup>179</sup> See WIPO RFC-2, paragraphs 19-23; United States Government White Paper, Section 8; and the recently agreed Memorandum of Understanding between the United States Department of Commerce and ICANN (MoU), in which ICANN agrees to:

“[c]ollaborate on the design, development and testing of a plan for creating a process that will consider the possible expansion of the number of gTLDs. The designed process should consider and take into account the following:

...

“d. Recommendations regarding trademark/domain name policies set forth in the Statement of Policy [White Paper]; recommendations made by the World Intellectual Property Organization (WIPO) concerning: (i) the development of a uniform approach to resolving trademark/domain name disputes involving cyberspiracy; (ii) a process for protecting famous trademarks in the generic top level domains; (iii) the effects of adding new gTLDs and related dispute resolution procedures on trademark and intellectual property holders; and recommendations made by other independent organizations concerning trademark/domain name issues.” (Article V.C.9.d.).

The MoU provides that the following factors should also be taken into account: the potential impact of new gTLDs on the Internet root server system and Internet stability; the creation and implementation of minimum

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criteria for new and existing gTLD registries; and potential consumer benefits/costs associated with establishing a competitive environment for gTLD registries (Article V.C.9.a.-c.).

<sup>180</sup> The Postel Internet-Draft is referenced at <http://www.iiia.org/lists/newdom/1996q2/0259.html> in the Newdom listserver archive.

<sup>181</sup> The Revised Internet-Draft is referenced at <http://www.iiia.org/lists/newdom/1996q2/0289.html> in the Newdom listserver archive.

<sup>182</sup> See <http://www.gtld-mou.org/draft-iahc-recommend-oo.html>.

<sup>183</sup> Proposed Rule for the Improvement of the Technical Management of Internet Names and Addresses, Docket No. 980212036-8036-01 (January 30, 1998) (the Green Paper).

<sup>184</sup> The White Paper (Section 7) provided the following policy guidance on adding new TLDs:

“At least in the short run, a prudent concern for the stability of the system suggests that expansion of gTLDs proceed at a deliberate and controlled pace to allow for evaluation of the impact of the new gTLDs and well-reasoned evolution of the domain space. New top level domains could be created to enhance competition and to enable the new corporation to evaluate the functioning, in the new environment, of the root server system and the software systems that enable shared registration.”

<sup>185</sup> This principle of doing no harm was most recently stated by President Clinton on November 30, 1998, in a speech addressing progress in electronic commerce.

<sup>186</sup> See, the Internet Architecture Board’s Comment on the Green Paper, paragraph 2 (February 23, 1998). For example, the addition of very large numbers of TLDs (for example, allowing arbitrary domains to be established for any and all interested parties) could cause scaling and implementation problems in the current DNS due to the potential flattening of the domain name lookup process.

<sup>187</sup> See, in this respect, Amendment No. 11 to the Cooperation Agreement between NSI and the United States Department of Commerce, which entered into force on October 7, 1998 (NCR-9218742). This agreement provides in relevant part that: “In order to create an environment conducive to the development of robust competition among domain name registrars, NSI will, either directly or by contract, develop a protocol and associated software supporting a system that permits multiple registrars to provide registration services within the gTLDs for which NSI now acts as a registry (Shared Registration System).”

<sup>188</sup> The recent bidding for the top-level domain “.tv,” which is the ISO 3166 two-letter code for Tuvalu, illustrates the commercial potential that some would attribute to such country domains. It was reported that one of the bidders promised US\$ 50 million in advance for the contract to administer the domain. See Andrew Raskin, “Buy This Domain,” *WIRED* (September 9, 1998) ([http://www.wired.com/wired/archive/6.09/tuvalu\\_pr.html](http://www.wired.com/wired/archive/6.09/tuvalu_pr.html)).

<sup>189</sup> One analysis was presented as a comment to WIPO RFC-1 by Mr. Milton Mueller, Associate Professor at Syracuse University School of Information Studies (USA). With respect to the incidence of domain name disputes involving intellectual property, the Mueller study concludes that, on the basis of statistical evidence, actual infringement cases constitute a very small number in the gTLDs. A critique of this study was submitted as a comment to WIPO RFC-2 by Mr. Jacob Jacoby, Professor at the Leonard Stern Graduate School of Business, New York University (USA), and Mr. Leon B. Kaplan, President of Princeton Research and Consulting Center Inc. (Princeton, NJ, USA). The Jacoby and Kaplan critique takes issue with the Mueller study on the basis that there is no scientifically defensible basis for the conclusions contained therein.

<sup>190</sup> Network Solutions Inc., the registration authority for the nearly 4,500,000 names registered in the open gTLDs, has indicated that it has received approximately 5,400 trademark-related complaints resulting in the

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application of its Dispute Resolution Policy in approximately 2,600 instances. While the number of disputes which have been brought to NSI's attention is low in relation to the total number of domain name registrations in these gTLDs, considered absolutely these numbers nevertheless represent a significant level of conflicts.

<sup>191</sup> See *Intellectual Property on the Internet: A Report Commissioned by MARQUES* (the Association of European Trade Mark Owners), was based on a mail survey in which responses from 60 entities were received from 24 countries in Africa, Asia, Europe, Latin America and North America. The majority of respondees were directors, heads of trademark departments or partners of law firms specializing in intellectual property. See also International Association for the Protection of Industrial Property, Group Reports Q143: Internet Domain Names, Trademarks and Trade Names, XXXVII<sup>th</sup> Congress, Rio de Janeiro, 1998 (Yearbook 1998/VI).

<sup>192</sup> See Comment of Ms. Sally Abel of International Trademark Association (San Francisco Consultation).

<sup>193</sup> See Comment of Ms. Susan Anthony of MCI Worldcom (Washington Consultation – 1998).

<sup>194</sup> See Comment of Ms. Sarah Deutsch of Bell Atlantic (Washington Consultation – 1998).

<sup>195</sup> See Comment of Ms. Marilyn Cade of AT&T (Washington Consultation – 1998).

<sup>196</sup> See Comment of Mr. Gregory Phillips of Johnson & Hatch for Porsche (San Francisco Consultation).

<sup>197</sup> See Comment of Ms. Michelena Hallie of Viacom (Washington Consultation – 1998).

<sup>198</sup> See Comment of Ms. Susan Anthony of MCI Worldcom (Washington Consultation – 1998).

<sup>199</sup> *Ibid.*

<sup>200</sup> See Comment of Ms. Michelena Hallie of Viacom (Washington Consultation – 1998).

<sup>201</sup> See Comment of Ms. Anne Gundelfinger of Intel (San Francisco Consultation).

<sup>202</sup> See Comment of Mr. Nils Montan of Warner Bros. (San Francisco Consultation).

<sup>203</sup> See Comment of Ms. Shelley Hebert of Stanford University (San Francisco Consultation).

<sup>204</sup> See Comment of Electronic Frontier Foundation (November 6, 1998 - RFC-2).

<sup>205</sup> Pokey.org and Veronica.org were domain names registered in the names of children, for their non-commercial use, but were identical to an existing trademark and therefore apparently frustrated the trademark owners' desire to register the coinciding domain name. See Comment of Ms. Ellen Rony (Washington Consultation - 1999).

<sup>206</sup> In that case, Roadrunner Computer Systems, which had used the domain name for two years to market their Internet services, challenged NSI's dispute resolution policy after the trademark owners invoked the policy to assert their right to use the domain name. The suit was dismissed after NSI agreed not to disrupt Roadrunner's use of the domain name in the absence of a court order. See Roadrunner Computer Systems, Inc. v. Network Solutions, Inc. No. 96-413-A (E.D. Va. complaint filed March 26, 1996), dismissed (June 21, 1996) (at <http://www.patents.com/nsicpt.sht>).

<sup>207</sup> See Comment of Mr. Srikanth Narra (March 26, 1999 - RFC-3); Comment of Ms. Jane Hirsch and Mr. Helmut Hirsch (March 14, 1999 - RFC-3).

<sup>208</sup> See Comment of Mr. Kurt Opsahl & Co-Signatories (March 19, 1999 - RFC-3); Comment of Domain Name Rights Coalition (March 20, 1999 - RFC-3).

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<sup>209</sup> See Comment of Mr. Rocky Cabagnet (March 18, 1999 - RFC-3).

<sup>210</sup> See Comment of Government of United States of America, Office of Advocacy U.S. Small Business Administration (March 19, 1999 - RFC-3); Comment of Mr. Eric Menge (Washington Consultation – 1999); Comment of Mr. Michael Doughney (Washington Consultation – 1999).

<sup>211</sup> See Comment of Mr. Eric Menge (Washington Consultation – 1999), who described the reliance of small businesses on the Internet, stating that, as of November 1998, 41 percent of all small and mid-size businesses in the USA have a website, and 22 percent of those businesses use the Internet to sell goods and services (Washington Consultation - 1999).

<sup>212</sup> Comment of Davis & Schroeder that "[n]inety percent of the demands my small clients get from big companies no longer even make a pretense of there being any real trademark issue, they just say 'I went to register my trademark as a domain name and found that you were using it - give it to me!'" See also Comment of gjohnson@season.com (March 19, 1999 - RFC-3); Comment of Mr. Peter Rony (March 15, 1999 - RFC-3).

<sup>213</sup> See Comment of Government of Australia (March 30, 1999 - RFC-3); Comment of ACM and the Internet Society (March 25, 1999 - RFC-3); Comment of DNRC (March 20, 1999 - RFC-3); Comment of Mr. Kurt Opsahl & Co-Signatories (March 19, 1999 - RFC-3); Comment of Mr. Milton Mueller (Washington Consultation - 1999); Comment of Ms. Shari Steele (Washington Consultation - 1999); Comment of Mr. Michael Doughney (Washington Consultation – 1999).

<sup>214</sup> Comment of Mr. Michael Doughney (Washington Consultation - 1999).

<sup>215</sup> See Comment of Mr. Paul Kane of Internet Computer Bureau (Brussels Consultation – 1998). See also Comment of Electronic Frontier Foundation (November 6, 1998 - RFC-2).

<sup>216</sup> See Comment of the Government of India, Department of Industrial Development: Ministry of Industry, (November 6, 1998 - RFC-2).

<sup>217</sup> See Comment by Mr. Krishna of Andhra Pradesh Technology Services, State Government of Andhra Pradesh (Hyderabad Consultation).

<sup>218</sup> See Network Solutions Domain Name Dispute Policy (Revision 03) (effective February 25, 1998), at <http://www.internic.net/domaininfo/internic-domain-6.html>.

<sup>219</sup> On the other hand, NSI's Policy does require that the third party complainant's notice "clearly state that the complainant believes the registration and use of the disputed domain name violates the trademark rights of the complainant; the notice must also clearly allege the factual and legal bases for the belief." (Section 8(b)).

<sup>220</sup> See Comment of The Chanel Company (November, 4 1998 - RFC-2).

<sup>221</sup> See Comment of International Intellectual Property Alliance (November 6, 1998 - RFC-2).

<sup>222</sup> RIPE CENTR Response to the Green Paper, at [http://www.ntia.doc.gov/ntiahome/domainname/130dfmail/03\\_13\\_98.htm](http://www.ntia.doc.gov/ntiahome/domainname/130dfmail/03_13_98.htm).

<sup>223</sup> For instance, the large majority of European organizations have registered their domain names with one of the ccTLD registries.

<sup>224</sup> Statistics referred to in this section were made available by NetNames Ltd. at <http://www.netnames.com>.

<sup>225</sup> *Ibid.*

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<sup>226</sup> See Comment of European Community and its Member States (November 3, 1998 - RFC-2); Comment of American Intellectual Property Law Association (November 6, 1998 - RFC-2); Comment of European Brands Association (AIM) (November 5, 1998 - RFC-2); Comment of Ms. Marilyn Cade of AT&T (Washington Consultation – 1998); Comment of Ford Global Technologies (November 14, 1998 - RFC-2); Comment of Mr. Roger Cochetti of IBM (Washington Consultation – 1998)

<sup>227</sup> See Comment of MARQUES (November 6, 1998 - RFC-2); Comment of Mr. Neil Smith of Limbach and Limbach (San Francisco Consultation); Comment of Mr. Keith Gymer (Brussels Consultation – 1999); Comment of Mr. Nethri (Hyderabad Consultation); Comment of Mr. Martin Schwimmer (November 11, 1998 - RFC-2).

<sup>228</sup> For instance, the latest releases of Netscape's browser include a feature called "Internet Keywords." A user wishing to access, for example, the website of BankAmerica Corporation would no longer be required to enter "<http://www.bofa.com>" in a browser, but simply "*bank of america*."

<sup>229</sup> The INternet ONE system permits such coexistence, as illustrated by <http://www.lloyds.io>. When a user enters a keyword that is shared by several parties in this system, a screen will appear listing all such parties together with their description, and a link to their respective websites.

<sup>230</sup> Centraal's RealName system requires keywords to be unique; see <http://company.realnames.com/WhatAreRealNames/GeneralFAQ.html>.

<sup>231</sup> In Netscape's system, entering the keyword "book" directs the user to the Barnes & Noble on-line book store at <http://www.book.com>. Centraal's RealName system in principle does not accept generic terms, see <http://company.realnames.com/WhatAreRealNames/GeneralFAQ.html>.

<sup>232</sup> Compare, for instance, the policies of Netscape (at <http://home.netscape.com/escapes/keywords/faq.html>), Internet One (at <http://www.io.io/rules.html>), and Centraal (at <http://company.realnames.com/WhatAreRealNames/GeneralFAQ.html>); see also Estee Lauder, Inc. et al. v. the Fragrance Counter, Inc. et al. (S.D.N.Y., No. 99 Civil 382) (plaintiffs allege that keywords registered by the Fragrance Counter with Excite infringe their trademarks) (pending).

<sup>233</sup> Similarly entering the keyword "golf" in the same systems, directs the user to the website of one company located in the United States ([www.golf.com](http://www.golf.com)), while several other companies exist that have used the word "golf" as a domain name, including one in the United Kingdom ([www.golf.co.uk](http://www.golf.co.uk)), Germany ([www.golf.de](http://www.golf.de)), the Netherlands ([www.golf.nl](http://www.golf.nl)), Australia ([www.golf.com.au](http://www.golf.com.au)), etc.

<sup>234</sup> See, e.g., C. Oakes, "The Next Net Name Battle," WIRED (July 20, 1998) (at <http://www.wired.com/news/news/technology/story/13820.html>), and G. Venditto, "Netscape's Quiet Power Grab," Internet World (August 24, 1998) (at <http://www.internetworld.com/print/1998/08/24/opinion/19980824-target.html>).

**EXHIBIT JJN-62**



## New gTLD Application Submitted to ICANN by: VeriSign Sarl

String: םוק

Originally Posted: 13 June 2012

Application ID: 1-1254-29622

### Applicant Information

#### 1. Full legal name

VeriSign Sarl

#### 2. Address of the principal place of business

Contact Information  
Redacted

#### 3. Phone number

Contact Information Redacted

#### 4. Fax number

Contact Information Redacted

#### 5. If applicable, website or URL

## Primary Contact

### 6(a). Name

Ms. Sarah Elizabeth Langstone

### 6(b). Title

Director, Product Management

### 6(c). Address

### 6(d). Phone Number

1 703 948 4553

### 6(e). Fax Number

Contact Information Redacted

### 6(f). Email Address

Contact Information Redacted

## Secondary Contact

### 7(a). Name

Mr. Joe Alton Waldron

### 7(b). Title

Director, Product Management

### **7(c). Address**

### **7(d). Phone Number**

Contact Information Redacted

### **7(e). Fax Number**

Contact Information Redacted

### **7(f). Email Address**

Contact Information Redacted

## **Proof of Legal Establishment**

### **8(a). Legal form of the Applicant**

Société à Responsabilité Limitée (Sàrl)

### **8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).**

Switzerland

### **8(c). Attach evidence of the applicant's establishment.**

Attachments are not displayed on this form.

### **9(a). If applying company is publicly traded, provide the exchange and symbol.**

**9(b). If the applying entity is a subsidiary, provide the parent company.**

VeriSign Switzerland SA

**9(c). If the applying entity is a joint venture, list all joint venture partners.**

Not applicable.

## **Applicant Background**

**11(a). Name(s) and position(s) of all directors**

Daniel Blättler	Gérant (Manager)
Romain Jean-Pierre Cholat	Gérant (Manager) & President

**11(b). Name(s) and position(s) of all officers and partners**

Daniel Blättler	Gérant (Manager)
Romain Jean-Pierre Cholat	Gérant (Manager) & President

**11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares**

VeriSign Switzerland SA	Not Applicable
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**11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility**

## **Applied-for gTLD string**

**13. Provide the applied-for gTLD string. If an IDN, provide the U-label.**

קום

**14(a). If an IDN, provide the A-label (beginning with "xn--").**

xn--9dbq2a

**14(b). If an IDN, provide the meaning or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.**

Transliteration of com

**14(c). If an IDN, provide the language of the label (in English).**

Hebrew

**14(c). If an IDN, provide the language of the label (as referenced by ISO-639-1).**

he

**14(d). If an IDN, provide the script of the label (in English).**

Hebrew

**14(d). If an IDN, provide the script of the label (as referenced by ISO 15924).**

Hebr

**14(e). If an IDN, list all code points contained in the U-label according to Unicode form.**

U+05E7 U+05D5 U+05DD

**15(a). If an IDN, Attach IDN Tables for the proposed registry.**

Attachments are not displayed on this form.

**15(b). Describe the process used for development of the IDN tables submitted, including consultations and sources used.**

Verisign will leverage its mature shared registration system to provide services for the HEBREW\_TRANSLITERATION\_OF\_COM gTLD. Verisign's registration software is in compliance with all current IDN standards, including ICANN's IDN Guidelines, as well as The Internationalized Domain Names in Applications (IDNA 2008) specification, published by the IETF as RFC 5891.

The IDN tables provided herein represent Unicode characters allowed for registration by Verisign's software. The data in these tables come from three categories of source material.

1. Openly available language standards, published in RFC and other formats, by appropriate authorities.
2. The Unicode Standard, specifically definitions of written scripts as defined by this well-known specification.
3. ICANN's own IDN Implementation Guidelines, which provide some special rules for domain registration, especially code points not appropriate for the DNS.

#### Attached IDN Tables

Per ICANN's requirement, "IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal." Of the formats that the TAS tool accepts, there are no machine readable formats available for upload. The best format for machine readable, RFC 4290 compliant, text would be the open standard ASCII text format of .txt. Upon inquiring with ICANN applicants were told to submit the IDN tables in an .xls or .pdf format. All of the IDN tables attached to this application are available in the machine readable open standard ASCII text format of .txt. In order to meet the 5 attachment per question limit and the 5MB size per file, we have divided the Language and Script files into five files that accommodate the size of the tables. As such we have attached 4 .pdf files, and one .xls file. The single Excel file contains the one script file for Han which far exceeded the 5MB limit in .pdf but is offered here in .xls format. Again, all IDN tables are available for ICANN's review in the required RFC 4290 compliant machine readable open standard ASCII text format of .txt outlined in the application; however, due to limitations in the TAS tool accommodations have been made.

### **15(c). List any variant strings to the applied-for gTLD string according to the relevant IDN tables.**

N/A

### **16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.**

Having successfully operated TLDs for more than 16 years and having used IDNs in our registries since 2000, Verisign has deep knowledge and understanding of potential operational or rendering problems associated with TLDs and IDN strings.

Verisign operates the HEBREW\_TRANSLITERATION\_OF\_COM gTLD in compliance with the most recently approved versions of the ICANN IDN Guidelines and RFC application protocol, currently RFC 5891, Internationalized Domain Names in Applications (IDNA 2008).

Bi-directional rules for impacted scripts, outlined in RFC 5893 (Right-to-Left Scripts for IDNA), specify the relevant rules for the HEBREW\_TRANSLITERATION\_OF\_COM gTLD.

**17. (OPTIONAL) Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).**

'koom

## Mission/Purpose

**18(a). Describe the mission/purpose of your proposed gTLD.**

1 MISSION AND PURPOSE OF PROPOSED GTLD

The primary mission of the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD is to improve the user experience by offering a fully internationalized domain name (IDN) that includes a transliteration of .com. This gTLD is intended to serve users whose primary language is based in Hebrew script. For the first time in the history of the Domain Name System (DNS), internationalized generic top-level domains (gTLDs) create the capability for speakers of non-Latin-based languages to access the DNS entirely in their native script. Offering HEBREW\_TRANSLITERATION\_OF\_.COM represents a critical step toward implementing that functionality. Verisign's vision is to improve usability of domain names for users of major scripts around the world. Registrants and Internet users will be able to use their native script, if desired, to take advantage of their domain name's functionality, ubiquity, and stability.

**18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?**

2 BENEFIT TO REGISTRANTS, INTERNET USERS, AND OTHERS

As of this writing, more than 800,000 internationalized second-level domain names are registered in .com, including approximately 12,000 in Hebrew. The HEBREW\_TRANSLITERATION\_OF\_.COM gTLD, along with the other proposed IDN transliterations of .com, provide an immediate benefit to registrants of those names by giving them the opportunity to register IDN second-level domain names as "IDN.IDN" domain names. That is, registrants can use their preferred script in both the second-level domain name and the gTLD name. Doing so improves these domain names' functionality and accessibility to speakers of non-Latin-based languages.

We anticipate that the availability of the HEBREW\_TRANSLITERATION\_OF\_.COM will greatly increase the appeal and value of internationalized addresses in Israel. Expanding the accessibility and functionality of these domain names to users worldwide is the primary benefit of all internationalized transliterations of .com.

Finally, we anticipate that HEBREW\_TRANSLITERATION\_OF\_.COM will increase choice and competition in Israel and elsewhere by giving local users the option of registering their domain name with an established, trusted gTLD in their own language. Potential registrants in Israel currently have limited choices if they want to register an IDN.IDN domain name in a gTLD that is recognized across Hebrew-speaking regions. The HEBREW\_TRANSLITERATION\_OF\_.COM gTLD creates an attractive new option for these users.

More specifically, the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD benefits the following groups:

Registrants: As discussed above, current .com registrants with second-level .com IDNs in

Hebrew can greatly expand the functionality and reach of their existing registered addresses by the availability of IDN.IDN domain names entirely in Hebrew script. In addition, new registrants, whether Israel or elsewhere, who seek entirely Hebrew addresses, have the option of registering their IDN.IDN domain names in a globally recognized domain.

Internet Users: The HEBREW\_TRANSLITERATION\_OF\_.COM gTLD significantly increases the ubiquity and functionality of .com for users around the world, particularly those in Israel. For the first time, Hebrew speakers could access a transliteration of .com addresses entirely in their native script. Verisign is committed to ensuring that the domain name experience remains consistent to all users, in every major script, everywhere in the world. This commitment supports the vision of "One World. One Internet." that infuses ICANN's global efforts.

## 2.1 Business Goals

Our goal is for HEBREW\_TRANSLITERATION\_OF\_.COM to operate as a best-in-class IDN registry. Although the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD is distinct from the .com gTLD in the DNS, we plan to provide a similar high quality of service that users of .com have come to expect.

The first step in this process is to ensure that, like .com, HEBREW\_TRANSLITERATION\_OF\_.COM operates at the highest level of availability, stability, and security. The HEBREW\_TRANSLITERATION\_OF\_.COM gTLD is rooted in the same world-class infrastructure that supports .com and .net at the highest level of operational excellence. Users and registrants have extremely high expectations of .com, and we leverage the full capability of our infrastructure and operational expertise to ensure that HEBREW\_TRANSLITERATION\_OF\_.COM meets these expectations from the moment of its launch.

The initial target audience for HEBREW\_TRANSLITERATION\_OF\_.COM is the registrants of the approximately 12,000 IDN second-level addresses in .com. These registrants will have the opportunity to register their IDN.com addresses as IDN. HEBREW\_TRANSLITERATION\_OF\_.COM addresses.

The secondary target market for HEBREW\_TRANSLITERATION\_OF\_.COM is the current registrants of ASCII domain name addresses who may be doing business in Israel or other regions with a high number of Hebrew speakers. The HEBREW\_TRANSLITERATION\_OF\_.COM gTLD provides these registrants a ready-made solution to localize their online identity while still maintaining the continuity of their .com addresses.

Finally, we are committed to working with registrars to perform outreach in Israel and elsewhere to reach potential new registrants who are interested in establishing a new HEBREW\_TRANSLITERATION\_OF\_.COM domain name.

## 2.2. Competition, Differentiation, and Innovation Goals

Hebrew speakers currently have limited options for registering IDN.IDN domain names. The HEBREW\_TRANSLITERATION\_OF\_.COM gTLD introduces competition and choice for registrants in Israel by providing them with an option that—while new—also carries the trust, reliability, and accessibility of an established global brand.

What differentiates HEBREW\_TRANSLITERATION\_OF\_.COM from other potential market entrants for Hebrew IDN gTLDs is that it represents a localized representation of a domain that many users already know and trust, .com. In addition, HEBREW\_TRANSLITERATION\_OF\_.COM is the best available phonetic representation of ".com" in Hebrew. The IDN's brand is the brand of a globally recognized domain, operated by a globally recognized provider.

## 2.3 User Experience Goals

Verisign's goal for HEBREW\_TRANSLITERATION\_OF\_.COM is to deliver a user experience as similar to the current experience of .com as possible. Verisign operates the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD at the same high level of security, stability, and

availability as .com, allowing registrars to enjoy the same high service levels that Verisign provides for all of the domains we operate.

We helped organize and are deeply involved in the IDN Software Developers Consortium (IDNSDC), which is committed to improving the functionality and accessibility of IDNs to users. We continue to engage significantly in the IDNSDC to complement the IDN initiatives being driven by ICANN and to help drive adoption of IDN capabilities in standard client software.

## 2.4 Registration Policies

The registration policies for HEBREW\_TRANSLITERATION\_OF\_.COM follow closely the existing IDN registration policies for .com. The Verisign Shared Registration System (SRS) allows the creation of IDNs that contain Unicode supported non-ASCII scripts. We have developed a policy for IDN registrations specifying permissible and prohibited code points. The policy is implemented in the following five rules. IDNs that adhere to these five rules are considered valid registrations.

### 2.4.1. Internet Engineering Task Force (IETF) Standards

The IDNA2008 specification defines rules and algorithms that permit/prohibit Unicode points in IDN registrations. We comply with all of the RFC documents that comprise the IDNA2008 standard.

### 2.4.2. Restrictions on Specific Languages

All IDN registrations require a three-letter Language Tag. HEB, for instance, is for the Hebrew language. If the Language Tag associated with the registration is in our Language Tag Table, we have a List of Included Characters for that language. The requested IDN must be entirely contained within this List of Included Characters. If even one code point from the IDN is not a valid character for this language, the registration is rejected.

### 2.4.3. Restriction on Commingling of Scripts

If the Language Tag specified in the IDN registration is not in the approved list of Language Tags located on our website, and so does not have a List of Included Characters, then we apply an alternate restriction to prevent commingling of different scripts in a single domain.

The Unicode Standard defines a set of Unicode Scripts (<http://www.unicode.org/Public/6.0.0/ucd/Scripts.txt>) by assigning each code point exactly one Unicode script value. As a rule, Verisign rejects the commingling of code points from different Unicode scripts. That is, if an IDN contains code points from two or more Unicode scripts, then that IDN registration is rejected. For example, a character from the Latin script cannot be used in the same IDN with any Cyrillic character. All code points within an IDN must come from the same Unicode script. This is done to prevent confusable code points from appearing in the same IDN.

Again, this rule only applies to languages for which there is not a strictly defined List of Included Characters. For example, the FRE Language Tag, indicating the French language, does not have a strict List of Included Characters, and so the commingling rule applies. All code points in a French domain must come from a single script.

2.4.4. The Verisign SRS also adheres to ICANN's Guidelines for the Implementation of Internationalized Domain Names. Section 5 of the document outlines characters that are allowed by the IETF standard, but should be prohibited for IDN registration.

### 2.4.5. Special Characters

There are two (Unicode characters whose latest definitions are not backward compatible with previous versions of the IDNA Standard. The Latin Sharp S and Greek Final Sigma were previously mapped to alternate characters. Clients and registries that comply with the older standard would, for instance, map a Latin Sharp S into two lowercase Latin letter S characters. This mapping is irreversible. The latest version of the IDNA standard does not apply this mapping. So, whereas the Latin Sharp S was previously prohibited (mapped into other characters), the latest standard allows registries to accept this character at their own discretion.

Because these changes are not backward compatible, Verisign has elected to continue to

disallow these two characters until a clear and fair approach to their registration has been reached and communicated.

Additional information about our registration policies and approach to rights protection is available in our response to Question 29, Rights Protection Mechanisms.

## 2.5 Measures to Protect Privacy and Confidentiality

We limit information collection from registrants to ICANN mandated data points required in the registration of a domain name, and use this data solely for the purpose of publishing to the publicly available Whois service. Whois Terms of Use are available on our website.

## 2.6 Outreach and Communications

### Registrar Outreach

Many of our registrars have marketed and supported IDNs at the second-level of the .com TLD for more than ten years. Well-established registrars have provided IDN communications and customer service in markets where IDNs provide the highest level of benefit. We have sought advice from registrars and actively communicated the planned approach for launching IDNs at the top-level in regular meetings with the registrar channel. We continue to work closely with registrars not only to prepare for the Sunrise, Trademark Claims service, and general launch periods, but also to reach existing and prospective registrants who are interested in realizing the benefits of IDNs.

### Registrant and End-User Outreach

We augment our existing IDN web content with launch planning information and additional online resources for the IDN.IDN transliterations of .com. This web content includes details on the benefits of IDNs, and our approach to protect intellectual property and enhance end-user ubiquity. The full launch plan addresses Sunrise and Trademark Claims services, general launch through the registrar channel, and localized content for the initial launch markets. The IDN Software Developer's Consortium (IDNSDC)

To complement the IDN initiatives being driven by ICANN, we have organized a consortium to facilitate adoption of IDN capabilities in standard client software. The IDNSDC works with domain name industry stakeholders and application developers to bring greater awareness to existing client-side application challenges so that registrars in communication with their domain name registrants may fully understand usability issues.

## **18(c). What operating rules will you adopt to eliminate or minimize social costs?**

### 3 OPERATING RULES TO MINIMIZE SOCIAL COSTS

Verisign follows the standards and procedures in the Applicant Guidebook to ensure the stable, secure, and successful launch and operation of the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD. The registration policies described in Section 2.4 ensure that all HEBREW\_TRANSLITERATION\_OF\_.COM addresses comply with Internet standards, and ensure ICANN guidelines are put in place to reduce end-user confusion and security-related issues.

Our implementation of Language Tags and the restrictions on script commingling are intended to minimize the risk of misuse of IDN domain names for activities such as phishing.

#### 3.1 Resolution of Multiple Applications

During the Sunrise phase of the HEBREW\_TRANSLITERATION\_OF\_.COM launch, the registry accepts only applications with a valid identifier from the Trademark Clearinghouse. If multiple applications are received for the same domain name, the registry uses a first-come/first-served

policy to determine the registrant.

During the general availability of the domain name, we continue to employ a first-come/first-served policy. Therefore, multiple requests for the same domain name result in a successful registration for the first request while subsequent requests will return a Not Available status.

### 3.2 Cost Benefits for Registrants

The introduction of IDN gTLDs, including HEBREW\_TRANSLITERATION\_OF\_.COM, introduces competition and choice to registrants interested in localizing their online identities to better reach non-English speaking end users.

### 3.3 Contractual Commitments Regarding Price Escalation

We provide to registrars at least six months' written notice of any increase to domain name registration fees.

## 4 OTHER STEPS TO MINIMIZE NEGATIVE CONSEQUENCES/COSTS IMPOSED UPON CONSUMERS

We have implemented extensive abuse prevention and rights protection mechanisms, as outlined in the response to Question 28, Abuse Prevention and Mitigation, and Question 29, Rights Protection Mechanisms.

# Community-based Designation

## 19. Is the application for a community-based TLD?

No

**20(a). Provide the name and full description of the community that the applicant is committing to serve.**

**20(b). Explain the applicant's relationship to the community identified in 20(a).**

**20(c). Provide a description of the community-based purpose of the applied-for gTLD.**

**20(d). Explain the relationship between the applied-for gTLD string and the community identified in 20(a).**

**20(e). Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.**

**20(f). Attach any written endorsements from institutions/groups representative of the community identified in 20(a).**

Attachments are not displayed on this form.

## Geographic Names

**21(a). Is the application for a geographic name?**

No

## Protection of Geographic Names

**22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.**

The Verisign registry solution provides a mechanism for reserving second-level domain names that prevents them from being registered. This functionality includes a list of strings that the system will not allow to be registered. Strings can be added and removed from this list as needed.

For the protection of geographic names for the HEBREW\_TRANSLITERATION\_OF\_COM gTLD, the country and territory names contained in the following internationally recognized lists shall be blocked initially:

\* The short form (in English) of all country and territory names, including the European Union, contained on the International Organization for Standardization (ISO) 3166-1 list:

[http://www.iso.org/iso/support/country\\_codes/iso\\_3166\\_code\\_lists/iso-3166-1\\_decoding\\_table.htm#EU](http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU)

\* The United Nations Group of Experts on Geographical Names (UNGEGN), Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World:

<http://unstats.un.org/unsd/geoinfo/UNGEGN/publications.html>

\* The list of United Nations member states, in six official United Nations languages, prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names. The most recent list of country names approved by the Working Group was submitted on behalf of UNGEGN for the Ninth UN Conference on the Standardization of Geographical Names in August

As new versions of these three internationally recognized lists are published, Verisign will update the list of names reserved by the Verisign registry system to reflect any changes.

In addition to providing protection for geographic names, this reserved name functionality will be used to reserve other names specifically ineligible for delegation. For example, Section 2.2.1.2.3 of the Applicant Guidebook lists strings associated with the International Olympic Committee and the International Red Cross and Red Crescent organizations to be prohibited from delegation per the Government Advisory Committee (GAC) request.

All the strings on these lists as well as any others put forth by the GAC and approved by ICANN will be included in the list of reserved names.

There are no plans at this time to release any of the reserved names. If, however, Verisign intends to release any of the names at a future date, we will follow the appropriate procedures, outlined in Section 5 of Specification 5, on the release of reserved names.

## Registry Services

### 23. Provide name and full description of all the Registry Services to be provided.

#### 1 CUSTOMARY REGISTRY SERVICES

Verisign provides a comprehensive system and physical security solution that is designed to ensure a TLD is protected from unauthorized disclosure, alteration, insertion, or destruction of registry data. Our system addresses all areas of security including information and policies, security procedures, the systems development lifecycle, physical security, system hacks, break-ins, data tampering, and other disruptions to operations. Our operational environments not only meet the security criteria specified in our customer contractual agreements, thereby preventing unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards, but also are subject to multiple independent assessments as detailed in the response to Question 30, Security Policy. Our physical and system security methodology follows a mature, ongoing lifecycle that was developed and implemented many years before the development of the industry standards with which we currently comply. Please see the response to Question 30, Security Policy, for details of the security features of our registry services.

Verisign's registry services comply with relevant standards and best current practice RFCs published by the Internet Engineering Task Force (IETF), including all successor standards, modifications, or additions relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472. Moreover, our Shared Registration System (SRS) supports the following IETF Extensible Provisioning Protocol (EPP) specifications, where the Extensible Markup Language (XML) templates and XML schemas are defined in RFC 3915, 5730, 5731, 5732, 5733, and 5734. By strictly adhering to these RFCs, we help ensure our registry services do not create a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems. Besides our leadership in authoring RFCs for EPP, Domain Name System Security Extensions (DNSSEC), and other DNS services, we have created and contributed to several now well-established IETF standards and are a regular and long-standing participant in key Internet standards forums.

Figure 23-1 (see Attachment VRSN\_.comHebrew\_Q23 Figures for all figures in this response) summarizes the technical and business components of those registry services, customarily offered by a registry operator (i.e., Verisign), that support this application. These services are currently operational and support both large and small Verisign-managed registries. We provide customary registry services in the same manner as we provide these services for our existing gTLD.

Through these established registry services, we have proven our ability to operate a reliable and low-risk registry that supports millions of transactions per day. We are unaware of any potential security or stability concern related to any of these services.

Registry services defined by this application are not intended to be offered in a manner unique to the new generic top-level domain (gTLD) nor are any proposed services unique to this application's registry.

As further evidence of Verisign's compliance with ICANN mandated security and stability requirements, we allocate the applicable RFCs to each of the five customary registry services (items A - E above). For each registry service, we also provide evidence in Figure 23-2 of our RFC compliance and include relevant ICANN prior-service approval actions.

#### 1.1 Critical Operations of the Registry

##### I. Receipt of Data from Registrars Concerning Registration of Domain Names and Name Servers

See Item A in Figure 23-1 and Figure 23-2.

##### ii. Provision to Registrars Status Information Relating to the Zone Servers

Verisign registry services provisions to registrars status information relating to zone servers for the TLD. The services also allow a domain name to be updated with client Hold, server Hold status, which removes the domain name server details from zone files. This ensures that DNS queries of the domain name are not resolved temporarily. When these hold statuses are removed, the name server details are written back to zone files and DNS queries are again resolved. Figure 23-3 describes the domain name status information and zone insertion indicator provided to registrars. The zone insertion indicator determines whether the name server details of the domain name exist in the zone file for a given domain name status. Verisign also has the capability to withdraw domain names from the zone file in near-real time by changing the domain name statuses upon request by customers, courts, or legal authorities as required.

##### iii. Dissemination of TLD Zone Files

See Item B in Figure 23-1 and Figure 23-2.

##### iv. Operation of the Registry Zone Servers

As a company, Verisign operates zone servers and serves DNS resolution from 76 geographically distributed resolution sites located in North America, South America, Africa, Europe, Asia, and Australia. Currently, 17 DNS locations are designated primary sites, offering greater capacity than smaller sites comprising the remainder of the Verisign constellation. We also use Any cast techniques and regional Internet resolution sites to expand coverage, accommodate emergency or surge capacity, and support system availability during maintenance procedures. We operate the gTLD from a minimum of eight of our primary sites (two on the East Coast of the United States, two on the West Coast of the United States, two in Europe, and two in Asia) and expand resolution sites based on traffic volume and patterns. Further details of the geographic diversity of our zone servers are provided in the response to Question 34, Geographic Diversity. Moreover, additional details of our zone servers are provided in the response to Question 32, Architecture and the response to Question 35, DNS Service.

##### v. Dissemination of Contact and Other Information Concerning Domain Name Server Registrations

See Item C in Figure 23-1 and Figure 23-2.

## 2 OTHER PRODUCTS OR SERVICES THE REGISTRY OPERATOR IS REQUIRED TO PROVIDE BECAUSE OF THE ESTABLISHMENT OF A CONSENSUS POLICY

Verisign is a proven supporter of ICANN's consensus-driven, bottom-up policy development process whereby community members identify a problem, initiate policy discussions, and generate a solution that produces effective and sustained results. Verisign currently provides all of the products or services (collectively referred to as services) that the registry operator is required to provide because of the establishment of a Consensus Policy. For the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD, we implement these services using the same proven processes and procedures currently in-place for all registries under our management. Furthermore, we execute these services on computing platforms comparable to those of other registries under our management. Our extensive experience with consensus policy required services and our proven processes to implement these services greatly minimize any potential risk to Internet security or stability. Details of these services are provided in the following subsections. It shall be noted that consensus policy services required of registrars (e.g., Whois Reminder, Expired Domain) are not included in this response. This exclusion is in accordance with the direction provided in the question's Notes column to address registry operator services.

### 2.1 Inter-Registrar Transfer Policy (IRTP)

#### Technical Component

In compliance with the IRTP consensus policy, we have designed our registration systems to systematically restrict the transfer of domain names within 60 days of the initial create date. In addition, we have implemented EPP and "AuthInfo" code functionality, which is used to further authenticate transfer requests. The registration system has been designed to enable compliance with the five-day Transfer grace period and includes the following functionality:

- \* Allows the losing registrar to proactively 'ACK' or acknowledge a transfer prior to the expiration of the five-day Transfer grace period
- \* Allows the losing registrar to proactively 'NACK' or not acknowledge a transfer prior to the expiration of the five-day Transfer grace period
- \* Allows the system to automatically ACK the transfer request once the five-day Transfer grace period has passed if the losing registrar has not proactively ACK'd or NACK'd the transfer request.

#### Business Component

All requests to transfer a domain name to a new registrar are handled according to the procedures detailed in the IRTP. Dispute proceedings arising from a registrar's alleged failure to abide by this policy may be initiated by any ICANN-accredited registrar under the Transfer Dispute Resolution Policy. Our compliance office serves as the first-level dispute resolution provider pursuant to the associated Transfer Dispute Resolution Policy. As needed Verisign is available to offer policy guidance as issues arise.

#### Security and Stability Concerns

We are unaware of any impact, caused by the service, on throughput, response time, consistency, or coherence of the responses to Internet servers or end-user systems. By implementing the IRTP in accordance with ICANN policy, security is enhanced as all transfer commands are authenticated using the AuthInfo code prior to processing.

#### ICANN Prior Approval

We have been in compliance with the IRTP since November 2004.

#### Unique to the TLD

This service is not provided in a manner unique to the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD.

### 2.2 Add Grace Period (AGP) Limits Policy

#### Technical Component

Our registry system monitors registrars' Add grace period deletion activity and provides reporting that permits us to assess registration fees upon registrars that have exceeded the AGP thresholds stipulated in the AGP Limits Policy. Further, we accept and evaluate all exemption requests received from registrars and determine whether the exemption request

meets the exemption criteria. We maintain all AGP Limits Policy exemption request activity so that this material may be included within our Monthly Registry Operator Report to ICANN.

Registrars that exceed the limits established by the policy may submit exemption requests to us for consideration. Our compliance office reviews these exemption requests in accordance with the AGP Limits Policy and renders a decision. Upon request, we submit associated reporting on exemption request activity to support reporting in accordance with established ICANN requirements.

#### Business Component

The Add grace period (AGP) is restricted for any gTLD operator that has implemented an AGP. Specifically, for each operator:

\* During any given month, an operator may not offer any refund to an ICANN-accredited registrar for any domain names deleted during the AGP that exceed (i) 10% of that registrar's net new registrations (calculated as the total number of net adds of one-year through ten-year registrations as defined in the monthly reporting requirement of Operator Agreements) in that month, or (ii) fifty (50) domain names, whichever is greater, unless an exemption has been granted by an operator.

\* Upon the documented demonstration of extraordinary circumstances, a registrar may seek from an operator an exemption from such restrictions in a specific month. The registrar must confirm in writing to the operator how, at the time the names were deleted, these extraordinary circumstances were not known, reasonably could not have been known, and were outside the registrar's control. Acceptance of any exemption will be at the sole and reasonable discretion of the operator; however "extraordinary circumstances" that reoccur regularly for the same registrar will not be deemed extraordinary.

In addition to all other reporting requirements to ICANN, we identify each registrar that has sought an exemption, along with a brief description of the type of extraordinary circumstance and the action, approval, or denial that the operator took.

#### Security and Stability Concerns

We are unaware of any impact, caused by the policy, on throughput, response time, consistency, or coherence of the responses to Internet servers or end-user systems.

#### ICANN Prior Approval

We have had experience with this policy since its implementation in April 2009.

#### Unique to the TLD

This service is not provided in a manner unique to the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD.

### 2.3 Registry Services Evaluation Policy (RSEP)

#### Technical Component

We adhere to all RSEP submission requirements. We have followed the process many times and are fully aware of the submission procedures, the type of documentation required, and the evaluation process that ICANN adheres to.

#### Business Component

In accordance with ICANN procedures detailed on the ICANN RSEP website (<http://www.icann.org/en/registries/rsep/>), all gTLD registry operators are required to follow this policy when submitting a request for new registry services.

#### Security and Stability Concerns

As part of the RSEP submission process, we identify any potential security and stability concerns in accordance with RSEP stability and security requirements. We never launch services without satisfactory completion of the RSEP process and resulting approval.

#### ICANN Prior Approval

Not applicable.

#### Unique to the TLD

gTLD RSEP procedures are not implemented in a manner unique to the

HEBREW\_TRANSLITERATION\_OF\_.COM gTLD.

3 PRODUCTS OR SERVICES ONLY A REGISTRY OPERATOR IS CAPABLE OF PROVIDING BY REASON OF ITS DESIGNATION AS THE REGISTRY OPERATOR

We have developed a Registry-Registrar Two-Factor Authentication Service that complements traditional registration and resolution registry services. In accordance with direction provided in Question 23, Verisign details below the technical and business components of the service, identifies any potential threat to registry security or stability, and lists previous interactions with

ICANN to approve the operation of the service. The Two-Factor Authentication Service is currently operational, supporting multiple registries under ICANN's purview.

We are unaware of any competition issue that may require the registry service(s) listed in this response to be referred to the appropriate governmental competition authority or authorities with applicable jurisdiction. ICANN previously approved the service(s), at which time it was determined that either the service(s) raised no competitive concerns or any applicable concerns related to competition were satisfactorily addressed.

### 3.1 Two-Factor Authentication Service

#### Technical Component

The Registry-Registrar Two-Factor Authentication Service is designed to improve domain name security and assist registrars in protecting the accounts they manage. As part of the service, dynamic one-time passwords (OTPs) augment the user names and passwords currently used to process update, transfer, and/or deletion requests. These one-time passwords enable transaction processing to be based on requests that are validated both by "what users know" (i.e., their user name and password) and "what users have" (i.e., a two-factor authentication credential with a one-time-password).

Registrars can use the OTP when communicating directly with Verisign's Customer Service department as well as when using the registrar portal to make manual updates, transfers, and/or deletion transactions. The Two-Factor Authentication Service is an optional service offered to registrars that execute the Registry-Registrar Two-Factor Authentication Service Agreement.

#### Business Component

There is no charge for the Registry-Registrar Two-Factor Authentication Service. It is enabled only for registrars that wish to take advantage of the added security provided by the service.

#### Security and Stability Concerns

We are unaware of any impact, caused by the service, on throughput, response time, consistency, or coherence of the responses to Internet servers or end-user systems. The service is intended to enhance domain name security, resulting in increased confidence and trust by registrants.

#### ICANN Prior Approval

ICANN approved the same Two-Factor Authentication Service for Verisign's use on .com and .net on 10 July 2009 (RSEP Proposal 2009004) and for .name on 16 February 2011 (RSEP Proposal 2011001).

#### Unique to the TLD

This service is not provided in a manner unique to the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD.

## Demonstration of Technical & Operational Capability

### 24. Shared Registration System (SRS) Performance

## 1.1 High-Level Shared Registration System (SRS) System Description

Verisign provides and operates a robust and reliable SRS that enables multiple registrars to provide domain name registration services in the top-level domain (TLD). Our proven reliable SRS serves approximately 915 registrars, and as a company, we have averaged more than 140 million registration transactions per day. The SRS provides a scalable, fault-tolerant platform for the delivery of gTLDs through the use of a central customer database, a web interface, a standard provisioning protocol (i.e., Extensible Provisioning Protocol, EPP), and a transport protocol (i.e., Secure Sockets Layer, SSL).

The SRS components include:

- \* **Web Interface:** Allows customers to access the authoritative database for accounts, contacts, users, authorization groups, product catalog, product subscriptions, and customer notification messages.

- \* **EPP Interface:** Provides an interface to the SRS that enables registrars to use EPP to register and manage domains, hosts, and contacts.

- \* **Authentication Provider:** A Verisign-developed application, specific to the SRS, that authenticates a user based on a login name, password, and the SSL certificate common name and client IP address.

The SRS is designed to be scalable and fault tolerant by incorporating clustering in multiple tiers of the platform. New nodes can be added to a cluster within a single tier to scale a specific tier, and if one node fails within a single tier, the services will still be available. The SRS allows registrars to manage the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD domain names in a single architecture.

To flexibly accommodate the scale of our transaction volumes, as well as new technologies, we employ the following design practices:

- \* **Scale for Growth:** Scale to handle current volumes and projected growth.

- \* **Scale for Peaks:** Scale to twice base capacity to withstand "registration add attacks" from a compromised registrar system.

- \* **Limit Database CPU Utilization:** Limit utilization to no more than 50 percent during peak loads.

- \* **Limit Database Memory Utilization:** Each user's login process that connects to the database allocates a small segment of memory to perform connection overhead, sorting, and data caching. Our standards mandate that no more than 40 percent of the total available physical memory on the database server will be allocated for these functions.

Our SRS is built upon a three-tier architecture as illustrated in Figure 24-1 (see Attachment VRSN\_.comHebrew\_Q24 Figures for all figures in this response) and detailed here:

- \* **Gateway Layer:** The first tier, the gateway servers, uses EPP to communicate with registrars. These gateway servers then interact with application servers, which comprise the second tier.

- \* **Application Layer:** The application servers contain business logic for managing and maintaining the registry business. The business logic is particular to each TLD's business rules and requirements. The flexible internal design of the application servers allows Verisign to easily leverage existing business rules to apply to the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD. The application servers store Verisign's data in the registry database, which comprises the third and final tier. This simple, industry-standard design has been highly effective with other customers for whom we provide backend registry services.

- \* **Database Layer:** The database is the heart of this architecture. It stores all the essential

information provisioned from registrars through the gateway servers. Separate servers query the database, extract updated zone and Whois information, validate that information, and distribute it around the clock to our worldwide domain name resolution sites.

## Scalability and Performance

We implement our scalable SRS on a supportable infrastructure that achieves the availability requirements in Specification 10. We employ the design patterns of simplicity and parallelism in both our software and systems, based on our experience that these factors contribute most significantly to scalability and reliable performance. Going counter to feature-rich development patterns, we intentionally minimize the number of lines of code between the end user and the data delivered. The result is a network of restorable components that provide rapid, accurate updates. Figure 24-2 depicts EPP traffic flows and local redundancy in our SRS provisioning architecture. As detailed in the figure, local redundancy is maintained for each layer as well as each piece of equipment. This built-in redundancy enhances operational performance while enabling the future system scaling necessary to meet additional demand created by this or future registry applications.

Besides improving scalability and reliability, local SRS redundancy enables us to take down individual system components for maintenance and upgrades, with little to no performance impact. With our redundant design, we can perform routine maintenance while the remainder of the system remains online and unaffected. For the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD registry, this flexibility minimizes unplanned downtime and provides a more consistent end-user experience.

### 1.2 Representative Network Diagrams

Figure 24-3 provides a summary network diagram of Verisign's SRS. This configuration at both the primary and alternate-primary Verisign data centers provides a highly reliable backup capability. Data is continuously replicated between both sites to ensure failover to the alternate-primary site can be implemented expeditiously to support both planned and unplanned outages.

### 1.3 Number of Servers

We continually review our server deployments for all aspects of our registry service. We evaluate usage based on peak performance objectives as well as current transaction volumes, which drive the quantity of servers in our implementations. Our scaling is based on the following factors:

- \* Server configuration is based on CPU, memory, disk IO, total disk, and network throughput projections.

- \* Server quantity is determined through statistical modeling to fulfill overall performance objectives as defined by both the service availability and the server configuration.

- \* To ensure continuity of operations for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD, we use a minimum of 100 dedicated servers per SRS site. These servers are virtualized to meet demand.

### 1.4 Description of Interconnectivity with Other Registry Systems

Figure 24-4 provides a technical overview of Verisign's SRS, showing how the SRS component fits into this larger system and interconnects with other system components.

### 1.5 Frequency of Synchronization Between Servers

We use synchronous replication to keep our SRS continuously in sync between the two data centers. This synchronization is performed in near-real time, thereby supporting rapid failover should a failure occur or a planned maintenance outage be required.

## 1.6 Synchronization Scheme

Verisign uses synchronous replication to keep the SRS continuously in sync between the two data centers. Because the alternate-primary site is continuously up, and built using an identical design to the primary data center, it is classified as a “hot standby.”

## 2 SCALABILITY AND PERFORMANCE ARE CONSISTENT WITH THE OVERALL BUSINESS APPROACH AND PLANNED SIZE OF THE REGISTRY

As an experienced backend registry provider, we have developed and use proprietary system scaling models to guide the growth of our TLD supporting infrastructure. These models direct our infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. We periodically update these models to account for the adoption of more capable and cost-effective technologies.

Verisign’s scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 – Financial Projections: Most Likely) as an input to our scaling models, we derived the necessary infrastructure required to implement and sustain this gTLD. Cost related to this infrastructure is provided as “Total Critical Registry Function Cash Outflows” (Template 1, Line IIb.G) within the Question 46 financial projections response.

## 3 TECHNICAL PLAN THAT IS ADEQUATELY RESOURCED IN THE PLANNED COSTS DETAILED IN THE FINANCIAL SECTION

As an experienced backend registry provider, we have developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. We routinely adjust these staffing models to account for new tools and process innovations. These models enable us to continually right-size our staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 – Financial Projections: Most Likely) as an input to our staffing models, we derived the necessary personnel levels required for this gTLD’s initial implementation and ongoing maintenance. This personnel-related cost is included in “Total Critical Registry Function Cash Outflows” (Template 1, Line IIb.G) within the Question 46 financial projections response.

Verisign employs more than 1,040 individuals of which more than 775 comprise our technical work force. (Current statistics are publicly available in our quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, we have maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving our ability to align personnel resource growth to the scale increases of our TLD service offerings.

We project we will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support SRS performance:

- \* Application Engineers: 19
- \* Database Administrators: 8
- \* Database Engineers: 3
- \* Network Administrators: 11
- \* Network Architects: 4
- \* Project Managers: 25
- \* Quality Assurance Engineers: 11
- \* SRS System Administrators: 13

- \* Storage Administrators: 4
- \* Systems Architects: 9

To implement and manage the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD as described in this application, we scale, as needed, the size of each technical area now supporting our portfolio of TLDs. Consistent with our resource modeling, we periodically review the level of work to be performed and adjust staff levels for each technical area.

When usage projections indicate a need for additional staff, our internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all our TLDs instead of creating a new entity to manage only this proposed gTLD, we realize significant economies of scale and ensure our TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as we hold all contributing staff members accountable to the same procedures that guide our execution of the Internet's largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, we afford new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

#### 4 EVIDENCE OF COMPLIANCE WITH SPECIFICATION 6 AND 10 TO THE REGISTRY AGREEMENT

##### Section 1.2 (EPP) of Specification 6, Registry Interoperability and Continuity Specifications

Verisign provides these services using our SRS, which complies fully with Specification 6, Section 1.2 of the Registry Agreement. In using our SRS to provide backend registry services, we implement and comply with relevant existing RFCs (i.e., 5730, 5731, 5732, 5733, 5734, and 5910) and intend to comply with RFCs that may be published in the future by the Internet Engineering Task Force (IETF), including successor standards, modifications, or additions thereto relating to the provisioning and management of domain names that use EPP. In addition, our SRS includes a Registry Grace Period (RGP) and thus complies with RFC 3915 and its successors. Details of the Verisign SRS' compliance with RFC SRS/EPP are provided in the response to Question 25, Extensible Provisioning Protocol. We do not use functionality outside the base EPP RFCs, although proprietary EPP extensions are documented in Internet-Draft format following the guidelines described in RFC 3735 within the response to Question 25. Moreover, prior to deployment, Verisign will provide to ICANN updated documentation of all the EPP objects and extensions supported in accordance with Specification 6, Section 1.2.

##### Specification 10, EPP Registry Performance Specifications

Verisign's SRS meets all EPP Registry Performance Specifications detailed in Specification 10, Section 2. Evidence of this performance can be verified by a review of the .com and .net Registry Operator's Monthly Reports, which we file with ICANN. These reports detail our operational status of the .com and .net registries, which use an SRS design and approach comparable to the one proposed for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD. These reports provide evidence of our ability to meet registry operation service level agreements (SLAs) comparable to those detailed in Specification 10. The reports are accessible at the following URL: <http://www.icann.org/en/tlds/monthly-reports/>.

In accordance with EPP Registry Performance Specifications detailed in Specification 10, our SRS meets the following performance attributes:

- \* EPP service availability: Fewer than or equal to 864 minutes of downtime (approximately 98%)
- \* EPP session-command round trip time (RTT): Fewer than or equal to 4000 milliseconds (ms), for at least 90 percent of the commands
- \* EPP query-command RTT: Fewer than or equal to 2000 ms, for at least 90 percent of the

commands

\* EPP transform-command RTT: Fewer than or equal to 4000 ms, for at least 90 percent of the commands

## 25. Extensible Provisioning Protocol (EPP)

### 1 COMPLETE KNOWLEDGE AND UNDERSTANDING OF THIS ASPECT OF REGISTRY TECHNICAL REQUIREMENTS

We have used Extensible Provisioning Protocol (EPP) since our inception and possess complete knowledge and understanding of EPP registry systems. Our first EPP implementation—for a thick registry for the .name generic top-level domain (gTLD)—was in 2002. Since then we have continued our RFC-compliant use of EPP in multiple TLDs, as detailed in Figure 25-1 (see Attachment VRSN\_.comHebrew\_Q25 Figures for all figures in this response).

Our understanding of EPP and our ability to implement code that complies with the applicable RFCs is unparalleled. Mr. Scott Hollenbeck, Verisign’s director of software development, authored the Extensible Provisioning Protocol and continues to be fully engaged in its refinement and enhancement (U.S. Patent Number 7299299 – Shared registration system for registering domain names). We have also developed numerous new object mappings and object extensions following the guidelines in RFC 3735 (Guidelines for Extending the Extensible Provisioning Protocol). Mr. James Gould, a principal engineer at Verisign, led and co-authored the most recent EPP Domain Name System Security Extensions (DNSSEC) RFC effort (RFC 5910).

All Verisign registry systems use EPP. Upon approval of this application, we will use EPP to provide registry services for this gTLD. The .com, .net, and .name registries, for which we are the registry operator, use an SRS design and approach comparable to the one proposed for this gTLD. Approximately 915 registrars use our EPP service, and the registry system performs more than 140 million EPP transactions daily without performance issues or restrictive maintenance windows. The processing time service level agreement (SLA) requirements for the Verisign-operated .net gTLD are the strictest of the current Verisign-managed gTLDs. All processing times for Verisign-operated gTLDs can be found in ICANN’s Registry Operator’s Monthly Reports at <http://www.icann.org/en/tlds/monthly-reports/>.

We have also been active on the Internet Engineering Task Force (IETF) Provisioning Registry Protocol (provreg) working group and mailing list since work started on the EPP protocol in 2000. This working group provided a forum for members of the Internet community to comment on Mr. Scott Hollenbeck’s initial EPP drafts, which Mr. Hollenbeck refined based on input and discussions with representatives from registries, registrars, and other interested parties. The working group has since concluded, but the mailing list is still active to enable discussion of different aspects of EPP.

#### 1.1 EPP Interface with Registrars

Verisign fully supports the features defined in the EPP specifications and provides a set of software development kits (SDK) and tools to help registrars build secure and stable interfaces. Our SDKs give registrars the option of either fully writing their own EPP client software to integrate with the Shared Registration System (SRS), or using the Verisign-provided SDKs to aid them in the integration effort. Registrars can download the Verisign EPP SDKs and tools from the registrar website (<http://www.Verisign.com/domain-name-services/current-registrars/epp-sdk/index.html>).

The EPP SDKs provide a host of features including connection pooling, Secure Sockets Layer (SSL), and a test server (stub server) to run EPP tests against. One tool—the EPP tool—provides a web interface for creating EPP Extensible Markup Language (XML) commands and sending them to a configurable set of target servers. This helps registrars in creating the template XML and testing a variety of test cases against the EPP servers. An Operational Test and Evaluation (OT&E) environment, which runs the same software as the production system

so approved registrars can integrate and test their software before moving into a live production environment, is also available.

## 2 TECHNICAL PLAN SCOPE/SCALE CONSISTENT WITH THE OVERALL BUSINESS APPROACH AND PLANNED SIZE OF THE REGISTRY

As an experienced backend registry provider, we have developed and use proprietary system scaling models to guide the growth of our TLD supporting infrastructure. These models direct our infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. We periodically update these models to account for the adoption of more capable and cost-effective technologies.

Our scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 – Financial Projections: Most Likely) as an input to our scaling models, we derived the necessary infrastructure required to implement and sustain this gTLD. Cost related to this infrastructure is provided as “Total Critical Registry Function Cash Outflows” (Template 1, Line IIB.G) within the Question 46 financial projections response.

## 3 TECHNICAL PLAN THAT IS ADEQUATELY RESOURCED IN THE PLANNED COSTS DETAILED IN THE FINANCIAL SECTION

As an experienced backend registry provider, we have developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. We routinely adjust these staffing models to account for new tools and process innovations. These models enable us to continually right-size our staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 – Financial Projections: Most Likely) as an input to our staffing models, we derived the necessary personnel levels required for this gTLD’s initial implementation and ongoing maintenance. Cost related to this infrastructure is provided as “Total Critical Registry Function Cash Outflows” (Template 1, Line IIB.G) within the Question 46 financial projections response.

We employ more than 1,040 individuals of which more than 775 comprise our technical work force. (Current statistics are publicly available in our quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, we have maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving our ability to align personnel resource growth to the scale increases of our TLD service offerings.

We project we will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support the provisioning of EPP services:

- \* Application Engineers: 19
- \* Database Engineers: 3
- \* Quality Assurance Engineers: 11

To implement and manage the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD as described in this application, we scale, as needed, the size of each technical area now supporting our portfolio of TLDs. Consistent with our resource modeling, we periodically review the level of work to be performed and adjust staff levels for each technical area.

When usage projections indicate a need for additional staff, our internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed

by the lead of the relevant technical area. By scaling one common team across all our TLDs instead of creating a new entity to manage only this proposed gTLD, we realize significant economies of scale and ensure our TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed TLD, as we hold all contributing staff members accountable to the same procedures that guide our execution of the Internet's largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, we afford new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

#### 4 ABILITY TO COMPLY WITH RELEVANT RFCS

We incorporate design reviews, code reviews, and peer reviews into our software development lifecycle (SDLC) to ensure compliance with the relevant RFCs. Our dedicated QA team creates extensive test plans and issues internal certifications when it has confirmed the accuracy of the code in relation to the RFC requirements. Our QA organization is independent from the development team within engineering. This separation helps Verisign ensure adopted processes and procedures are followed, further ensuring that all software releases fully consider the security and stability of the TLD.

For the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD, the Shared Registration System (SRS) complies with the following IETF EPP specifications, where the XML templates and XML schemas are defined in the following specifications:

- \* EPP RGP 3915 (<http://www.apps.ietf.org/rfc/rfc3915.html>): EPP Redemption Grace Period (RGP) Mapping specification for support of RGP statuses and support of Restore Request and Restore Report (authored by Verisign's Scott Hollenbeck)
- \* EPP 5730 (<http://tools.ietf.org/html/rfc5730>): Base EPP specification (authored by Verisign's Scott Hollenbeck)
- \* EPP Domain 5731 (<http://tools.ietf.org/html/rfc5731>): EPP Domain Name Mapping specification (authored by Verisign's Scott Hollenbeck)
- \* EPP Host 5732 (<http://tools.ietf.org/html/rfc5732>): EPP Host Mapping specification (authored by Verisign's Scott Hollenbeck)
- \* EPP Contact 5733 (<http://tools.ietf.org/html/rfc5733>): EPP Contact Mapping specification (authored by Verisign's Scott Hollenbeck)
- \* EPP TCP 5734 (<http://tools.ietf.org/html/rfc5734>): EPP Transport over Transmission Control Protocol (TCP) specification (authored by Verisign's Scott Hollenbeck)
- \* EPP DNSSEC 5910 (<http://tools.ietf.org/html/rfc5910>): EPP Domain Name System Security Extensions (DNSSEC) Mapping specification (authored by Verisign's James Gould and Scott Hollenbeck)

#### 5 PROPRIETARY EPP EXTENSIONS

We use our SRS to provide registry services. The SRS supports the following EPP specifications, which we developed following the guidelines in RFC 3735, where the XML templates and XML schemas are defined in the specifications:

- \* IDN Language Tag (<http://www.verisigninc.com/assets/idn-language-tag.pdf>): EPP internationalized domain names (IDN) language tag extension used for IDN domain name registrations
- \* RGP Poll Mapping (<http://www.verisigninc.com/assets/whois-info-extension.pdf>): EPP mapping for an EPP poll message in support of Restore Request and Restore Report
- \* Whois Info Extension (<http://www.verisigninc.com/assets/whois-info-extension.pdf>): EPP

extension for returning additional information needed for transfers

\* EPP ConsoliDate Mapping (<http://www.verisigninc.com/assets/consolidate-mapping.txt>): EPP mapping to support a Domain Sync operation for synchronizing domain name expiration dates

\* NameStore Extension (<http://www.verisigninc.com/assets/namestore-extension.pdf>): EPP extension for routing with an EPP intelligent gateway to a pluggable set of backend products and services

\* Low Balance Mapping (<http://www.verisigninc.com/assets/low-balance-mapping.pdf>): EPP mapping to support low balance poll messages that proactively notify registrars of a low balance (available credit) condition

As part of the 2006 implementation report to bring the EPP RFC documents from Proposed Standard status to Draft Standard status, an implementation test matrix was completed. Two independently developed EPP client implementations based on the RFCs were tested against the Verisign EPP server for the domain, host, and contact transactions. No compliance-related issues were identified during this test, providing evidence that these extensions comply with RFC 3735 guidelines and further demonstrating Verisign's ability to design, test, and deploy an RFC-compliant EPP implementation. A copy of the implementation test matrix that was completed in 2006 to bring the EPP RFC documents from Proposed Standard status to Draft Standard Status can be found here: <http://www.ietf.org/iesg/implementation/report-rfc4930-4934.txt>

## 5.1 EPP Templates and Schemas

The EPP XML schemas are formal descriptions of the EPP XML templates. They are used to express the set of rules to which the EPP templates must conform in order to be considered valid by the schema. The EPP schemas define the building blocks of the EPP templates, describing the format of the data and the different EPP commands' request and response formats. The current EPP implementations managed by Verisign use these EPP templates and schemas, as will the proposed TLD. For each proprietary XML template/schema, we provide a reference to the applicable template and include the schema.

### XML templates/schema for idnLang-1.0 (IDN Language Tag)

\* Template: The templates for idnLang-1.0 can be found in Chapter 3, EPP Command Mapping of the relevant EPP documentation, <http://www.verisigninc.com/assets/idn-language-tag.pdf>.

\* Schema: This schema describes the extension mapping for the IDN language tag. The mapping extends the EPP domain name mapping to provide additional features required for the provisioning of IDN domain name registrations.

```
<?xml version="1.0" encoding="UTF-8"?>

<schema targetNamespace="http://www.Verisign.com/epp/idnLang-1.0"
  xmlns:idnLang="http://www.Verisign.com/epp/idnLang-1.0"
  xmlns="http://www.w3.org/2001/XMLSchema"
  elementFormDefault="qualified">

  <annotation>
    <documentation>
      Extensible Provisioning Protocol v1.0 domain name
      extension schema for IDN Lang Tag.
    </documentation>
  </annotation>
```

<!--  
Child elements found in EPP commands.

```
-->
  <element name="tag" type="language"/>

  <!--
  End of schema.
  -->
</schema>
```

-----

XML templates/schema for rgp-poll-1.0 (RGP Poll Mapping)

\* Template: The templates for rgp-poll-1.0 can be found in Chapter 3, EPP Command Mapping of the relevant EPP documentation, <http://www.verisigninc.com/assets/rgp-poll-mapping.pdf>.

\* Schema: This schema describes the extension mapping for poll notifications. The mapping extends the EPP base mapping to provide additional features for registry grace period (RGP) poll notifications.

```
<?xml version="1.0" encoding="UTF-8"?>

<schema targetNamespace="http://www.Verisign.com/epp/rgp-poll-1.0"
  xmlns:rgp-poll="http://www.Verisign.com/epp/rgp-poll-1.0"
  xmlns:eppcom="urn:ietf:params:xml:ns:eppcom-1.0"
  xmlns:rgp="urn:ietf:params:xml:ns:rgp-1.0"
  xmlns="http://www.w3.org/2001/XMLSchema"
  elementFormDefault="qualified">

  <!--
  Import common element types.
  -->
  <import namespace="urn:ietf:params:xml:ns:eppcom-1.0"
    schemaLocation="eppcom-1.0.xsd"/>
  <import namespace="urn:ietf:params:xml:ns:rgp-1.0"
    schemaLocation="rgp-1.0.xsd"/>

  <annotation>
    <documentation>
      Extensible Provisioning Protocol v1.0
      Verisign poll notification specification for registry grace period
      poll notifications.
    </documentation>
  </annotation>

  <!--
  Child elements found in EPP commands.
  -->
  <element name="pollData" type="rgp-poll:pollDataType"/>

  <!--
  Child elements of the <notifyData> element for the
  redemption grace period.
  -->
  <complexType name="pollDataType">
    <sequence>
      <element name="name" type="eppcom:labelType"/>
      <element name="rgpStatus" type="rgp:statusType"/>
      <element name="reqDate" type="dateTime"/>
    </sequence>
  </complexType>
```

```

    <element name="reportDueDate" type="dateTime"/>
  </sequence>
</complexType>
<
!--
End of schema.
-->
</schema>

```

-----

XML templates/schema for whoisInf-1.0 (Whois Info Extension)

\* Template: The templates for whoisInf-1.0 can be found in Chapter 3, EPP Command Mapping of the relevant EPP documentation, <http://www.verisigninc.com/assets/whois-info-extension.pdf>.

\* Schema: This schema describes the extension mapping for the Whois Info extension. The mapping extends the EPP domain name mapping to provide additional features for returning additional information needed for transfers.

```

<?xml version="1.0" encoding="UTF-8"?>

<schema targetNamespace="http://www.Verisign.com/epp/whoisInf-1.0"
  xmlns:whoisInf="http://www.Verisign.com/epp/whoisInf-1.0"
  xmlns:eppcom="urn:ietf:params:xml:ns:eppcom-1.0"
  xmlns="http://www.w3.org/2001/XMLSchema"
  elementFormDefault="qualified">

  <import namespace="urn:ietf:params:xml:ns:eppcom-1.0"
    schemaLocation="eppcom-1.0.xsd"/>

  <annotation>
    <documentation>
      Extensible Provisioning Protocol v1.0
      extension schema for Whois Info
    </documentation>
  </annotation>

  <!--
Possible Whois Info extension root elements.
-->
  <element name="whoisInf" type="whoisInf:whoisInfType"/>
  <element name="whoisInfData" type="whoisInf:whoisInfDataType"/>

  <!--
Child elements for the <whoisInf> extension which
is used as an extension to an info command.
-->
  <complexType name="whoisInfType">
    <sequence>
      <element name="flag" type="boolean"/>
    </sequence>
  </complexType>

  <!--
Child elements for the <whoisInfData> extension which
is used as an extension to the info response.
-->
  <complexType name="whoisInfDataType">

```

```

<sequence>
<element name="registrar" type="string"/>
<element name="whoisServer" type="eppcom:labelType"
  minOccurs="0"/>
<element name="url" type="token" minOccurs="0"/>
<element name="irisServer" type="eppcom:labelType"
  minOccurs="0"/>
</sequence>
</complexType>

</schema>

```

---

XML templates/schema for sync-1.0 (EPP ConsoliDate Mapping)

\* Template: The templates for sync-1.0 can be found in Chapter 3, EPP Command Mapping of the relevant EPP documentation, <http://www.verisign.com/assets/consolidate-mapping.txt>.

\* Schema: This schema describes the extension mapping for the synchronization of domain name registration period expiration dates. This service is known as "ConsoliDate." The mapping extends the EPP domain name mapping to provide features that allow a protocol client to end a domain name registration period on a specific month and day.

```

<?xml version="1.0" encoding="UTF-8"?>

<schema targetNamespace="http://www.Verisign.com/epp/sync-1.0"
  xmlns:sync="http://www.Verisign.com/epp/sync-1.0"
  xmlns="http://www.w3.org/2001/XMLSchema"
  elementFormDefault="qualified">

  <annotation>
    <documentation>
      Extensible Provisioning Protocol v1.0 domain name
      extension schema for expiration date synchronization.
    </documentation>
  </annotation>

  <!--
  Child elements found in EPP commands.
  -->
  <element name="update" type="sync:updateType"/>

  <!--
  Child elements of the <update> command.
  -->
  <complexType name="updateType">
    <sequence>
      <element name="expMonthDay" type="gMonthDay"/>
    </sequence>
  </complexType>

  <!--
  End of schema.
  -->
</schema>

```

## XML templates/schema for namestoreExt-1.1 (NameStore Extension)

\* Template: The templates for namestoreExt-1.1 can be found in Chapter 3, EPP Command Mapping of the relevant EPP documentation, <http://www.verisigninc.com/assets/namestore-extension.pdf>.

\* Schema: This schema describes the extension mapping for the routing with an EPP intelligent gateway to a pluggable set of backend products and services. The mapping extends the EPP domain name and host mapping to provide a sub-product identifier to identify the target sub-product that the EPP operation is intended for.

```
<?xml version="1.0" encoding="UTF-8"?>

<schema targetNamespace="http://www.Verisign-grs.com/epp/namestoreExt-1.1"
  xmlns="http://www.w3.org/2001/XMLSchema"
  xmlns:namestoreExt="http://www.Verisign-grs.com/epp/namestoreExt-1.1"
  elementFormDefault="qualified">

  <annotation>
    <documentation>
      Extensible Provisioning Protocol v1.0 Namestore extension schema
      for destination registry routing.
    </documentation>
  </annotation>

  <!-- General Data types. -->
  <simpleType name="subProductType">
    <restriction base="token">
      <minLength value="1"/>
      <maxLength value="64"/>
    </restriction>
  </simpleType>

  <complexType name="extAnyType">
    <sequence>
      <any namespace="##other" maxOccurs="unbounded"/>
    </sequence>
  </complexType>

  <!-- Child elements found in EPP commands and responses. -->
  <element name="namestoreExt" type="namestoreExt:namestoreExtType"/>

  <!-- Child elements of the <product> command. -->
  <complexType name="namestoreExtType">
    <sequence>
      <element name="subProduct"
        type="namestoreExt:subProductType"/>
    </sequence>
  </complexType>

  <!-- Child response elements. -->
  <element name="nsExtErrData" type="namestoreExt:nsExtErrDataType"/>

  <!-- <prdErrData> error response elements. -->
  <complexType name="nsExtErrDataType">
    <sequence>
      <element name="msg" type="namestoreExt:msgType"/>
    </sequence>
  </complexType>
```

```

<!-- <prdErrData> <msg> element. -->
<complexType name="msgType">
  <simpleContent>
    <extension base="normalizedString">
      <attribute name="code"
        type="namestoreExt:prdErrCodeType" use="required"/>
      <attribute name="lang" type="language" default="en"/>
    </extension>
  </simpleContent>
</complexType>

<!-- <prdErrData> error response codes. -->
<simpleType name="prdErrCodeType">
  <restriction base="unsignedShort">
    <enumeration value="1"/>
  </restriction>
</simpleType>

<!-- End of schema. -->
</schema>

```

-----

XML templates/schema for lowbalance-poll-1.0 (Low Balance Mapping)

\* Template: The templates for lowbalance-poll-1.0 can be found in Chapter 3, EPP Command Mapping of the relevant EPP documentation, <http://www.verisigninc.com/assets/low-balance-mapping.pdf>.

\* Schema: This schema describes the extension mapping for the account low balance notification. The mapping extends the EPP base mapping so an account holder can be notified via EPP poll messages whenever the available credit for an account reaches or goes below the credit threshold.

```

<?xml version="1.0" encoding="UTF-8"?>

<schema targetNamespace="http://www.Verisign.com/epp/lowbalance-poll-1.0"
  xmlns:lowbalance-poll="http://www.Verisign.com/epp/lowbalance-poll-1.0"
  xmlns:eppcom="urn:ietf:params:xml:ns:eppcom-1.0"
  xmlns="http://www.w3.org/2001/XMLSchema"
  elementFormDefault="qualified">

  <!-- Import common element types.-->
  <import namespace="urn:ietf:params:xml:ns:eppcom-1.0"
    schemaLocation="eppcom-1.0.xsd"/>

  <annotation>
    <documentation>
      Extensible Provisioning Protocol v1.0
      Verisign poll notification specification for low balance notifications.
    </documentation>
  </annotation>

  <!--Child elements found in EPP commands.-->
  <element name="pollData" type="lowbalance-poll:pollDataType"/>

  <!--Child elements of the <notifyData> element for the low balance.-->
  <complexType name="pollDataType">

```

```

    <sequence>
      <element name="registrarName" type="eppcom:labelType"/>
      <element name="creditLimit" type="normalizedString"/>
      <element name="creditThreshold"
        type="lowbalance-poll:thresholdType"/>
      <element name="availableCredit" type="normalizedString"/>
    </sequence>
  </complexType>

  <complexType name="thresholdType">
    <simpleContent>
      <extension base="normalizedString">
        <attribute name="type"
          type="lowbalance-poll:thresholdValueType"
          use="required"/>
      </extension>
    </simpleContent>
  </complexType>

  <simpleType name="thresholdValueType">
    <restriction base="token">
      <enumeration value="FIXED"/>
      <enumeration value="PERCENT"/>
    </restriction>
  </simpleType>

  <!-- End of schema.-->
</schema>

```

## 6 PROPRIETARY EPP EXTENSION CONSISTENCY WITH REGISTRATION LIFECYCLE

Verisign's proprietary EPP extensions, defined in Section 5 above, are consistent with the registration lifecycle documented in the response to Question 27, Registration Lifecycle. Details of the registration lifecycle are presented in that response. As new registry features are required, we develop proprietary EPP extensions to address new operational requirements. Consistent with ICANN procedures we adhere to all applicable Registry Services Evaluation Process (RSEP) procedures.

## 26. Whois

### 1 COMPLETE KNOWLEDGE AND UNDERSTANDING OF THIS ASPECT OF REGISTRY TECHNICAL REQUIREMENTS

Verisign has operated the Whois lookup service for the gTLDs and ccTLDs we manage since 1991, and will provide these proven services for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD registry. In addition, we continue to work with the Internet community to improve the utility of Whois data, while thwarting its application for abusive uses.

#### 1.1 High-Level Whois System Description

Like all other components of our registry service, our Whois system is designed and built for both reliability and performance in full compliance with applicable RFCs. Our current Whois implementation has answered more than five billion Whois queries per month for the TLDs we manage, and has experienced more than 250,000 queries per minute in peak conditions. The proposed gTLD uses a Whois system design and approach that is comparable to the current implementation. Independent quality control testing ensures our Whois service is RFC-

compliant through all phases of its lifecycle.

Our redundant Whois databases further contribute to overall system availability and reliability. The hardware and software for our Whois service is architected to scale both horizontally (by adding more servers) and vertically (by adding more CPUs and memory to existing servers) to meet future need.

We can fine-tune access to our Whois database on an individual Internet Protocol (IP) address basis, and we work with registrars to help ensure their services are not limited by any restriction placed on Whois. We provide near real-time updates for Whois services for the TLDs under our management. As information is updated in the registration database, it is propagated to the Whois servers for quick publication. These updates align with the near real-time publication of Domain Name System (DNS) information as it is updated in the registration database. This capability is important for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD registry as it is Verisign's experience that when DNS data is updated in near real time, so should Whois data be updated to reflect the registration specifics of those domain names.

Verisign's Whois response time has been less than 500 milliseconds for 95 percent of all Whois queries in .com, .net, .tv, and .cc. The response time in these TLDs, combined with our capacity, enables the Whois system to respond to up to 30,000 searches (or queries) per second for a total capacity of 2.6 billion queries per day.

The Whois software written by Verisign complies with RFC 3912. We use an advanced in-memory database technology to provide exceptional overall system performance and security. In accordance with RFC 3912, we provide a website at whois.nic. <TLD> that provides free public query-based access to the registration data.

We currently operate both thin and thick Whois systems.

Verisign commits to implementing a RESTful Whois service upon finalization of the relevant standards and protocols by the IETF (Internet Engineering Task Force).

#### Provided Functionalities for User Interface

To use the Whois service via port 43, the user enters the applicable parameter on the command line as illustrated here:

- \* For domain name: whois EXAMPLE.TLD
- \* For registrar: whois "registrar Example Registrar, Inc."
- \* For name server: whois "NS1.EXAMPLE.TLD" or whois "name server (IP address)"

To use the Whois service via the web-based directory service search interface:

- \* Go to [http://whois.nic. <TLD>](http://whois.nic.<TLD>)
- \* Click on the appropriate button (Domain, Registrar, or Name Server)
- \* Enter the applicable parameter:
  - a. Domain name, including the TLD (e.g., EXAMPLE.TLD)
  - b. Full name of the registrar, including punctuation (e.g., Example Registrar, Inc.)
  - c. Full host name or the IP address (e.g., NS1.EXAMPLE.TLD or 198.41.3.39)
- \* Click on the Submit button.

Provisions to Ensure That Access Is Limited to Legitimate Authorized Users and Is in Compliance with Applicable Privacy Laws or Policies

To further promote reliable and secure Whois operations, Verisign has implemented rate-limiting characteristics within the Whois service software. For example, to prevent data mining or other

abusive behavior, the service can throttle a specific requestor if the query rate exceeds a configurable threshold. In addition, QoS technology enables rate limiting of queries before they reach the servers, which helps protect against denial of service (DoS) and distributed denial of service (DDoS) attacks.

Our software also permits restrictions on search capabilities. For example, wild card searches can be disabled. If needed, it is possible to temporarily restrict and/or block requests coming from specific IP addresses for a configurable amount of time. Additional features that are configurable in the Whois software include help files, headers and footers for Whois query responses, statistics, and methods to memory map the database. Furthermore, we are European Union (EU) Safe Harbor certified and have worked with European data protection authorities to address applicable privacy laws by developing a tiered Whois access structure that requires users who require access to more extensive data to (i) identify themselves, (ii) confirm that their use is for a specified purpose and (iii) enter into an agreement governing their use of the more extensive Whois data.

## 1.2 Relevant Network Diagrams

Figure 26-1 (see Attachment VRSN\_.comHebrew\_Q26 Figures for all figures in this response) provides a summary network diagram of the Whois service provided by Verisign. The figure details the configuration with one resolution/Whois site. For the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD, we provide Whois service from six of our 17 primary sites based on the proposed gTLD's traffic volume and patterns. A functionally equivalent resolution architecture configuration exists at each Whois site.

## 1.3 IT and Infrastructure Resources

Figure 26-2 summarizes the IT and infrastructure resources that Verisign uses to provision Whois services from Verisign primary resolution sites. As needed, virtual machines are created based on actual and projected demand.

## 1.4 Description of Interconnectivity with Other Registry Systems

Figure 26-3 provides a technical overview of Verisign's registry system, and shows how the Whois service component fits into this larger system and interconnects with other system components.

## 1.5 Frequency of Synchronization Between Servers

Synchronization between the SRS and the geographically distributed Whois resolution sites occurs approximately every three minutes. We use a two-part Whois update process to ensure Whois data is accurate and available. Every 12 hours an initial file is distributed to each resolution site. This file is a complete copy of all Whois data fields associated with each domain name under management. As interactions with the SRS cause the Whois data to be changed, these incremental changes are distributed to the resolution sites as an incremental file update. This incremental update occurs approximately every three minutes. When the new 12-hour full update is distributed, this file includes all past incremental updates. Our approach to frequency of synchronization between servers meets the Performance Specifications defined in Specification 10 of the Registry Agreement for new gTLDs.

## 2 TECHNICAL PLAN SCOPE/SCALE CONSISTENT WITH THE OVERALL BUSINESS APPROACH AND PLANNED SIZE OF THE REGISTRY

As an experienced backend registry provider, we have developed and use proprietary system scaling models to guide the growth of our TLD supporting infrastructure. These models direct our infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. We periodically update these models to account for the adoption of more capable and cost-effective

technologies.

Our scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 – Financial Projections: Most Likely) as an input to our scaling models, we derived the necessary infrastructure required to implement and sustain this gTLD. Cost related to this infrastructure is provided as “Total Critical Registry Function Cash Outflows” (Template 1, Line IIB.G) within the Question 46 financial projections response.

### 3 TECHNICAL PLAN THAT IS ADEQUATELY RESOURCED IN THE PLANNED COSTS DETAILED IN THE FINANCIAL SECTION

As an experienced backend registry provider, we have developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. We routinely adjust these staffing models to account for new tools and process innovations. These models enable us to continually right-size our staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 – Financial Projections: Most Likely) as an input to our staffing models, we derived the necessary personnel levels required for this gTLD’s initial implementation and ongoing maintenance. Cost related to this infrastructure is provided as “Total Critical Registry Function Cash Outflows” (Template 1, Line IIB.G) within the Question 46 financial projections response.

We employ more than 1,040 individuals of which more than 775 comprise our technical work force. (Current statistics are publicly available in our quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, we have maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving our ability to align personnel resource growth to the scale increases of our TLD service offerings.

We project we will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support Whois services:

- \* Application Engineers: 19
- \* Database Engineers: 3
- \* Quality Assurance Engineers: 11

To implement and manage the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD as described in this application, we scale, as needed, the size of each technical area now supporting our portfolio of TLDs. Consistent with our resource modeling, we periodically review the level of work to be performed and adjust staff levels for each technical area.

When usage projections indicate a need for additional staff, our internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all our TLDs instead of creating a new entity to manage only this proposed gTLD, we realize significant economies of scale and ensure our TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as we hold all contributing staff members accountable to the same procedures that guide our execution of the Internet’s largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, we afford new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

### 4 COMPLIANCE WITH RELEVANT RFC

Verisign’s Whois service complies with the data formats defined in Specification 4 of the

Registry Agreement. We will provision Whois services for registered domain names and associated data in the top-level domain (TLD). Our Whois services are accessible over Internet Protocol version 4 (IPv4) and Internet Protocol version 6 (IPv6), via both Transmission Control Protocol (TCP) port 43 and a web-based directory service at whois.nic. (TLD) , which in accordance with RFC 3912, provides free public query-based access to domain name, registrar, and name server lookups. Our proposed Whois system meets all requirements as defined by ICANN for each registry under our management. Evidence of this successful implementation, and thus compliance with the applicable RFCs, can be verified by a review of the .com and .net Registry Operator's Monthly Reports that we file with ICANN. These reports provide evidence of our ability to meet registry operation service level agreements (SLAs) comparable to those detailed in Specification 10. The reports are accessible at the following URL:  
<http://www.icann.org/en/tlds/monthly-reports/>.

## 5 COMPLIANCE WITH SPECIFICATIONS 4 AND 10 OF REGISTRY AGREEMENT

In accordance with Specification 4, Verisign provides a Whois service that is available via both port 43 in accordance with RFC 3912, and a web-based directory service at whois.nic. (TLD) also in accordance with RFC 3912, thereby providing free public query-based access. We acknowledge that ICANN reserves the right to specify alternative formats and protocols, and upon such specification, we will implement such alternative specification as soon as reasonably practicable.

The format of the following data fields conforms to the mappings specified in Extensible Provisioning Protocol (EPP) RFCs 5730 - 5734 so the display of this information (or values returned in Whois responses) can be uniformly processed and understood: domain name status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date, and times.

Specifications for data objects, bulk access, and lookups comply with Specification 4 and are detailed in the following subsections, provided in both bulk access and lookup modes.

### Bulk Access Mode

This data is provided on a daily schedule to a party designated from time to time in writing by ICANN. The specification of the content and format of this data, and the procedures for providing access, shall be as stated below, until revised in the ICANN Registry Agreement.

The data is provided in three files:

- \* Domain Name File: For each domain name, the file provides the domain name, server name for each name server, registrar ID, and updated date.
- \* Name Server File: For each registered name server, the file provides the server name, each IP address, registrar ID, and updated date.
- \* Registrar File: For each registrar, the following data elements are provided: registrar ID, registrar address, registrar telephone number, registrar email address, Whois server, referral URL, updated date, and the name, telephone number, and email address of all the registrar's administrative, billing, and technical contacts.

### Lookup Mode

Figures 26-4 through Figure 26-6 provide the query and response format for domain name, registrar, and name server data objects

#### 5.1 Specification 10, RDDS Registry Performance Specifications

Verisign's Whois service meets all registration data directory services (RDDS) registry performance specifications detailed in Specification 10, Section 2. Evidence of this performance can be verified by a review of the .com and .net Registry Operator's Monthly Reports that we file

monthly with ICANN. These reports are accessible from the ICANN website at the following URL: <http://www.icann.org/en/tlds/monthly-reports/>.

In accordance with RDDS registry performance specifications detailed in Specification 10, our Whois service meets the following proven performance attributes:

- \* RDDS availability: Fewer than or equal to 864 min of downtime (approximately 98%)
- \* RDDS query RTT: Fewer than or equal to 2000 ms, for at least 95% of the queries
- \* RDDS update time: Fewer than or equal to 60 min, for at least 95% of the probes

## 6 SEARCHABLE WHOIS

Verisign provides a searchable Whois service for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD. We have experience in providing tiered access to Whois for the .name registry, and we use these methods and control structures to help reduce potential malicious use of the function. The searchable Whois system currently uses Apache's Lucene full text search engine to index relevant Whois content with near-real time incremental updates from the provisioning system.

Features of our searchable Whois function include:

- \* Provision of a web-based searchable directory service
- \* Ability to perform partial match, at least, for the following data fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state, or province)
- \* Ability to perform exact match, at least, on the following fields: registrar ID, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records)
- \* Ability to perform Boolean search supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT
- \* Search results that include domain names that match the selected search criteria

Our implementation of searchable Whois is EU Safe Harbor certified and includes appropriate access control measures that help ensure that only legitimate authorized users can use the service. Furthermore, our compliance office monitors current ICANN policy and applicable privacy laws or policies to help ensure the solution is maintained within compliance of applicable regulations. Features of these access control measures include:

- \* All unauthenticated searches are returned as thin results.
- \* Registry system authentication is used to grant access to appropriate users for thick Whois data search results.
- \* Account access is granted by our defined HEBREW\_TRANSLITERATION\_OF\_.COM gTLD admin user.

## Potential Forms of Abuse and Related Risk Mitigation

Leveraging our experience providing tiered access to Whois for the .name registry and interacting with ICANN, data protection authorities, and applicable industry groups, we are knowledgeable of the likely data mining forms of abuse associated with a searchable Whois service. Figure 26-7 summarizes these potential forms of abuse and our approach to mitigate the identified risk.

## 27. Registration Life Cycle

### 1 COMPLETE KNOWLEDGE AND UNDERSTANDING OF REGISTRATION LIFECYCLES AND STATES

Verisign's registry implements the full registration lifecycle for domain names supporting the operations in the Extensible Provisioning Protocol (EPP) specification. The registration lifecycle of the domain name starts with registration and traverses various states as specified in the following sections. The registry system provides options to update domain names with different server and client status codes that block operations based on the EPP specification. The system also provides different grace periods for different billable operations, where the price of the billable operation is credited back to the registrar if the billable operation is removed within the grace period. Together Figure 27-1 and Figure 27-2 (see Attachment VRSN\_.comHebrew\_Q27 Figures for all figures in this response) define the registration states comprising the registration lifecycle and explain the trigger points that cause state-to-state transitions. States are represented as green rectangles within Figure 27-1.

#### 1.1 Registration Lifecycle of Create/Update/Delete

The following section details the create/update/delete processes and the related renewal process that we follow. For each process, this response defines the process function and its characterization, and as appropriate provides a process flow chart.

##### Create Process

The domain name lifecycle begins with a registration or what is referred to as a Domain Name Create operation in EPP. The system fully supports the EPP Domain Name Mapping as defined by RFC 5731, where the associated objects (e.g., hosts and contacts) are created independent of the domain name.

##### Process Characterization

The Domain Name Create command is received, validated, run through a set of business rules, persisted to the database, and committed in the database if all business rules pass. The domain name is included with the data flow to the DNS and Whois resolution services. If no name servers are supplied, the domain name is not included with the data flow to the DNS. A successfully created domain name has the created date and expiration date set in the database. Creates are subject to grace periods as described in Section 1.3 of this response.

The Domain Name Create operation (Figure 27-3) requires the following attributes:

- \* Domain name meets the string restrictions.
- \* Domain name does not already exist.
- \* Registrar is authorized to create a domain name in HEBREW\_TRANSLITERATION\_OF\_.COM.
- \* Registrar has available credit.
- \* Authorization Information (Auth-Info) value is valid.
- \* Required contacts (e.g., registrant, administrative contact, technical contact, and billing contact) are specified and exist.
- \* Specified name servers (hosts) exist, and there is a maximum of 13 name servers.
- \* Period in units of years with a maximum value of 10 (default period is one year).

##### Renewal Process

The domain name can be renewed unless it has any form of Pending Delete, Pending Transfer, or Renew Prohibited.

A request for renewal that sets the expiry date to more than ten years in the future is denied. The registrar must pass the current expiration date (without the timestamp) to support the idempotent features of EPP, where sending the same command a second time does not cause unexpected side effects.

Automatic renewal occurs when a domain name expires. On the expiration date, the registry extends the registration period one year and debits the registrar account balance. In the case of an auto-renewal of the domain name, a separate Auto-Renew grace period applies. Renewals are subject to grace periods as described in Section 1.3 of this response.

##### Process Characterization

The Domain Name Renew command is received, validated, authorized, and run through a set of business rules. The data is updated and committed in the database if it passes all business rules. The updated domain name's expiration date is included in the flow to the Whois resolution service.

The Domain Name Renew operation (Figure 27-4) requires the following attributes:

- \* Domain name exists and is sponsored by the requesting registrar.
- \* Registrar is authorized to renew a domain name in HEBREW\_TRANSLITERATION\_OF\_.COM.
- \* Registrar has available credit.
- \* Passed current expiration date matches the domain name's expiration date.
- \* Period in units of years with a maximum value of 10 (default period is one year). A domain name expiry past ten years is not allowed.

#### Registrar Transfer Procedures

A registrant may transfer the domain name from the current registrar to another registrar. The database system allows a transfer as long as the transfer is not within the initial 60 days, per industry standard, of the original registration date.

The registrar transfer process goes through many process states, which are described in detail below, unless it has any form of Pending Delete, Pending Transfer, or Transfer Prohibited.

A transfer can only be initiated when the appropriate Auth-Info is supplied. The Auth-Info for transfer is only available to the current registrar. Any other registrar requesting to initiate a transfer on behalf of a registrant must obtain the Auth-Info from the registrant.

The Auth-Info is available to the registrant upon request. The registrant is the only party other than the current registrar that has access to the Auth-Info. Registrar transfer entails a specified extension of the expiry date for the object. The registrar transfer is a billable operation and is charged identically to a renewal for the same extension of the period. This period can be from one to ten years, in one-year increments.

Because registrar transfer involves an extension of the registration period, the rules and policies applying to how the resulting expiry date is set after transfer are based on the renewal policies on extension.

Per industry standard, a domain name cannot be transferred to another registrar within the first 60 days after registration. This restriction continues to apply if the domain name is renewed during the first 60 days. Transfer of the domain name changes the sponsoring registrar of the domain name, and also changes the child hosts (ns1.sample.xyz) of the domain name (sample.xyz).

The domain name transfer consists of five separate operations:

- \* Transfer Request (Figure 27-5): Executed by a non-sponsoring registrar with the valid Auth-Info provided by the registrant. The Transfer Request holds funds of the requesting registrar but does not bill the registrar until the transfer is completed. The sponsoring registrar receives a Transfer Request poll message.
- \* Transfer Cancel (Figure 27-6): Executed by the requesting registrar to cancel the pending transfer. The held funds of the requesting registrar are reversed. The sponsoring registrar receives a Transfer Cancel poll message.
- \* Transfer Approve (Figure 27-7): Executed by the sponsoring registrar to approve the Transfer Request. The requesting registrar is billed for the Transfer Request and the sponsoring registrar is credited for an applicable Auto-Renew grace period. The requesting registrar receives a Transfer Approve poll message.
- \* Transfer Reject (Figure 27-8): Executed by the sponsoring registrar to reject the pending transfer. The held funds of the requesting registrar are reversed. The requesting registrar receives a Transfer Reject poll message.
- \* Transfer Query (Figure 27-9): Executed by either the requesting registrar or the sponsoring registrar of the last transfer.

The registry auto-approves a transfer if the sponsoring registrar takes no action. The requesting registrar is billed for the Transfer Request and the sponsoring registrar is credited for an applicable Auto-Renew grace period. The requesting registrar and the sponsoring registrar

receive a Transfer Auto-Approve poll message.

#### Delete Process

A registrar may choose to delete the domain name at any time.

#### Process Characterization

The domain name can be deleted, unless it has any form of Pending Delete, Pending Transfer, or Delete Prohibited.

A domain name is also prohibited from deletion if it has any in-zone child hosts that are name servers for domain names. For example, the domain name "sample.xyz" cannot be deleted if an in-zone host "ns.sample.xyz" exists and is a name server for "sample2.xyz."

If the Domain Name Delete occurs within the Add grace period, the domain name is immediately deleted and the sponsoring registrar is credited for the Domain Name Create. If the Domain Name Delete occurs outside the Add grace period, it follows the Redemption grace period (RGP) lifecycle.

#### Update Process

The sponsoring registrar can update the following attributes of a domain name:

- \* Auth-Info
- \* Name servers
- \* Contacts
- \* Statuses (e.g., Client Delete Prohibited, Client Hold, Client Renew Prohibited, Client Transfer Prohibited, Client Update Prohibited)

#### Process Characterization

Updates are allowed provided that the update includes the removal of any Update Prohibited status. The Domain Name Update operation is detailed in Figure 27-10.

A domain name can be updated unless it has any form of Pending Delete, Pending Transfer, or Update Prohibited.

### 1.2 Pending, Locked, Expired, and Transferred

Verisign handles pending, locked, expired, and transferred domain names as described here. When the domain name is deleted after the five-day Add grace period, it enters into the Pending Delete state. The registrant can return its domain name to active any time within the five-day Pending Delete grace period. After the five-day Pending Delete grace period expires, the domain name enters the Redemption Pending state and then is deleted by the system. The registrant can restore the domain name at any time during the Redemption Pending state.

When a non-sponsoring registrar initiates the domain name transfer request, the domain name enters Pending Transfer state and a notification is mailed to the sponsoring registrar for approvals. If the sponsoring registrar doesn't respond within five days, the Pending Transfer expires and the transfer request is automatically approved.

EPP specifies both client (registrar) and server (registry) status codes that can be used to prevent registry changes that are not intended by the registrant. Currently, many registrars use the client status codes to protect against inadvertent modifications that would affect their customers' high-profile or valuable domain names.

Verisign's registry service supports the following client (registrar) and server (registry) status codes:

- \* clientHold
- \* clientRenewProhibited
- \* clientTransferProhibited
- \* clientUpdateProhibited
- \* clientDeleteProhibited
- \* serverHold
- \* serverRenewProhibited

- \* serverTransferProhibited
- \* serverUpdateProhibited
- \* serverDeleteProhibited

### 1.3 Add Grace Period, Redemption Grace Period, and Notice Periods for Renewals or Transfers

\* Add Grace Period: The Add grace period is a specified number of days following the initial registration of the domain name. The current value of the Add grace period for all registrars is five days.

\* Redemption Grace Period: If the domain name is deleted after the five-day grace period expires, it enters the Redemption grace period and then is deleted by the system. The registrant has an option to use the Restore Request command to restore the domain name within the Redemption grace period. In this scenario, the domain name goes to Pending Restore state if there is a Restore Request command within 30 days of the Redemption grace period. From the Pending Restore state, it goes either to the OK state, if there is a Restore Report Submission command within seven days of the Restore Request grace period, or a Redemption Period state if there is no Restore Report Submission command within seven days of the Restore Request grace period.

\* Renew Grace Period: The Renew/Extend grace period is a specified number of days following the renewal/extension of the domain name's registration period. The current value of the Renew/Extend grace period is five days.

\* Auto-Renew Grace Period: All auto-renewed domain names have a grace period of 45 days.

\* Transfer Grace Period: Domain names have a five-day Transfer grace period.

### 1.4 Aspects of the Registration Lifecycle Not Covered by Standard EPP RFCs

Our registration lifecycle processes and code implementations adhere to the standard EPP RFCs related to the registration lifecycle. By adhering to the RFCs, our registration lifecycle is complete and addresses each registration-related task comprising the lifecycle. No aspect of our registration lifecycle is not covered by one of the standard EPP RFCs and thus no additional definitions are provided in this response.

## 2 CONSISTENCY WITH ANY SPECIFIC COMMITMENTS MADE TO REGISTRANTS AS ADAPTED TO THE OVERALL BUSINESS APPROACH FOR THE PROPOSED gTLD

The registration lifecycle described above applies to the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD as well as other TLDs managed by Verisign; thus we remain consistent with commitments made to our registrants. No unique or specific registration lifecycle modifications or adaptations are required to support the overall business approach for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD.

## 3 COMPLIANCE WITH RELEVANT RFCs

Our registration lifecycle complies with RFCs 5730 – 5734 and 3915. The system fully supports the EPP Domain Name Mapping (RFC 5731), where the associated objects (e.g., hosts and contacts) are created independent of the domain name.

In addition, in accordance with RFCs 5732 and 5733, the registration system enforces the following registration constraints:

\* Uniqueness/Multiplicity: A second-level domain name is unique in the HEBREW\_TRANSLITERATION\_OF\_.COM database. Two identical second-level domain names cannot simultaneously exist in HEBREW\_TRANSLITERATION\_OF\_.COM. Further, a second-level domain name cannot be created if it conflicts with a reserved domain name.

\* Point of Contact Associations: The domain name is associated with the following points of

contact. Contacts are created and managed independently according to RFC 5733.

- a. Registrant
- b. Administrative contact
- c. Technical contact
- d. Billing contact

\* Domain Name Associations: Each domain name is associated with:

- a. A maximum of 13 hosts, which are created and managed independently according to RFC 5732
- b. An Auth-Info, which is used to authorize certain operations on the object
- c. Status(es), which are used to describe the domain name's status in the registry
- d. A created date, updated date, and expiry date

#### 4 DEMONSTRATES THAT TECHNICAL RESOURCES REQUIRED TO CARRY THROUGH THE PLANS FOR THIS ELEMENT ARE ALREADY ON HAND OR READILY AVAILABLE

Verisign has developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. These routinely adjusted models enable us to continually right-size staff to meet projected demand, service level agreements, and requirements for Internet security and stability. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to our staffing models, we derived the personnel levels required for this gTLD's initial implementation and ongoing maintenance. Cost related to this infrastructure is provided as "Total Critical Registry Function Cash Outflows" (Template 1, Line Iib.G) within the Question 46 response.

We employ more than 1,040 individuals; more than 775 comprise our technical work force, enabling us to draw from this pool and align personnel resource growth to the scale increases of our TLD service offerings.

We expect to use the following personnel roles, which are described in Section 5 of the response to Question 31, to support the registration lifecycle:

- \* Application Engineers: 19
- \* Customer Support Personnel: 36
- \* Database Administrators: 8
- \* Database Engineers: 3
- \* Quality Assurance Engineers: 11
- \* SRS System Administrators: 13

To implement and manage the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD as described in this application, we scale, as needed, the size of each technical area now supporting our portfolio of TLDs. Consistent with our resource modeling, we periodically review the level of work to be performed and adjust staff levels for each technical area.

When usage projections indicate a need for additional staff, our internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all our TLDs instead of creating a new entity to manage only this proposed gTLD, we realize significant economies of scale and ensure our TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as we hold all contributing staff members accountable to the same procedures that guide our execution of the Internet's largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, we afford new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

## 28. Abuse Prevention and Mitigation

1. COMPREHENSIVE ABUSE POLICIES, WHICH INCLUDE CLEAR DEFINITIONS OF WHAT CONSTITUTES ABUSE IN THE TLD, AND PROCEDURES THAT WILL EFFECTIVELY MINIMIZE POTENTIAL FOR ABUSE IN THE TLD

Verisign has more than 16 years' experience in protecting our domains and Domain Name System (DNS) from malicious abuse, and we offer multiple services, products, and policies to combat abuse of the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD.

## Definitions

Malicious abuse of the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD, where software is disseminated to infiltrate or damage a computer system without the owner's informed consent, can include the following types of abuse:

- \* Trojan / Malware Executable(s): A malicious executable is hosted on a server.
- \* Trojan / Malware Drive-By: A website is crafted such that it attempts to exploit a vulnerability in a browser or browser plugin (e.g., Flash, PDF, Java) for the purpose of automatically downloading and installing a malicious executable on a client machine.
- \* Phishing: A link in an email (often sent as spam) points to fraudulent web pages/ website (primarily Trojan / Malware Drive-By). These fraudulent web pages are designed to trick recipients into divulging sensitive data such as user names or passwords.
- \* Command-and-Control (CnC): A server is used to send and receive commands from infected machines (bots).
- \* Mass Registrations: Many different domain names are used as part of a CnC infrastructure. The domain names are linked to a specific malware family and are registered in close proximity to each other (time-wise) or by a common entity (malicious actor).

We offer a number of security services to protect registrants and minimize the potential for abuse. These products include:

- \* Verisign MalDetector: This new commercial service enables registrars to offer malware scanning to their customers. MalDetector analyzes a website's content by scanning the site's web pages (text, video, images, ads, web code) for malware and obfuscations (hidden malware code). If MalDetector detects malware code in the website content, it provides remediation instructions for removing the malicious code.
- \* Verisign Domain Name System Security Extensions (DNSSEC) Signing Service: This services helps registrars build the infrastructure capability to protect users from redirection to unintended sites while reducing the cost, complexity, and administrative burden associated with implementing DNSSEC.
- \* Verisign Registry Lock Service: This service enables registrars to offer server-level protection for registrants' HEBREW\_TRANSLITERATION\_OF\_.COM domain name records, thereby guarding against unintended changes, deletions, or transfers. These modification may result in malicious use of the domain name.
- \* Verisign Registry-Registrar Two-Factor Authentication: Helps registrars better manage and control communications with the Verisign registry by providing a mechanism to validate that requested changes come from authorized personnel and update authorized contacts as personnel changes occur.

In the case of other forms of illegal activity, we work with law enforcement personnel, as needed, to mitigate abuse through the judicial system.

### 1.1 Abuse Prevention and Mitigation Implementation Plan

The security services described in the preceding section are currently implemented in the other TLDs that Verisign operates. These services are available immediately to the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD, without the need for additional implementation.

The HEBREW\_TRANSLITERATION\_OF\_.COM gTLD is added to the root zone, and second-level domain names are provisioned through Verisign's Shared Registration System

(SRS). Registrars have the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD and the products and services described in this application added to their account in the SRS. Registrars are required to complete a ramp-up period during which they test their Extensible Provisioning Protocol (EPP) client applications and services through our Operational Test Environment (OTE). The OTE is a functional equivalent to the production environment that allows registrars to determine whether their client applications are production ready. Once the registrar has completed the testing and certification of its client applications and services, it is granted access to the production environment and may begin processing domain names registrations to be published in the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD zone.

## 1.2 Policies for Handling Complaints Regarding Abuse

Verisign handles complaints regarding abuse as detailed in this section.

Abuse complaints are initially addressed to the Registrar of Record (ROR). If registrars or registrants need to escalate an abuse complaint, our Customer Service Center (CSC) is the initial point of contact. Our Customer Support includes the 24/7 onsite CSC staff and on-call support from Tier 3 teams (e.g., registry operations staff, engineers, and developers) during non-business hours. Our primary concern is to resolve issues quickly. As such, we maintain a formal escalation process to ensure that all issues are addressed promptly by the appropriate person/teams.

Abuse complaints are first directed to the Verisign CSC, which manages the complaint through the processes outlined in Section 3.2.2. Our CSC provides world-class support to our customers with key performance metrics that support a timely response to customer issues, including complaints of abuse. Team leads actively manage all access channels to ensure appropriate responsiveness via each access channel.

## 1.3 Proposed Measures for Removal of Orphan Glue Records

Although orphan glue records may support correct and ordinary operation of the Domain Name System (DNS), registry operators are required to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct. Verisign's registration system is specifically designed to not allow orphan glue records. Registrars are required to delete/move all dependent DNS records before deleting the parent domain name.

To prevent orphan glue records, we perform the following checks before removing a domain or name server:

Checks during domain delete:

\* A parent domain name deletion transaction is not allowed if any other domain name in the zone refers to the child name server.

\* If the parent domain name is the only domain name using the child name server, then both the domain name and the glue record are removed from the zone.

Check during explicit name server delete:

\* We confirm that the current name server is not referenced by any in-zone domain name before deleting the name server.

Zone-file impact:

\* If the parent domain name references the child name server AND if other domain names in the zone also reference it AND if the parent domain name is assigned a serverHold status, then the parent domain name is removed from the zone file, but the name server glue record is not.

\* If no domain names reference a name server, then the zone file removes the glue record.

## 1.4 Resourcing Plans

Details related to resourcing plans for the initial implementation and ongoing maintenance of our abuse plan are provided in Section 2 of this response.

## 1.5 Measures to Promote Whois Accuracy

Verisign performs periodic Whois reviews to verify accuracy and completeness of data for which the registry is authoritative. For data maintained in the registry database for which the registry is not authoritative and is therefore unable to verify registrant contact data, the registry validates the syntax and completeness of all required contact fields during registration and modification transactions. In addition, we coordinate with the respective registrars to promote accuracy of these data, including periodic notifications of ICANN's Whois Data Reminder Policy.

### 1.5.1 Authentication of Registrant Information

Authentication of registrant information is performed by the registrant's registrar, since the registry has no direct relationship with the registrant. The registration rules for HEBREW\_TRANSLITERATION\_OF\_.COM require creation of an AuthInfo code for each domain name. This AuthInfo code is required to initiate a request to transfer the domain name between registrars. Use of this authorization by the gaining registrar is intended to prevent unauthorized transfers of domain names.

### 1.5.2 Regular Monitoring of Registration Data for Accuracy and Completeness

Verisign has established policies and procedures to encourage registrar compliance with ICANN's Whois accuracy requirements. We incorporate the following services into our full-service registry operations.

#### Registrar Self Certification

Our self-certification program consists, in part, of evaluations applied equally to all operational ICANN accredited registrars and conducted from time to time throughout the year. Process steps are as follows:

- \* Verisign sends an email notification to the ICANN primary registrar contact, requesting that the contact go to a designated URL, log in with his/her Web ID and password, and complete and submit the online form. The contact must submit the form within 15 business days of receipt of the notification.

- \* When the form is submitted, we send the registrar an automated email confirming that the form was successfully submitted.

- \* We review the submitted form to ensure the certifications are compliant.

- \* We send the registrar an email notification if the registrar is found to be compliant in all areas.

- \* If a review of the response indicates that the registrar is out of compliance or if we have follow-up questions, the registrar has 10 days to respond to the inquiry.

- \* If the registrar does not respond within 15 business days of receiving the original notification, or if it does not respond to the request for additional information, we send the registrar a Breach Notice and give the registrar 30 days to cure the breach.

- \* If the registrar does not cure the breach, we terminate the Registry-Registrar Agreement (RRA).

#### Whois Data Reminder Process

Verisign regularly reminds registrars of their obligation to comply with ICANN's Whois Data Reminder

Policy, which was adopted by ICANN as a consensus policy on 27 March 2003 (<http://www.icann.org/en/registrars/wdrp.htm>). We send a notice to all registrars once a year reminding them of their obligation to be diligent in validating the Whois information provided during the registration process, to investigate claims of fraudulent Whois information, and to cancel domain name registrations for which Whois information is determined to be invalid.

#### 1.6 Malicious or Abusive Behavior Definitions, Metrics, and Service Level Requirements for Resolution

Please see Section 1.0 for the definition of potential forms of abuse specific to the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD. See Section 3.2.2 for a definition of Verisign's response procedures.

The initial response from Customer Service is within 20 seconds or less for 90% of phone calls. Verification of malicious activity and removal of confirmed malicious infections is completed within 24 hours.

#### 1.7 Controls to Ensure Proper Access to Domain Functions

The following sections describe various controls that Verisign employs to ensure appropriate access to domain functions.

##### 1.7.1 Multi-Factor Authentication

To ensure proper access to domain functions, we incorporate our Registry-Registrar Two-Factor Authentication Service into our full-service registry operations. The service is designed to improve domain name security and assist registrars in protecting the accounts they manage by providing another level of assurance that only authorized personnel can communicate with the registry. As part of the service, dynamic one-time passwords (OTPs) augment the user names and passwords currently used to process update, transfer, and/or deletion requests. These OTPs enable transaction processing to be based on requests that are validated both by "what users know" (i.e., their user name and password) and "what users have" (i.e., a two-factor authentication credential with a one-time-password).

Registrars can use the OTP when communicating directly with our Customer Service department as well as when using the registrar portal to make manual updates, transfers, and/or deletion transactions. The Two-Factor Authentication Service is an optional service offered to registrars that execute the Registry-Registrar Two-Factor Authentication Service Agreement. As shown in Figure 28-1 (see Attachment VRSN\_.comHebrew\_Q28 Figures for all figures in this response), the registrars' authorized contacts use the OTP to enable strong authentication when they contact the registry. There is no charge for the Registry-Registrar Two-Factor Authentication Service. It is enabled only for registrars that wish to take advantage of the added security provided by the service.

##### 1.7.2 Requiring Multiple, Unique Points of Contact

Each user of the system is required to have an account established with a responsibility role assigned to him/her. The authoritative contact for the account is the ICANN Primary Contact. In addition to the Administrative Contact, the following roles are available: Billing, Technical, Legal, Marketing, Administrative, CEO, and Technical <sup>24/7</sup>. Only one user is designated as the ICANN Primary and, as such, is the authoritative contact on the account should any conflict arise.

## 2. TECHNICAL PLAN THAT IS ADEQUATELY RESOURCED IN THE PLANNED COSTS DETAILED IN THE FINANCIAL SECTION

As an experienced backend registry provider, we have developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. We routinely adjust these staffing models to account for new tools and process innovations. These models enable us to continually right-size our staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the

projected usage volume for the most likely scenario (defined in Question 46, Template 1 – Financial Projections: Most Likely) as an input to our staffing models, we derived the necessary personnel levels required for this gTLD’s initial implementation and ongoing maintenance. Cost related to this infrastructure is provided as “Total Critical Registry Function Cash Outflows” (Template 1, Line IIb.G) within the Question 46 financial projections response.

We employ more than 1,040 individuals of which more than 775 comprise our technical work force. (Current statistics are publicly available in our quarterly filings.)

We project we will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support abuse prevention and mitigation:

- \* Application Engineers: 19
- \* Business Continuity Personnel: 3
- \* Customer Affairs Organization: 9
- \* Customer Support Personnel: 36
- \* Information Security Engineers: 11
- \* Network Administrators: 11
- \* Network Architects: 4
- \* Network Operations Center (NOC) Engineers: 33
- \* Project Managers: 25
- \* Quality Assurance Engineers: 11
- \* Systems Architects: 9

To implement and manage the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD as described in this application, we scale, as needed, the size of each technical area now supporting our portfolio of TLDs. Consistent with our resource modeling, we periodically review the level of work to be performed and adjust staff levels for each technical area.

When usage projections indicate a need for additional staff, our internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all our TLDs instead of creating a new entity to manage only this proposed gTLD, we realize significant economies of scale and ensure our TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD. Moreover, by augmenting existing teams, we afford new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

### 3. POLICIES AND PROCEDURES IDENTIFY AND ADDRESS THE ABUSIVE USE OF REGISTERED NAMES AT STARTUP AND ON AN ONGOING BASIS

#### 3.1 Start-Up Anti-Abuse Policies and Procedures

We incorporate the following domain name abuse prevention service into our full-service registry operations. This service is available at the time of domain name registration.

##### Registry Lock

The Registry Lock Service allows registrars to offer server-level protection for their registrants’ domain names. A registry lock can be applied during the initial standup of the domain name or at any time that the registry is operational.

Specific EPP status codes are set on the domain name to prevent malicious or inadvertent modifications, deletions, and transfers. Typically, these ‘server’ level status codes can only be updated by the registry. The registrar only has ‘client’ level codes and cannot alter ‘server’ level status codes. The registrant must provide a pass phrase to the registry before any updates are made to the domain name. However, with Registry Lock, registrars can also take advantage of server status codes.

The following EPP server status codes are applicable for domain names: (i) serverUpdateProhibited, (ii) serverDeleteProhibited, and (iii) serverTransferProhibited. These statuses may be applied individually or in combination.

The EPP also enables setting host (i.e., name server) status codes to prevent deleting or renaming a host or modifying its IP addresses. Setting host status codes at the registry reduces the risk of inadvertent disruption of DNS resolution for domain names.

The Registry Lock Service is used in conjunction with a registrar's proprietary security measures to bring a greater level of security to registrants' domain names and help mitigate potential for unintended deletions, transfers, and/or updates.

Two components comprise the Registry Lock Service:

\* Registrars provide Verisign with a list of the domain names to be placed on the server status codes. During the term of the service agreement, the registrar can add domain names to be placed on the server status codes and/or remove domain names currently placed on the server status codes. We then manually authenticate that the registrar submitting the list of domain names is the registrar of record for such domain names.

\* If registrars require changes (including updates, deletes, and transfers) to a domain name placed on a server status code, we follow a secure, authenticated process to perform the change. This process includes a request from a registrar-authorized representative for Verisign to remove the specific registry status code, validation of the authorized individual by Verisign, removal of the specified server status code, registrar completion of the desired change, and a request from the registrar-authorized individual to reinstate the server status code on the domain name. This process is designed to complement automated transaction processing through the Shared Registration System (SRS) by using independent authentication by trusted registry experts.

## 3.2 Ongoing Anti-Abuse Policies and Procedures

### 3.2.1 Policies and Procedures That Identify Malicious or Abusive Behavior

We incorporate the following service into our full-service registry operations.

#### Malware Scanning Service

Registrants are often unknowing victims of malware exploits. We have developed proprietary code to help identify malware in the zones we manage, which in turn helps us to identify malicious code hidden in HEBREW\_TRANSLITERATION\_OF\_.COM domain names.

MalDetector, our malware scanning service, helps prevent HEBREW\_TRANSLITERATION\_OF\_.COM websites from infecting other websites by scanning web pages for embedded malicious content that will infect visitors' websites. Our malware scanning technology uses a combination of in-depth malware behavioral analysis, anti-virus results, detailed malware patterns, and network analysis to discover known exploits for the particular scanned zone. If malware is detected, the service sends the registrant a report that contains the number of malicious domain names found and details about malicious content within its TLD zones. Reports with remediation instructions are provided to help the response team quickly and effectively remove the malicious code.

### 3.2.2 Policies and Procedures That Address the Abusive Use of Registered Names

#### Suspension Processes

In the case of domain name abuse, Verisign verifies the nature of the abuse and remediates the abuse using the procedures detailed in this section and in Figure 28-2.

Step 1.1: Verisign Notification. External party escalates the abuse notification to Verisign for processing, documented by:

\* Threat domain name

\* Registrar of record (ROR) Incident narrative, threat analytics, screen shots to depict abuse,

and/or other evidence

- \* Threat classification
- \* Recommended timeframe for action
- \* Technical details (e.g., Whois records, IP addresses, hash values, anti-virus detection results/nomenclature, name servers, domain name statuses that are relevant to the suspension)
- \* Contact details (e.g. name, phone, email address)
- \* Escalation history (initial timeframe of report to ROR, response from ROR, and so on)

Step 1.2: Registry Notification Verification. When we receive a request for escalation from an external party, we perform the following verification procedures:

- \* Validate that all the required data appears in the notification.
- \* Validate that the request for escalation is for a registered domain name.
- \* Return a case number for tracking purposes.

Step 1.3: Escalation Rejection. If required data is missing from the request for escalation, or the domain name is not registered, the request will be rejected and returned to the external party with the following information:

- \* Threat domain name
- \* Verisign case number
- \* Error reason

Step 1.4: Registrar Notification. Once we have performed the verification, we notify the registrar of the issue. Registrar notification includes the following information:

- \* Threat domain name
- \* Verisign case number
- \* Classification of type of domain name abuse
- \* Evidence of abuse
- \* Verisign anti-abuse contact name and number

Step 1.5: Registrant Notification. Once the registrar receives the notification from Verisign, it may, at its discretion, notify the registrant and/or take any appropriate action.

Step 1.6: Website/Domain Cleanup. We may work with the registrar to complete the following steps:

- \* Remediation steps: The registrar performs the remediation, and can elect to have us deploy MalDetector, our malware scanning service, to determine the remediation needed to remove the malware.
- \* Additional action needed: We provide additional comments to the registrar or information to contact the Internet service provider (ISP) or hosting company for additional action.

Step 1.7: Cleanup Acknowledgement. We notify the external party that the abuse cleanup has been completed. Acknowledgement of the cleanup includes the following information:

- \* Threat domain name
- \* Verisign case number
- \* Domain name
- \* Verisign abuse contact name and number
- \* Cleanup status

#### 4. WHEN EXECUTED IN ACCORDANCE WITH THE REGISTRY AGREEMENT, PLANS WILL RESULT IN COMPLIANCE WITH CONTRACTUAL REQUIREMENTS

All Verisign abuse mitigation policies are based on the corresponding terms in the Registry Agreement and the Registry-Registrar Agreement as applicable. Whenever we develop a policy, we look first at the language of our agreements to determine what we can and cannot do. We then structure policies that are based on these determinations and appropriate stakeholders, such as registrars, to develop policies with processes to monitor compliance with the policies.

In addition, ICANN recently asked us to participate (along with some other registries) in its 2011 Pilot Registry Self-Assessment. We are willingly cooperating with this pilot, for which we provide ICANN with our certification that we comply with specific terms of our Registry Agreements (as identified by ICANN).

#### 5. TECHNICAL PLAN SCOPE/SCALE THAT IS CONSISTENT WITH THE OVERALL BUSINESS APPROACH AND PLANNED SIZE OF THE REGISTRY

We have developed and use proprietary system scaling models to guide the growth of our TLD supporting infrastructure. These models direct our infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. We periodically update these models to account for the adoption of more capable and cost-effective technologies.

Our scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 - Financial Projections: Most Likely) as an input to our scaling models, we derived the necessary infrastructure required to implement and sustain this gTLD. Cost related to this infrastructure is provided as "Other Operating Cost" (Template 1, Line I.L) within the Question 46 financial projections response.

## 29. Rights Protection Mechanisms

### 1 MECHANISMS DESIGNED TO PREVENT ABUSIVE REGISTRATIONS

Rights protection is a core objective of Verisign. We will implement and adhere to any rights protection mechanisms (RPMs) that may be mandated from time to time by ICANN, including each mandatory RPM set forth in the Trademark Clearinghouse model contained in the Registry Agreement, specifically Specification 7. We acknowledge that, at a minimum, ICANN requires a Sunrise period, a Trademark Claims period, and interaction with the Trademark Clearinghouse with respect to the registration of domain names for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD. It should be noted that because ICANN, as of the time of this application submission, has not issued final guidance with respect to the Trademark Clearinghouse, we cannot fully detail the specific implementation of the Trademark Clearinghouse within this application. We will adhere to all processes and procedures to comply with ICANN guidance once this guidance is finalized.

As described in this response, we implement a Sunrise period and Trademark Claims service with respect to the registration of domain names within the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD. Certain aspects of the Sunrise period and/or Trademark Claims service may be administered on behalf of Verisign by Verisign-approved registrars depending on final implementation specification detail related to the Trademark Clearinghouse.

#### Sunrise Service

We implement a Sunrise service procedure for at least 30 days prior to launch of the general registration of domain names in the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD as

provided by the Trademark Clearinghouse model set forth in the ICANN Applicant Guidebook. The HEBREW\_TRANSLITERATION\_OF\_.COM Sunrise service will comply with the requirements outlined in the current Applicant Guidebook as well as any final guidance to be issued pertaining to the operation of the Trademark Clearinghouse.

#### Trademark Claims Service

We also implement a Trademark Claims service for at least 60 days after the launch of the general registration of domain names in the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD. The HEBREW\_TRANSLITERATION\_OF\_.COM Trademark Claims service will comply with the requirements outlined in the current Applicant Guidebook as well as any final guidance to be issued pertaining to the operation of the Trademark Clearinghouse.

#### 2 MECHANISMS DESIGNED TO IDENTIFY AND ADDRESS THE ABUSIVE USE OF REGISTERED NAMES ON AN ONGOING BASIS

In addition to the Sunrise and Trademark Claims services described in Section 1 of this response, we implement and adhere to RPMs post-launch as mandated by ICANN, and we confirm that registrars accredited for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD are in compliance with these mechanisms. Certain aspects of these post-launch RPMs may be administered on behalf of Verisign by Verisign-approved registrars.

These post-launch RPMs include the established Uniform Domain-Name Dispute-Resolution Policy (UDRP), as well as the newer Uniform Rapid Suspension System (URS) and Trademark Post-Delegation Dispute Resolution Procedure (PDDRP). Where applicable, Verisign implements all determinations and decisions issued under the corresponding RPM.

After a domain name is registered, trademark holders can object to the registration through the UDRP or URS. Objections to the operation of the gTLD can be made through the PDDRP.

The following descriptions provide implementation details of each post-launch RPM for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD:

\* UDRP: The UDRP provides a mechanism for complainants to object to domain name registrations. The complainant files its objection with a UDRP provider and the domain name registrant has an opportunity to respond. The UDRP provider makes a decision based on the papers filed. If the complainant is successful, ownership of the domain name registration is transferred to the complainant. If the complainant is not successful, ownership of the domain name remains with the domain name registrant. Verisign and entities operating on our behalf adhere to all decisions rendered by UDRP providers.

\* URS: We also provide for a Uniform Rapid Suspension (URS) system as specified in the Applicant Guidebook. Similar to the UDRP, a complainant files its complaint with a URS provider. The URS provider conducts an administrative review for compliance with applicable filing requirements. If the complaint passes administrative review, the URS provider sends Verisign, the registry operator for HEBREW\_TRANSLITERATION\_OF\_.COM, a Notice of Complaint. Within 24 hours of receipt of the Notice of Complaint, we place the subject domain name on "lock," (serverUpdateProhibited, serverTransferProhibited, and serverDeleteProhibited) which restricts all changes to the registration data but allows the name to continue to resolve. After the domain name is placed on lock, the URS provider notifies the registrant of the complaint. The registrant is then given an opportunity to respond. The URS provider must then conduct a review of the complaint and response based on the rules outlined in the Uniform Rapid Suspension System Draft Procedures set forth in the Applicant Guidebook. If the complainant is successful, the registry operator is informed and the domain name is suspended for the balance of the registration period; the domain name will not resolve to the original website, but to an informational web page provided by the URS provider. If the complainant is not successful, the lock is removed and full control of the domain name registration is returned to the domain name registrant. Similar to the existing UDRP, Verisign and entities operating on our behalf adhere to the decisions rendered by the URS providers.

\* PDDRP: As provided in the Applicant Guidebook, all registries are required to implement the PDDRP. The PDDRP provides a mechanism for a complainant to object to the registry operator's manner of operation or use of the gTLD. The complainant files its objection with a

PDDRP provider, who performs a threshold review. The registry operator has the opportunity to respond and the provider issues its determination based on the papers filed, although there may be opportunity for further discovery and a hearing. Verisign participates in the PDDRP process for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD as specified in the Applicant Guidebook.

#### Additional Measures Specific to Rights Protection

We provide additional measures against potentially abusive registrations. These measures help mitigate phishing, pharming, and other Internet security threats. The measures exceed the minimum requirements for RPMs defined by Specification 7 of the Registry Agreement and are available at the time of registration. These measures include:

\* **Rapid Takedown or Suspension Based on Court Orders:** We comply promptly with any order from a court of competent jurisdiction that directs us to take any action on a domain name that is within our technical capabilities as a TLD registry. These orders may be issued when abusive content, such as child pornography, counterfeit goods, or illegal pharmaceuticals, is associated with the domain name.

\* **Anti-Abuse Process:** We implement an anti-abuse process that is executed based on the type of domain name action requested. These actions are coordinated with the domain name's registrar of record. The anti-abuse process is for malicious exploitation of the DNS infrastructure, such as phishing, botnets, and malware.

\* **Authentication Procedures:** We use two-factor authentication to augment security protocols for telephone, email, and chat communications.

\* **Registry Lock:** This Verisign service allows registrants to lock a domain name at the registry level to protect against both unintended and malicious changes, deletions, and transfers. Only Verisign, as the registry operator, can release the lock; thus all other entities that normally are permitted to update Shared Registration System (SRS) records are prevented from doing so. This lock is released only after the registrar request to unlock is validated.

\* **Malware Code Identification:** This safeguard reduces opportunities for abusive behaviors that use registered domain names in the gTLD. Registrants are often unknowing victims of malware exploits. As a backend registry services provider, we have developed proprietary code to help identify malware in the zones we manage, which in turn helps registrars by identifying malicious code hidden in their domain names.

\* **DNSSEC Signing Service:** Domain Name System Security Extensions (DNSSEC) helps mitigate pharming attacks that use cache poisoning to redirect unsuspecting users to fraudulent websites or addresses. It uses public key cryptography to digitally sign DNS data when it comes into the system and then validate it at its destination. The HEBREW\_TRANSLITERATION\_OF\_.COM gTLD is DNSSEC-enabled as part of our core backend registry services.

\* **Commingling Restriction:** If the Language Tag specified in the IDN registration is not from an approved language authorities table, and so does not have a List of Included Characters, then Verisign applies a restriction to prevent commingling of different scripts in a single domain. That is, if an IDN contains code points from two or more Unicode scripts, then that IDN registration is rejected. For example, a character from the Latin script cannot be used in the same IDN with any HEBREW character. All code points within an IDN must come from the same Unicode script. This is done to prevent confusable code points from appearing in the same IDN.

### 3. RESOURCING PLANS

As an experienced registry operator, we have developed a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. We routinely adjust these staffing models to account for new tools and process innovations. These models enable us to continually right-size our staff to accommodate projected demand and

meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 – Financial Projections: Most Likely) as an input to our staffing models, we derived the necessary personnel levels required for this gTLD’s initial implementation and ongoing maintenance.

We employ more than 1,040 individuals of which more than 775 comprise our technical work force. (Current statistics are publicly available in our quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, we have maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving our ability to align personnel resource growth to the scale increases of our TLD service offerings.

We project we will use the following personnel roles, which are described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support the implementation of RPMS:

- \* Customer Affairs Organization: 9
- \* Customer Support Personnel: 36
- \* Information Security Engineers: 11

To implement and manage the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD as described in this application, we scale, as needed, the size of each technical area now supporting our portfolio of TLDs. Consistent with our resource modeling, we periodically review the level of work to be performed and adjust staff levels for each technical area.

When usage projections indicate a need for additional staff, our internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all our TLDs instead of creating a new entity to manage only this proposed gTLD, we realize significant economies of scale and ensure our TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as we hold all contributing staff members accountable to the same procedures that guide our execution of the Internet’s largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, we afford new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

### **30(a). Security Policy: Summary of the security policy for the proposed registry**

#### **1 DETAILED DESCRIPTION OF PROCESSES AND SOLUTIONS DEPLOYED TO MANAGE LOGICAL SECURITY ACROSS INFRASTRUCTURE AND SYSTEMS, MONITORING AND DETECTING THREATS AND SECURITY VULNERABILITIES AND TAKING APPROPRIATE STEPS TO RESOLVE THEM**

Verisign’s comprehensive security policy has evolved over the years as part of managing some of the world’s most critical TLDs. Our Information Security Policy is the primary guideline that sets the baseline for all other policies, procedures, and standards that we follow. This security policy addresses all of the critical components for the management of backend registry services, including architecture, engineering, and operations.

Our general security policies and standards with respect to these areas are provided as follows:

#### **Architecture**

\* Information Security Architecture Standard: This standard establishes the Verisign standard for application and network architecture. The document explains the methods for segmenting application tiers, using authentication mechanisms, and implementing application functions.

\* Information Security Secure Linux Standard: This standard establishes the information security requirements for all systems that run Linux throughout the Verisign organization.

\* Information Security Secure Oracle Standard: This standard establishes the information security requirements for all systems that run Oracle throughout the Verisign organization.

\* Information Security Remote Access Standard: This standard establishes the information security requirements for remote access to terminal services throughout the Verisign organization.

\* Information Security SSH Standard: This standard establishes the information security requirements for the application of Secure Shell (SSH) on all systems throughout the Verisign organization.

## Engineering

\* Secure SSL/TLS Configuration Standard: This standard establishes the information security requirements for the configuration of Secure Sockets Layer/Transport Layer Security (SSL/TLS) for all systems throughout the Verisign organization.

\* Information Security C++ Standards: These standards explain how to use and implement the functions and application programming interfaces (APIs) within C++. The document also describes how to perform logging, authentication, and database connectivity.

\* Information Security Java Standards: These standards explain how to use and implement the functions and APIs within Java. The document also describes how to perform logging, authentication, and database connectivity.

## Operations

\* Information Security DNS Standard: This standard establishes the information security requirements for all systems that run DNS systems throughout the Verisign organization.

\* Information Security Cryptographic Key Management Standard: This standard provides detailed information on both technology and processes for the use of encryption on Verisign information security systems.

\* Secure Apache Standard: We have a multitude of Apache web servers, which are used in both production and development environments on the Verisign intranet and on the Internet. They provide a centralized, dynamic, and extensible interface to various other systems that deliver information to the end user. Because of their exposure and the confidential nature of the data that these systems host, adequate security measures must be in place. The Secure Apache Standard establishes the information security requirements for all systems that run Apache web servers throughout the Verisign organization.

\* Secure Sendmail Standard: We use sendmail servers in both the production and development environments on the Verisign intranet and on the Internet. Sendmail allows users to communicate with one another via email. The Secure Sendmail Standard establishes the information security requirements for all systems that run sendmail servers throughout the Verisign organization.

\* Secure Logging Standard: This standard establishes the information security logging requirements for all systems and applications throughout the Verisign organization. Where specific standards documents have been created for operating systems or applications, the logging standards have been detailed. This document covers all technologies.

\* Patch Management Standard: This standard establishes the information security patch and upgrade management requirements for all systems and applications throughout Verisign.

## General

\* Secure Password Standard: Because passwords are the most popular and, in many cases, the sole mechanism for authenticating a user to a system, great care must be taken to help ensure that passwords are “strong” and secure. The Secure Password Standard details requirements for the use and implementation of passwords.

\* Secure Anti-Virus Standard: Verisign must be protected continuously from computer viruses and other forms of malicious code. These threats can cause significant damage to the overall operation and security of the Verisign network. The Secure Anti-Virus Standard describes the requirements for minimizing the occurrence and impact of these incidents.

Security processes and solutions for the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD are based on the standards defined above, each of which is derived from our experience and industry best practice. These standards comprise the framework for the overall security solution and applicable processes implemented across all products under our management. The security solution and applicable processes include, but are not limited to:

- \* System and network access control (e.g., monitoring, logging, and backup)
- \* Independent assessment and periodic independent assessment reports
- \* Denial of service (DoS) and distributed denial of service (DDoS) attack mitigation
- \* Computer and network incident response policies, plans, and processes
- \* Minimization of risk of unauthorized access to systems or tampering with registry data
- \* Intrusion detection mechanisms, threat analysis, defenses, and updates
- \* Auditing of network access
- \* Physical security

Further details of these processes and solutions are provided in Part B of this response.

### 1.1 Security Policy and Procedures for the Proposed Registry

Specific security policy related details, requested as the bulleted items of Question 30 – Part A, are provided here.

#### Independent Assessment and Periodic Independent Assessment Reports

To help ensure effective security controls are in place, we conduct a yearly American Institute of Certified Public Accountants (AICPA) and Canadian Institute of Chartered Accountants (CICA) SAS 70 audit on all of our data centers, hosted systems, and applications. During these SAS 70 audits, security controls at the operational, technical, and human level are rigorously tested. These audits are conducted by a certified and accredited third party and help ensure that Verisign in-place environments meet the security criteria specified in our customer contractual agreements and are in accordance with commercially accepted security controls and practices. We also perform numerous audits throughout the year to verify our security processes and activities. These audits cover many different environments and technologies and validate our capability to protect our registry and DNS resolution environments. Figure 30A-1 (see Attachment VRSN\_.comHebrew\_Q30A\_Figures for all figures in this response) lists a subset of the audits that Verisign conducts. For each audit program or certification listed in Figure 30A-1, we have included, as attachments to the Part B component of this response, copies of the assessment reports conducted by the listed third-party auditor. (See VRSN\_.comHebrew\_Q30B-1\_Attachment\_SAS70; VRSN\_.comHebrew\_Q30B-2\_Attachment\_KPMGSysTrust; VRSN\_.comHebrew\_Q30B-3\_Attachment\_KPMG 10K; and VRSN\_.comHebrew\_Q30B-4\_Attachment\_InfoSecPolicy.)

From our experience operating registries, we have determined that together these audit programs and certifications provide a reliable means to ensure effective security controls are in place and that these controls are sufficient to meet ICANN security requirements and therefore are commensurate with the guidelines defined by ISO 27001.

#### Augmented Security Levels or Capabilities

See Section 5 of this response.

#### Commitments Made to Registrants Concerning Security Levels

See Section 4 of this response.

### 2 SECURITY CAPABILITIES ARE CONSISTENT WITH THE OVERALL BUSINESS APPROACH AND PLANNED SIZE OF THE REGISTRY

As an experienced backend registry provider, we have developed and use proprietary system scaling models to guide the growth of our TLD supporting infrastructure. These models direct our infrastructure scaling to include, but not be limited to, server capacity, data storage volume, and network throughput that are aligned to projected demand and usage patterns. We periodically update these models to account for the adoption of more capable and cost-effective technologies.

Our scaling models are proven predictors of needed capacity and related cost. As such, they provide the means to link the projected infrastructure needs of the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD with necessary implementation and sustainment cost. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 – Financial Projections: Most Likely) as an input to our scaling models, we derived the necessary infrastructure required to implement and sustain this gTLD. Cost related to this infrastructure is provided as “Total Critical Registry Function Cash Outflows” (Template 1, Line IIb.G) within the Question 46 financial projections response.

### 3 TECHNICAL PLAN ADEQUATELY RESOURCED IN THE PLANNED COSTS DETAILED IN THE FINANCIAL SECTION

As an experienced backend registry provider, we have developed and use a set of proprietary resourcing models to project the number and type of personnel resources necessary to operate a TLD. We routinely adjust these staffing models to account for new tools and process innovations. These models enable us to continually right-size our staff to accommodate projected demand and meet service level agreements as well as Internet security and stability requirements. Using the projected usage volume for the most likely scenario (defined in Question 46, Template 1 – Financial Projections: Most Likely) as an input to our staffing models, we derived the necessary personnel levels required for this gTLD’s initial implementation and ongoing maintenance. Cost related to this infrastructure is provided as “Total Critical Registry Function Cash Outflows” (Template 1, Line IIb.G) within the Question 46 financial projections response.

We employ more than 1,040 individuals of which more than 775 comprise our technical work force. (Current statistics are publicly available in our quarterly filings.) Drawing from this pool of on-hand and fully committed technical resources, we have maintained DNS operational accuracy and stability 100 percent of the time for more than 13 years for .com, proving our ability to align personnel resource growth to the scale increases of our TLD service offerings.

We project we will use the following personnel role, which is described in Section 5 of the response to Question 31, Technical Overview of Proposed Registry, to support our security policy:

\* Information Security Engineers: 11

To implement and manage the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD as described in this application, we

scale, as needed, the size of each technical area now supporting our portfolio of TLDs. Consistent with our resource modeling, we periodically review the level of work to be performed and adjust staff levels for each technical area.

When usage projections indicate a need for additional staff, our internal staffing group uses an in-place staffing process to identify qualified candidates. These candidates are then interviewed by the lead of the relevant technical area. By scaling one common team across all our TLDs instead of creating a new entity to manage only this proposed gTLD, we realize significant economies of scale and ensure our TLD best practices are followed consistently. This consistent application of best practices helps ensure the security and stability of both the Internet and this proposed gTLD, as we hold all contributing staff members accountable to the same procedures that guide our execution of the Internet's largest TLDs (i.e., .com and .net). Moreover, by augmenting existing teams, we afford new employees the opportunity to be mentored by existing senior staff. This mentoring minimizes start-up learning curves and helps ensure that new staff members properly execute their duties.

#### 4 SECURITY MEASURES ARE CONSISTENT WITH ANY COMMITMENTS MADE TO REGISTRANTS REGARDING SECURITY LEVELS

For the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD, no unique security measures or commitments must be made by Verisign to any registrant.

#### 5 SECURITY MEASURES ARE APPROPRIATE FOR THE APPLIED-FOR gTLD STRING (FOR EXAMPLE, APPLICATIONS FOR STRINGS WITH UNIQUE TRUST IMPLICATIONS, SUCH AS FINANCIAL SERVICES-ORIENTED STRINGS, WOULD BE EXPECTED TO PROVIDE A COMMENSURATE LEVEL OF SECURITY)

No unique security measures are necessary to implement the HEBREW\_TRANSLITERATION\_OF\_.COM gTLD. As defined in Section 1 of this response, we commit to providing backend registry services in accordance with the following international and relevant security standards:

\* American Institute of Certified Public Accountants (AICPA) and Canadian Institute of Chartered Accountants (CICA) SAS 70

\* WebTrust/SysTrust for Certification Authorities (CA)

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**EXHIBIT JJN-63**



# Program Implementation Review

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29 January 2016

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This report is intended to provide a high-level overview of the experiences of ICANN staff charged with implementing the New gTLD Program. The report does not represent a full and complete recitation of all facts and events associated with the New gTLD Program, nor is it dispositive of any matters highlighted in it. The report has not been approved by the ICANN Board or the ICANN community, and is not intended to serve as a policy document. Instead, the information presented is an attempt to capture in general terms the experiences of staff with the operational implementation of the New gTLD Program. This collection of staff experiences is anticipated to serve as input into the ongoing community reviews of the New gTLD Program, which may feed into further policy and implementation work that will require further vetting by the ICANN community.

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# Foreword

The New gTLD Program has its origins in carefully deliberated policy development work performed by the ICANN community. During the policy development process, topics such as the demand, benefits, and risks of new gTLDs; the selection criteria that should be applied; how gTLDs should be allocated; and the contractual conditions that should be required for new gTLD registries going forward were discussed. In October 2007, the Generic Names Supporting Organization (GNSO) formally completed its policy development work on new gTLDs and approved a set of seven principles, 19 policy recommendations, and 18 implementation guidelines on the introduction of new gTLDs.<sup>1</sup> After these recommendations were adopted by the GNSO, ICANN engaged international technical, operational, and legal expertise to provide guidance on details to support the implementation of the policy recommendations. The ICANN Board of Directors considered the recommendations and the implementation plan and adopted the community-developed policy in June 2008.<sup>2</sup>

In its June 2008 resolution, the ICANN Board directed staff to work with the community to further develop and complete the implementation plan. The draft versions of the Applicant Guidebook were released for public comment, and meaningful community input led to multiple revisions of the draft Applicant Guidebook. These draft versions of the Applicant Guidebook reflect ICANN and the community's implementation work.<sup>3</sup>

In parallel, ICANN worked to establish the tools, processes, and resources needed to successfully launch and operate the program. On 20 June 2011, the ICANN Board of Directors adopted a resolution to launch the New gTLD Program, including the approval of the Applicant Guidebook, a communications plan, and the New gTLD Program Budget.<sup>4</sup>

On 11 January 2012, the application period opened. A total of 1,930 applications were submitted. Applications proceeded through the New gTLD Program as defined in the Applicant Guidebook — participating in evaluation, objection and dispute resolution, contention resolution, and contracting processes as applicable. On 23 October 2013, the first new gTLD was delegated. As of 31 July 2015, over 700 gTLDs have been delegated as a result of the New gTLD Program.

## *Purpose of the Review*

The New gTLD Program was the first effort to enable expansion of the DNS on such a large scale. The implementation guidance provided in the community-developed Applicant Guidebook described many complex and previously untested concepts and processes.

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<sup>1</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>2</sup> ICANN. (26 June 2008) Adopted Board Resolutions | Paris. Retrieved from [https://www.icann.org/resources/board-material/resolutions-2008-06-26-en#\\_Toc76113171](https://www.icann.org/resources/board-material/resolutions-2008-06-26-en#_Toc76113171)

<sup>3</sup> ICANN. (21 September 2011) Applicant Guidebooks. Retrieved from <http://newgtlds.icann.org/en/historical-documentation/matrix-agb>

<sup>4</sup> ICANN. (20 June 2011) Approved Board Resolutions | Singapore. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en>

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The Affirmation of Commitments, signed in 2009 by the U.S. Department of Commerce and ICANN, provides for ongoing commitment reviews.<sup>5</sup> Section 9.3 describes a review of the New gTLD Program in terms of promoting competition, consumer trust, and consumer choice to be performed by volunteer community members (“Review Team”):

*If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.*

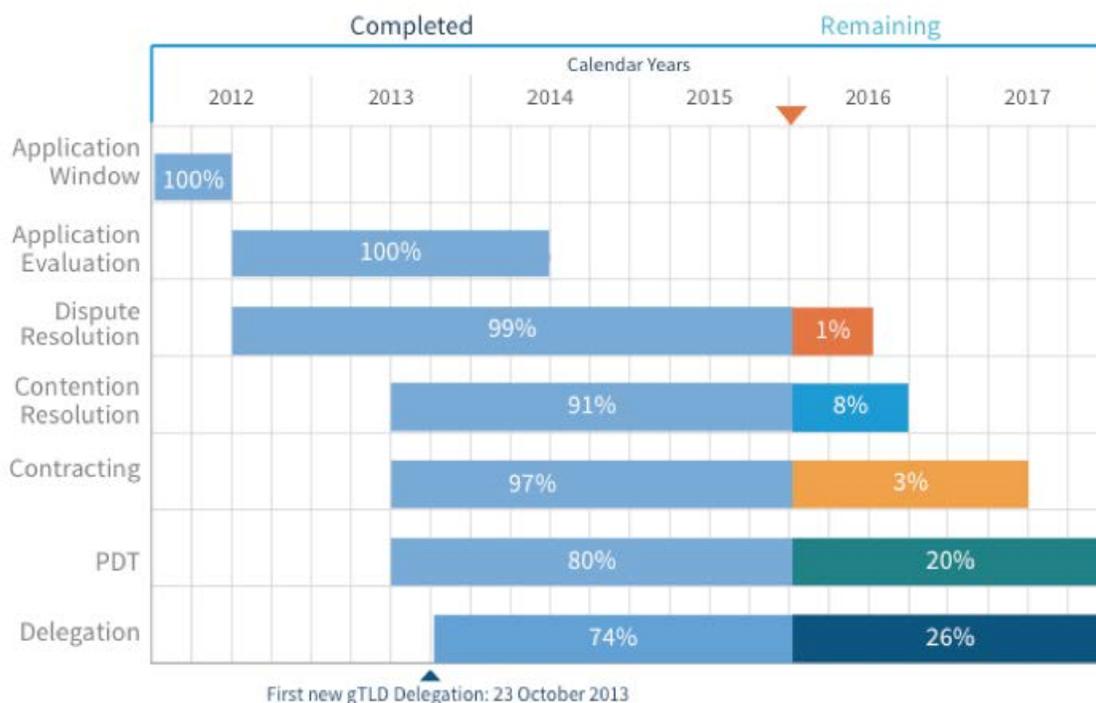
The Program implementation Review is ICANN’s assessment of the execution of New gTLD Program processes, and it is intended to help inform the Review Team’s assessment of the effectiveness of the application and evaluation process. The report documents the experiences of the ICANN staff members charged with executing the New gTLD Program as of the publication of the report (referred to throughout this report as “ICANN”). Other reviews are also being undertaken by ICANN to help inform the Review Team’s work on the competition, consumer trust and choice, and safeguards aspects of the Program. ICANN also recognizes that there are ongoing efforts by the community to review various aspects of the New gTLD Program (e.g., GAC sub-working group for protections of geographic names in next rounds of new gTLDs, SSAC work party on new gTLDs, GNSO new gTLD subsequent procedures discussion group). The Review Team may also wish to consider inclusion of the work of these community groups in its review.

Although some applications received as part of the New gTLD Program are still undergoing processing as of the publication date of this report, many of the processes described in the Applicant Guidebook are completed or nearing completion. Figure i provides an overview of the current New gTLD Program Timeline.

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<sup>5</sup> United States Department of Commerce. Affirmation of Commitments by the United States Department of Commerce and the Internet Corporation for Assigned Names and Numbers. Retrieved from <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>

Figure i: Overview of Current New gTLD Program Timeline



As of 31 December 2015, two of the seven major processes defined in the Applicant Guidebook are complete, and three are over 90% complete.

As the focus of this report is the effectiveness of the implementation of the Applicant Guidebook and New gTLD Program processes, it is not intended as a review of the community-developed Applicant Guidebook nor of the GNSO policies on the introduction of new gTLDs. There was a separate effort led by the New gTLD Subsequent Procedures Discussion Group (a community-led group tasked with calling on the community’s collective experiences from the 2012 New gTLD Program round) to determine what, if any, changes may need to be made to the existing Introduction of New Generic Top-Level Domains GNSO policy recommendations from 8 August 2007. This group’s work can be viewed on the ICANN Community Wiki.<sup>6</sup> ICANN prepared a Final Issue report, and the GNSO has initiated a formal Policy Development Process.<sup>7, 8</sup>

The Program Implementation Review report documents the experiences gained during implementation for consideration in future rounds. To support this intention and to capture the lessons learned first-hand, the report is a self-assessment performed by a staff review team at ICANN. However, many stakeholders have played a major role in the Program. Accordingly, input received

<sup>6</sup> ICANN. Discussion Group (DG) – New gTLD Subsequent Procedures Home. Retrieved from <https://community.icann.org/display/DGNGSR/Discussion+Group+%28DG%29+-+New+gTLD+Subsequent+Procedures+Home>

<sup>7</sup> ICANN. (4 December 2015) Final Issue Report on New gTLD Subsequent Procedures. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/subsequent-procedures-final-issue-04dec15-en.pdf>

<sup>8</sup> Generic Names Supporting Organization. (17 December 2015) Minutes of the GNSO Council Meeting 17 December 2015. Retrieved from <http://gns0.icann.org/en/meetings/minutes-council-17dec15-en.htm>

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from applicants, service providers, and other members of the community on various elements of the Program has been incorporated into this report. ICANN sought and encouraged additional input from stakeholders. The draft version of this report was published for public comment, and stakeholder input has been considered and taken into account in updating the report. While ICANN believes it will be beneficial to document and publish its analysis of the experience gained in implementing the Program, it also values the experience and insight from others who participated in the process. It is recognized that other stakeholders are performing their own reviews, and this review is not intended to replace those reviews nor to represent the experience of all stakeholders.

### *Structure of the Review*

This report has been organized into eight chapters. Each chapter includes various sections pertaining to those broader topics. The chapters and sections mimic the structure of the Applicant Guidebook. Additional chapters for key topics that are not specific to sections of the Applicant Guidebook have been included as well.

The chapters are as follows:

1. Application Processing
2. Application Evaluation
3. Objection and Dispute Resolution
4. Contention Resolution
5. Transition to Delegation
6. Applicant Support Program
7. Continued Operations Instrument
8. Program Management

To guide the review, each topic has been assessed with consideration of the following dimensions:

- Alignment to policy and implementation guidance: to what extent the program criteria, requirements, and execution adhered to GNSO policy recommendations and the Applicant Guidebook
- Security and stability: to what extent the process/procedure/framework supported security and stability of the DNS
- Fairness: to what extent decision-making was consistent, objective, and adhered to documented policies and procedures
- Predictability: to what extent the Program process/procedures/timelines provided predictability
- Effectiveness: to what degree the process was successful in producing desired results/achieving objectives
- Efficiency: to what extent resources (time, effort, cost) were well used for the intended purpose

Each of the chapters includes lessons learned from the implementation of this round as well as considerations for future application rounds. In implementing the New gTLD Program and reflecting upon the challenges of execution, ICANN has identified areas that were particularly challenging and

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which may require additional work and/or discussion. ICANN requests the community's input on these areas in order to enable improvement in future application rounds. The lessons learned and considerations in this report are based on the assumption that the policy recommendations for the introduction of new gTLDs will remain the same for future rounds. Should new consensus policy be developed, ICANN recognizes that some of the considerations may no longer be relevant to the application and evaluation processes.

### *Next Steps*

The final version of this report will be provided to the Review Team, along with the public comments received and ICANN's summary and analysis of the comments. As some Program processes are ongoing as of the writing of this report, the suggestions for future rounds have taken this into consideration and may be updated as necessary to reflect future events.

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# Executive Summary

The Program Implementation Review documents the experiences of the ICANN staff members charged with executing the New gTLD Program as of the publication of this report. In this report, a staff review team at ICANN has assessed the implementation of the Program, considering each phase of implementation.

A recurring topic of consideration throughout this assessment was the Program timeline. The Applicant Guidebook (AGB) contemplated that a simple application's lifecycle might be nine months, while a complex application's lifecycle might be up to twenty months. The application window opened on 11 January 2012, and as of 31 December 2015, there are still applications pending the contention resolution, contracting, and pre-delegation phases of the Program. ICANN anticipates that all applications will have completed their lifecycle by the end of 2017.<sup>9</sup>

While there were several factors that impacted Program timelines, the extended timeline can be contributed to two high-level factors. First, the application volume was much higher than the assumption used during the AGB-development process. Second, implementation required some processes that were not defined in detail by the AGB. Development of these processes and procedures required additional time.

Ultimately, ICANN developed a method for establishing prioritization to process the high volume of applications, and developed procedures, systems, criteria, and rules for all of the processes in this application round. Accordingly, to the extent that future rounds are similar to the 2012 round, ICANN could implement future rounds with less time required for development and with increased effectiveness and efficiency. To this end, this report assesses ICANN's implementation of each major Program process, and highlights areas where review or improvement is encouraged.

## *Chapter 1: Application Processing*

The AGB defined a process for application submission, which included the application window, an administrative completeness check, and the publication of the applied-for strings. Section 1.1: Application Submission assesses these aspects of application submission and the application form.

Key lessons learned on the topic of application submission are:

- Explore a more structured way of capturing application responses
- Implement a system that would allow applicants the flexibility to associate as many applications as desired to a single user account

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<sup>9</sup> ICANN. (25 June 2015) ICANN FY16 Operating Plan & Budget. Retrieved from <https://www.icann.org/en/system/files/files/adopted-opplan-budget-fy16-25jun15-en.pdf>

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Due to the high volume of applications, ICANN established a process to prioritize applications. Section 1.2: Prioritization of this report assesses the implementation of this process, particularly prioritization's effect on the efficiency and effectiveness of the Initial Evaluation, Contracting, Pre-Delegation Testing, and Auction processes.

Key lessons learned on the topic of prioritization are:

- Assign priority numbers to applications prior to commencement of application processing
- Consider grouping applications by common characteristics while establishing priority numbers, in order to increase processing efficiency

The AGB called for ICANN to provide a mechanism for members of the community to submit comments on an application, and for these comments to be reviewed at certain points in the process (e.g., during Community Priority Evaluation). Section 1.3: Application Comments assesses the process and tool developed by ICANN to support the submission and consideration of application comments.

Key lessons learned on the topic of application comments are:

- Explore implementing additional functionality that will improve the usability of the Application Comment Forum
- Provide additional clarity around the intended use of the Application Comment Forum, including timelines and ways to indicate the type of comment being submitted

The AGB called for applicants to notify ICANN if portions of their application became untrue or inaccurate. Section 1.4: Application Change Requests assesses the process that ICANN defined for applicants to make changes to their applications, including the criteria against which the change requests were evaluated and the change requests' impact on Program processes.

Key lessons learned on the topic of application change requests are:

- Design the application change request processes and criteria prior to the start of application processing
- Consider whether all types of application changes should be processed the same way

The AGB defined a way for applicants to withdraw applications that they no longer wished to proceed in the Program. Withdrawn applications were eligible for a refund if the applicant had not yet executed a Registry Agreement with ICANN. Section 1.5: Application Withdrawals assesses the withdrawal and refund processes.

Key lessons learned on the topic of application withdrawals are:

- Consider defining a process to move applications that may not proceed in the Program to a final status and provide a refund if they are not withdrawn
- Review Program financials at the conclusion of this application round to determine whether the refund schedule accurately mapped to the costs incurred at the specified Program phases

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## Chapter 2: Application Evaluation

The AGB defined 50 evaluation questions, intended to collect information on the applicant, to assess the applied-for string, to evaluate the proposed registry services, and to assess the applicant's capability to be a registry operator. The AGB defined Initial and Extended Evaluation as the periods during which applications would be reviewed against the AGB criteria. Section 2.1: Initial and Extended Evaluation assesses the evaluation process, evaluation timeline, and the quality control process.

Key lessons learned on the topic of Initial and Extended Evaluation are:

- Work with evaluation panels to perform pre-evaluation training and develop detailed procedures to ensure consistent and quality evaluations are achieved
- Consider whether Program processes that allow for additional communication between the applicant and ICANN, such as the Applicant Outreach process used in evaluation, may be beneficial

Sections 2.2 through 2.8 of this report assess the seven individual evaluations: Background Screening, String Similarity, DNS Stability, Geographic Names, Technical and Operational Capability, Financial Capability, and Registry Services. Observations from the execution of each of the evaluations are discussed, including areas of suggested review.

Key lessons learned on the topic of the individual evaluations are:

- Consider whether background screening should be performed during Initial Evaluation or at the time of contract execution
- Consider whether the procedures and criteria could be adjusted to account for a meaningful background screen in a variety of cases
- Review the relative timing of the String Similarity evaluation and the objections process
- Consider any ongoing work by various members of the community regarding string similarity, name collision, and geographic names
- Consider the purpose and the implications of the Geographic Names evaluation, particularly in terms of whether its purpose is limited to evaluation or if there are other implications to the geographic names designation
- For future rounds, leverage the IDN tools currently under development
- Consider whether alternate approaches to the Technical and Operational Capability and Financial Capability evaluations would be worthwhile
- Review Technical and Operational Capability and Financial Capability Clarifying Questions and responses to determine whether improvements to the application questions can be made
- Update the process for collection of registry services information to better support both evaluation and contracting activities

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- If an alternative approaches to the Technical and Operational Capability evaluation are explored, consider how the evaluation of Registry Services could be incorporated into the approach

### *Chapter 3: Objection Procedures*

The AGB provided for a process for ICANN's Governmental Advisory Committee (GAC) to issue advice on new gTLDs concerning specific applications. Section 3.1: GAC Advice assesses the GAC Early Warning and GAC Advice processes and ICANN's implementation of the advice issued.

Key lessons learned on the topic of GAC Advice are:

- Continue engagement with the GAC during the review process and the development of future procedures to ensure that its input is incorporated into relevant processes as early as possible

The AGB defined the Objections and Dispute Resolution process for parties with standing to file formal objections on four defined grounds, and to have their objections considered by experts. If an objection was successful, the applications would be placed into contention (in the case of String Confusion Objections filed by a new gTLD applicant), or the unsuccessful application would not proceed in the New gTLD Program (for all other objection types). Section 3.2: Objections and Dispute Resolution assesses the implementation of the objection grounds and standards, management of the dispute resolution service providers, the objections process, and the processes involving the Independent Objector. Additionally, while the AGB did not include an appeal mechanism, the ICANN Board New gTLD Program Committee approved a review mechanism for two objections. The concept of a review mechanism is discussed in this section.

Key lessons learned on the topic of objections and dispute resolution are:

- Explore a potential review mechanism for the next round
- Consider opportunities for improvement in administering the Independent Objector processes

### *Chapter 4: String Contention Procedures*

Contention sets were groups of two or more applications that were deemed confusingly similar to one-another by the String Similarity panel or by through a String Confusion Objection. Applicants were encouraged to self-resolve these contention sets; however, in the absence of self-resolution, the AGB provided for two mechanisms to resolve contention.

The first mechanism for resolution of string contention was Community Priority Evaluation (CPE), through which self-designated community applicants could gain priority by meeting CPE criteria. Section 4.1: Community Priority Evaluation assesses the implementation of the CPE criteria, process, and evaluation results.

Key lessons learned on the topic of CPE are:

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- Consider all dimensions of the feedback received to revisit the CPE scoring and framework before the next application round

The second mechanism for resolution of string contention was an ICANN-facilitated auction. Section 4.2: Auction: Mechanism of Last Resort assesses the implementation of the auction rules and auction process. In this round, auctions were implemented in a manner that supported fairness, predictability, effectiveness, and efficiency. Should auctions be included in the next application round, ICANN could replicate this process with minimal preparation.

### *Chapter 5: Transition to Delegation*

Once an application had successfully completed all required steps of the New gTLD Program (i.e., evaluation, objections and dispute resolution, contention resolution), the application could move forward to enter into a Registry Agreement (RA) with ICANN. The AGB included information about the contracting process, including timelines and a draft version of the Base RA, which are assessed in Section 5.1: Contracting.

Key lessons learned on the topic of contracting are:

- Explore the feasibility of finalizing the base RA before applications are submitted or establishing a process for updating the RA
- Explore whether different applicant types could be defined in a fair and objective manner, and if there are to be different applicant types, consider whether there should be different versions of the RA

The AGB called for the applicant to complete a technical test [Pre-Delegation Testing (PDT)] to demonstrate that they could operate their TLD in a secure and stable manner before delegation. Once the RA was executed and PDT was complete, ICANN recommended the TLD to IANA for delegation into the root zone. Section 5.2: Pre-Delegation Testing and Transition to IANA assesses the development of PDT requirements and service delivery and the Transition to IANA process.

Key lessons learned on the topics of PDT and Transition to IANA are:

- Consider which tests should be performed once per technical infrastructure implementation and which should be performed for each TLD
- Consider which, if any, tests can be converted from self-certifying tests to operational tests
- In considering an alternate approach to the Technical and Operational Capability evaluation, if an RSP accreditation program is considered, explore how PDT would be impacted
- In the development of evaluation criteria and procedures for IDNs, consider how the review of IDN tables during PDT would be affected

### *Chapter 6: Applicant Support*

The Applicant Support Program was a community-developed program designed to provide financial and non-financial support to applicants from underrepresented regions. The New gTLD Financial

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Assistance Handbook defined the criteria and process for financial assistance. Section 6.1: Applicant Support assesses ICANN's implementation of the financial assistance component of the program, as well as the pro bono services and the establishment of a funding mechanism for the program.

Key lessons learned on the topic of the Applicant Support Program are:

- Consider leveraging the same procedural practices used for other panels, including the publication of process documents and documentation of rationale
- Consider researching globally recognized procedures that could be adapted for the implementation of the Applicant Support Program

### *Chapter 7: Continued Operations Instrument*

The Continued Operations Instrument (COI) was a financial instrument intended to temporarily fund the continued operations of the five critical registry functions of a new gTLD by an emergency back-end registry operator (EBERO) in the event of a TLD's failure. The AGB defined the requirements of the COI in Question 50 of the application, and applicants were required to submit a compliant instrument before RA execution. Section 7.1: Continued Operations Instrument assesses the implementation of the COI requirements defined in the AGB.

Key lessons learned on the topic of the COI are:

- Explore whether there other more effective and efficient ways to fund an EBERO in the event of a TLD failure

### *Chapter 8: Program Management*

In order to implement the New gTLD Program, there was a significant effort required from the community, ICANN, and service providers. ICANN defined operational procedures to implement the processes defined in the AGB, developed systems and tools to support the implementation, secured human resources to support the Program, and selected and managed service providers to execute the Program. Further, ICANN managed the Program's financials, executed communications activities, and developed a Customer Service Center to support applicants and registry operators.

Section 8.1: Program Processes, Systems, Resources assesses ICANN's execution of Program processes and procedures, applicant-facing systems, and internal human resources.

Key lessons learned on the topic of Program processes, systems, and resources are:

- In developing timelines for future application rounds, provide an appropriate amount of time to allow for the use of best practices in system development
- Explore beta testing programs for systems to allow for lessons learned, to increase effectiveness of such systems, and to provide further transparency, clarity, and opportunity for preparation to applicants

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Section 8.2: Service Provider Coordination assesses the process used to select vendors, conflict of interest guidelines, and the coordination of the service providers' work.

Key lessons learned on the topic of service provider coordination are:

- Provide transparency and predictability to the procurement process following ICANN's procurement guidelines. Publish selection criteria, providers' process documents, and other relevant and non-confidential material in a timely manner.

Section 8.3: Financial Management assesses ICANN's management of the USD 357 million collected from the 1,930 applications submitted. ICANN's execution of budgeting and reporting, fund segregation, and fees are assessed. The Program's budget is published with ICANN's annual fiscal year Operating Plan and Budget and follows ICANN's annual budgeting process, which includes a public comment period and approval of the final budget by the ICANN Board. Program-related fees were collected in accordance with the AGB and in-line with the principle of cost recovery.

Key lessons learned on the topic of financial management are:

- Perform full review of Program financials and application fee before fees are defined for the next application round

Section 8.4: Communications assesses the communications activities executed prior to and throughout the New gTLD Program in support of the New gTLD Communications Plan.

Key lessons learned on the topic of communications are:

- Consolidate all next round program information into a single site and make information as accessible as possible
- Leverage ICANN's Global Stakeholder Engagement team to promote awareness of the New gTLD Program within their regions/constituencies

Section 8.5: Customer Service assesses ICANN's implementation of a Customer Service Center to support potential applicants and applicants of the New gTLD Program. Assessed in this section are the Program's impact on customer service and ongoing improvements made to the Customer Service Center, which has evolved over time to support a much wider audience.

Key lessons learned on the topic of customer service are:

- Consider customer service to be a critical function of the organization, and ensure that the Customer Service Center has the appropriate resources to support the ongoing and future activities of the New gTLD Program

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# Chapter 1: Application Processing

After several years of collaborative work by stakeholders from various sectors (e.g., governments, business and intellectual property constituencies, the technology community), the Applicant Guidebook (AGB)<sup>10</sup> – a roadmap for the implementation of the new gTLD Program – was approved by the ICANN Board on 20 June 2011.<sup>11</sup> Module 1 of the AGB “gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required, and when and how to submit them.” At the close of the application window, which spanned 12 January through 30 May of 2012, 1,930 applications for new gTLDs were submitted.

The processing of these 1,930 applications included providing the tools (system and guidance) for applicants to submit applications, a fair and effective mechanism to order applications for processing, a mechanism for applicants to update application materials, a mechanism for applicants to withdraw applications, and a mechanism for interested parties to submit comments on application materials.

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<sup>10</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>11</sup> ICANN. (20 June 2011) Approved Board Resolutions. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en>

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## 1.1 Application Submission

### 1.1.1 Introduction

Three main activities occurred during the period of time between the opening of the application window on 12 January 2012 and the publication of the applications on 13 June 2012:

- Applications submitted
- Administrative completeness check performed
- Applied-for TLDs published on Reveal Day

Collectively, these activities are referred to as application submission in this report. This section of the Program Implementation Review report discusses these activities.

### 1.1.2 Relevant Guidance

The following guidance is relevant to the topic of Contracting and will be discussed in further detail in Sections 1.1.3 and 1.1.4 of this report:

- GNSO Principle A: “New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.”<sup>12</sup>
- GNSO Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.*

*All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.*

- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- GNSO Recommendation 13: “Applications must initially be assessed in rounds until the scale of demand is clear.”
- GNSO Implementation Guideline A: “The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.”

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<sup>12</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

- GNSO Implementation Guideline E: “The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>13</sup>

### 1.1.3 Background

GNSO Implementation Guideline E specified that “the application submission date [would] be at least four months after the issue of the Request for Proposal.” The “Request for Proposal” referenced in this Implementation Guideline is the Applicant Guidebook (AGB). In accordance with this Implementation Guideline, on 19 September 2011, version 8 of the Applicant Guidebook was published, which set the dates for the application submission period as 12 January 2012 through 29 March 2012. The submission closing date was later pushed to 30 May 2012.

During the application window, interested parties were able to submit gTLD applications via the TLD Application System (TAS). See Section 8.1: Program Processes, Systems, Resources of this report for more discussion on TAS. The required steps to submit applications in TAS are illustrated in Figure 1.1.i below.

*Figure 1.1.i: Required Steps to Submit Applications in TAS*



To create a user account and profile, applicants answered Questions 1 through 12 of the questionnaire in Module 2 of the AGB. Once the user account and profile were created, applicants paid the USD 5,000 registration fee via wire transfer. Upon confirming receipt of the USD 5,000 registration fee, ICANN provided applicants with access to the application form in TAS. With access to the application form, applicants could then answer Questions 13 through 50 of the questionnaire in Module 2 of the AGB. Concurrently, applicants had to pay the remaining USD 180,000 evaluation fee. Both the completed application form and the remaining USD 180,000 evaluation fee must have been submitted by the scheduled close of the application window on 30 May 2012. To ensure applicants had sufficient time to pay the USD 5,000 registration fee, complete the application form, and pay the USD 180,000 remaining evaluation fee, ICANN set a deadline date of 29 March 2012 to create user accounts and profiles.

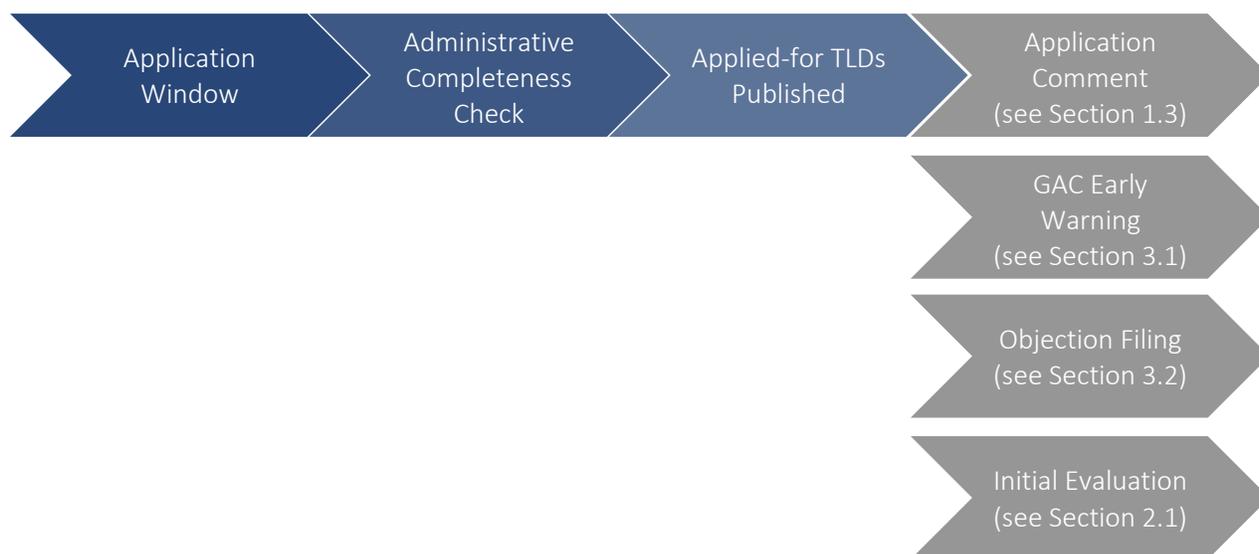
<sup>13</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

At the close of the application window, there were 1,268 user profiles created to submit 1,930 applications. Once the application window closed, ICANN performed an administrative completeness check on all applications in preparation for publication of the applied-for TLDs.

The final list of 1,930 applied-for TLDs and corresponding applications was published to the New gTLD microsite on 13 June 2012, also referred to as “Reveal Day.”<sup>14</sup>

The publication of the applied-for TLDs on Reveal Day triggered several Program processes. Figure 1.1.ii provides a summary of Program processes triggered by the publication of the applied-for TLDs.

*Figure 1.1.ii: Summary of Program Processes Triggered by the Publication of the Applied-for TLDs*



## 1.1.4 Assessment

### 1.1.4.1 APPLICATION WINDOW

#### *Timeline*

As per the AGB, the application window opened on 12 January 2012, six months after the ICANN Board approved the New gTLD Program.<sup>15</sup> During this six-month period, ICANN performed operational readiness activities as described in the AGB, such as engaging a third-party provider to perform background screening<sup>16</sup> and launching the New gTLD microsite.<sup>17</sup>

<sup>14</sup> ICANN. (13 June 2012) Announcement: New gTLD Reveal Day – Applied-for Strings. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-13jun12-en>

<sup>15</sup> ICANN. (20 June 2011) Approved Board Resolutions. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en>

<sup>16</sup> ICANN. (30 August 2011) Announcement: Safe Stable, and Secure TLDs, ICANN Seeks Global Background Screening Provider. Retrieved from <https://www.icann.org/news/announcement-2011-08-30-en>

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The close of the application window was set as 12 April 2012 by the AGB. While ICANN intended to close the window on the date specified in the AGB, the window was extended to 30 May 2012 due to the unanticipated unavailability of TAS for an amount of time during the application period (for more information, see Section 8.1: Processes, Systems, and Resources of this report). When TAS was taken offline on 12 April 2012, hours before the scheduled close of the application window, there were 1,268 registered user accounts and profiles and 2,091 application forms submitted or in progress. At the final close of the application window on 30 May 2012, there were 1,930 applications submitted.

### *Application Submission*

In alignment with Section 1.1.2.1 of the AGB, applicants could submit as many applications as desired. However, TAS placed a limit of 50 applications per user account. To submit more than 50 applications, applicants had to create multiple user accounts. Although there was no limit to the number of user accounts that could be created and thus the number of applications, a limit of 50 applications per user account required some applicants to create and manage multiple user accounts. Some applicants reported that this created some inefficiency for them, as they had to maintain multiple system credentials for the various user accounts and keep track of which applications were associated with which user account.

### *Application Form*

A standard online application form was used for all applications to support fairness and consistency in the application submission experience.

The application form itself was modeled after the questionnaire in Module 2 of the AGB. The form restated the questions as they appeared in the AGB and provided a space for open text responses to the questions. For those questions where the AGB specified a page limit for the response, the application form applied a conversion of 4,000 characters per page. For those questions where the AGB did not specify a page limit, the application form set a reasonable character limit. The character limit for all 50 application questions was communicated to applicants prior to the opening of the application window in the Customer Service Center's knowledge base.<sup>17</sup> For questions that allowed attachments, the application form provided the capability to attach files. Acceptable file formats were also communicated to applicants prior to the opening of the application window in the Customer Service Center's knowledge base.

The application form provided fields for open text responses to questions in the AGB. Feedback from the Financial and Technical/Operational Capability Evaluation Panels was that a structured way to capture data might have helped applicants provide more complete answers and have eliminated some Clarifying Questions. For example, several of the Technical/Operational Capability questions asked for compliance to several RFCs. Instead of an open text field where the applicant might miss

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<sup>17</sup> ICANN. (19 September 2011) Announcement: ICANN Launches New Online Information Center for New Generic Top-Level Domains. Retrieved from <https://www.icann.org/news/announcement-2-2011-09-19-en>

<sup>18</sup> ICANN. (16 December 2011) New gTLD Knowledge Articles. Retrieved from <http://newgtlds.icann.org/en/applicants/tas/character-limits-11jan12-en.pdf>

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providing a response to one or more of the required RFCs, a structured question form specifying each RFC that the applicant must provide a response to would have avoided an incomplete response.

#### **1.1.4.2 ADMINISTRATIVE COMPLETENESS CHECK**

After the close of the application window, the AGB called for ICANN to complete an administrative completeness check in preparation for the public posting of application materials.<sup>19</sup> The intent of the administrative completeness check was to ensure that mandatory questions were answered, supporting documents were provided in the correct format, and evaluation fees were received.

The AGB allowed eight weeks for ICANN to complete the check. ICANN completed the check in two weeks, in time for the posting of applied-for strings on 13 June 2012 (Reveal Day).

ICANN was able to complete the check in less time than provided for in the AGB because some of the activities called for during the administrative check period were performed during the application window. The reconciliation of evaluation fees was performed during the application window due to the requirement in Section 1.5.1 of the AGB that the full USD 185,000 evaluation fee must be received by the end of the application window. Checking of the applications to ensure that all mandatory questions were answered was also not necessary as the application form had built-in validations to ensure that all required questions were answered prior to the form being submitted. The application form also had built-in validations to ensure that only attachments with acceptable file formats were accepted. The main checks that ICANN performed during the two weeks prior to the publication of the applied-for strings were:

- Validation of addresses provided to ensure that PO Box addresses had not been submitted.
- Validation of the script and code points of applied-for IDN TLDs to ensure they were accurate.

ICANN performed follow-up with the applicants during the two-week administrative check period to address any identified issues to ensure the publication of accurate information on Reveal Day.

#### **1.1.4.3. REVEAL DAY**

“Reveal Day,” 13 June 2012, referred to the day that ICANN published the applied-for strings and the public portions of the 1,930 applications. The questionnaire in Module 2 of the AGB specified which questions were public and which questions were confidential and therefore would not be posted publically.

On 14 June 2012, ICANN published an announcement that the postal addresses of some primary and secondary contacts for new generic top-level domain applications were published and that this information was not intended for publication.<sup>20</sup> The addresses appeared as responses to portions of questions 6 and 7 on the application. As a result, ICANN temporarily disabled viewing of the

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<sup>19</sup> AGB Section 1.1.2.2: Administrative Completeness Check

<sup>20</sup> ICANN. (14 June 2012) Announcement: New gTLD Application Details Temporarily Offline – Update. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-14jun12-en>

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application details. ICANN removed the unintended information and the viewing of application details was restored on the same day. This did not impact any of the processes that Reveal Day triggered, as additional time was provided for all of those processes due to the volume of applications received.

## 1.1.5 Conclusion

Even though some issues and delays (discussed in Section 1.1.4: Assessment above) arose, the application submission phase achieved its intended purpose of allowing applicants to submit applications for TLDs, for ICANN to perform a completeness check of the submitted applications, and for ICANN to post the application information. Overall, while these issues and delays had some impact to the timeline of the Program, the volume of applications received had a more significant impact on the Program timeline. Please see Section 1.2: Prioritization and Section 2.1: Initial and Extended Evaluation of this report for additional discussion on how the volume of applications impacted Program timelines.

There are some valuable lessons learned from the implementation of the application submission phase that could help to inform development of procedures for future rounds. One of the lessons learned is that capturing responses to application questions in open text fields led to incomplete answers that did not fully address the questions and reduced the efficiency of evaluators. A more structured way to capture responses to application questions should be explored to reduce or eliminate incomplete answers from seemingly qualified applicants. Structured data also could have efficiency benefits in the evaluations or other downstream uses of the application answers. The other lesson learned is that placing a restriction on the number of applications that can be submitted under each user account and profile created inefficiency for applicants. Implementing a system that would allow applicants the flexibility to associate as many applications as desired with a single user account should be considered.

In summary:

**1.1.a** Explore a more structured way of capturing application responses

**1.1.b** Implement a system that would allow applicants the flexibility to associate as many applications as desired to a single user account

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## 1.2 Prioritization

### 1.2.1 Introduction

Prioritization refers to the assignment of priority numbers to applications for purposes of processing. This section of the Program Implementation Review report discusses the impact of prioritization on the following Program processes:

- Initial Evaluation
- Execution of Registry Agreements
- Pre-Delegation Testing
- Auction

### 1.2.2 Relevant Guidance

The following guidance is relevant to the topic of Contracting and will be discussed in further detail in Sections 1.2.3 and 1.2.4 of this report:

- GNSO Principle A: “New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.”<sup>21</sup>
- GNSO Implementation Guideline D: “A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>22</sup>
- ICANN Board Resolution 2012.03.28.01 (28 March 2012): Batching of New gTLD Applications: Secondary Timestamp<sup>23</sup>

### 1.2.3 Background

Section 1.1.2.5 of the AGB anticipated that Initial Evaluation (IE) would take approximately five months to complete and that results for all applications would be published at the end of IE. In the event of the number of applications exceeding 500, the AGB called for a secondary time stamp mechanism to establish batches for evaluation purposes. “Secondary time stamp” refers to a separate mechanism that would be used after the application window (see Section 1.1: Application Submission of this report) to assign time stamps to applications. At the end of the application

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<sup>21</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>22</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>23</sup> ICANN. (28 March 2012) Approved Board Resolutions | Special Meeting of the ICAN Board. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2012-03-28-en>

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window, 1,930 applications were submitted for new gTLDs. As this number exceeded the anticipated 500 in the AGB, a secondary time stamp mechanism in the form of digital archery was launched on 8 June 2012 to allow applicants to register a time stamp for their applications.<sup>24</sup> On 23 June 2012, ICANN announced that digital archery was suspended due to applicants' reports that the timestamp system returned unexpected results depending on circumstances.<sup>25</sup> Digital archery was scheduled to close on 28 June 2012. At the time of suspension, approximately 20% of applications had registered a time stamp.

The suspension of digital archery did not impact the start of application evaluation. All evaluation panels—String Similarity, Financial Capability, Technical/Operational Capability, DNS Stability, Registry Services, Geographic Names, and Background Screening—started processing applications in June 2012. Absent guidance regarding how to order applications for evaluation purposes, the evaluation panels processed applications in random order at this time. Some of the evaluation panels organized applications in groups that would enable the most efficient evaluation. For example, the Technical and Operational Capability and Registry Services evaluation panels grouped applications by back-end Registry Service providers. The Financial evaluation grouped applications by applying entity.

On 10 October 2012, ICANN published for comment a “Use of a Drawing for Prioritizing New gTLD Applications” plan for prioritizing applications through the use of a drawing.<sup>26</sup> The Plan was the culmination of four months of discussions with the community.

On 20 November 2012, ICANN announced that a prioritization draw would take place on 17 December 2012.<sup>27</sup> The draw would assign a priority number to each application for the purposes of application processing. To participate in the drawing, applicants were required to purchase a ticket for each application. The funds collected from ticket sales were donated to charitable organizations pursuant to California laws.

On 17 December 2012, ICANN held four drawings. The first drawing prioritized IDN applications with a purchased ticket. The second drawing prioritized non-IDN applications with a purchased ticket. The third drawing prioritized IDN applications without a purchased ticket. The fourth drawing prioritized non-IDN applications without a purchased ticket. In total, 1,917 applications were assigned a priority number. Thirteen applications withdrew before the Prioritization Draw took place.

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<sup>24</sup> ICANN. (6 June 2012) Announcement: New gTLD Batching Announcement. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-06jun12-en>

<sup>25</sup> ICANN. (23 June 2012) Announcement: Digital Archery Suspended. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-23jun12-en>

<sup>26</sup> ICANN. (10 October 2012) Announcement: Use of a Drawing for Prioritizing New gTLD Applications. Retrieved from <https://www.icann.org/news/announcement-2-2012-10-10-en>

<sup>27</sup> ICANN. New gTLD Prioritization Draw. Retrieved from <http://newgtlds.icann.org/en/applicants/prioritization-draw>

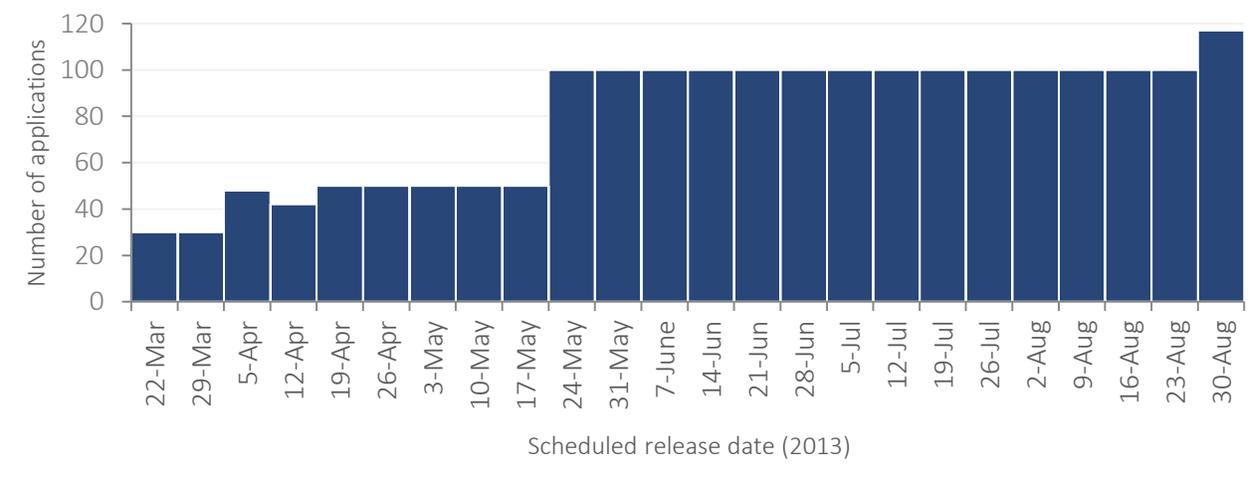
# 1.2.4 Assessment

According to the “Use of a Drawing for Prioritizing New gTLD Applications” plan,<sup>28</sup> priority numbers would be used to order the release of evaluation results (see Section 2.1: Initial and Extended Evaluation of this report), to execute Registry Agreements (see Section 5.1: Contracting of this report) and to schedule PDT appointments (see Section 5.2: Pre-Delegation Testing and Transition to IANA of this report). The Plan also stressed the importance of metering the execution of Registry Agreements and PDT processes to ensure that no more than 1,000 TLDs were delegated per year in accordance with root zone scaling requirements.<sup>29</sup>

## 1.2.4.1 INITIAL EVALUATION

For Initial Evaluation (IE), the Plan called for IE results to be released by priority numbers beginning in March 2013 and ending in June of 2013. ICANN met the March 2013 date and began releasing IE results on 22 March 2013. Results were released in batches by priority number. ICANN began by releasing results for priorities 1-30 the first week, ramping up to weekly batches of 100 priority numbers. This was lower than the 150 applications per week called for in the Plan. However, discussions with the evaluation panels after the publication of the Plan concluded that their maximum capacity was 100 applications per week. This resulted in the extended IE completion date of August 2013 instead of the June 2013 timeframe anticipated in the Plan.<sup>30</sup> Figure 1.2.i shows the IE results release schedule that ICANN followed during IE.

Figure 1.2.i: IE results release schedule



<sup>28</sup> ICANN. (10 October 2012) Use of a Drawing for Prioritizing New gTLD Applications. Retrieved from <http://newgtlds.icann.org/en/applicants/batching/drawing-prioritization-10oct12-en.pdf>

<sup>29</sup> ICANN. (October 2010) Summary of the Impact of Root Zone Scaling. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/summary-of-impact-root-zone-scaling-06oct10-en.pdf>

<sup>30</sup> ICANN. (22 March 2013) Announcement: Initial Evaluation Results Released for First Set of Applications. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-22mar13-en>

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There were instances where the IE results release for some applications could not occur in the scheduled week. Possible reasons IE results were not available in the scheduled week included pending change requests, clarifying questions or follow-up with applicants regarding missing information.

Although prioritization allowed for predictable release of IE results, it brought some inefficiency to the evaluation process. As mentioned in Section 1.2.3 of this report, evaluation panels began review of applications in June of 2012. When the Prioritization Draw took place on 17 December 2012, some applications with smaller prioritization numbers had not been evaluated while some of the applications with larger prioritization numbers had partially been reviewed. As such, significant reshuffling occurred and a considerable number of evaluations had to be completed in the three months leading up to the publication of the first set of IE results on 22 March 2013. The requirement to process applications by priority number also resulted in the inability to group applications by back-end registry service providers or by applicants throughout IE, which would have supported processing efficiency. This is further discussed in Sections 2.6: Technical and Operational Capability Evaluation and Section 2.7: Financial Capability Evaluation of this report.

#### **1.2.4.2 EXECUTION OF REGISTRY AGREEMENTS**

After IE, applications followed various possible paths as anticipated and illustrated in Section 1.1.5 of the AGB. For Contracting (see Section 5.1: Contracting of this report), priority numbers were used to invite applicants as they completed the required Program steps and became ready to enter the Contracting process. Similarly, priority numbers were used to order execution of the Registry Agreement as applicants completed all of the required Contracting process steps.

The AGB and Plan anticipated that applicants would sign the Registry Agreement quickly upon eligibility and that Registry Agreement execution would occur at a steady rate of 20 per week. In actuality, the majority of applicants did not sign the Registry Agreement quickly. The number of Registry Agreement executions varied and remained fewer than 20 for most weeks after the commencement of the Contracting process. See Section 5.1: Contracting of this report for further discussion on the process.

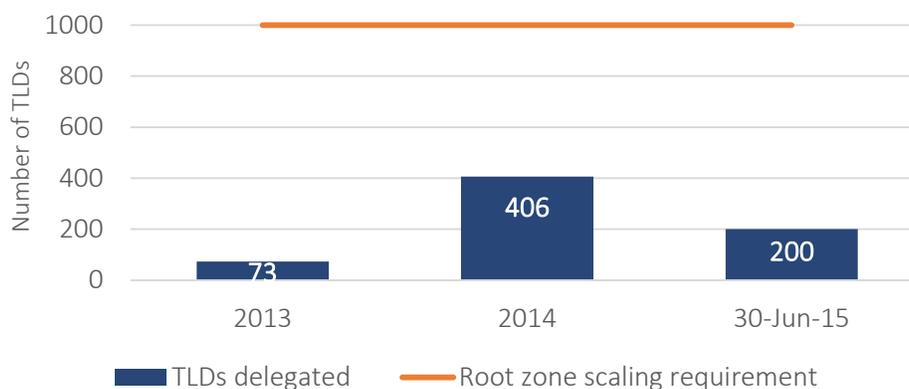
#### **1.2.4.3 PRE-DELEGATION TESTING (PDT)**

As applicants executed Registry Agreements and were ready to begin PDT, priority numbers were used to invite applicants to schedule PDT appointments. As the applicants were free to pick a PDT appointment date that worked for them, the actual PDT date did not always correspond to the order that applicants were invited to schedule PDT. Should there be several applicants wishing to schedule their appointments on the same date, applicants with the smallest priority numbers would be scheduled first, ahead of those with larger priority numbers.

As applicants did not quickly sign Registry Agreements, the volume and rate of PDT did not reach the 20 per week rate anticipated in the Plan. As such, the rate of delegation of TLDs stayed below the

root zone scaling requirement of 1,000 per year to-date. Figure 1.2.ii shows the number of delegations per calendar year.

Figure 1.2.ii: Delegations per calendar year



#### 1.2.4.4 AUCTION

Although not specifically called for in the Plan, priority numbers were also used to schedule auctions. Within a contention set, the application with the smallest priority number determined the order in which sets were scheduled for auction. Lacking any other direction to order contention sets, the use of priority number was the most fair and predictable method to schedule auctions.

### 1.2.5 Conclusion

Prioritization was a fair and effective method of ordering applications for release of IE results and for execution of other Program processes such as Contracting, PDT, and auction. It provided applicants with predictability of application processing order and timelines of IE results release. For staff, it provided an effective mechanism to prioritize service providers' and its own work. However, prioritization also caused some process inefficiency. The Prioritization Draw did not take place until six months after evaluation had already begun. As such, the evaluation panels were not able to fully leverage the work of the six months between the beginning of evaluation and the Prioritization Draw. Some applications that had been evaluated ended up with high priority numbers, and some applications where evaluations had not begun evaluation had low priority numbers. Prioritization also did not allow grouping of applications by back-end registry service providers, or applicants, which would have provided process efficiency in the evaluation of applications. Although these inefficiencies did not cause any delays to application processing, the lesson learned is that assignment of priority numbers to applications should be established prior to commencement of the processing of application. Considerations should also be given to how efficiency of grouping evaluations by common characteristics could be achieved while allowing for a fair and predictable way of ordering application processing.

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In summary:

**1.2.a** Assign priority numbers to applications prior to commencement of application processing

**1.2.b** Consider grouping applications by common characteristics while establishing priority numbers, in order to increase processing efficiency

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## 1.3 Application Comments

### 1.3.1 Introduction

The Application Comments Forum was provided as a mechanism for interested parties to comment on any applications and to bring relevant information to the attention of parties charged with handling specific aspects of application processing (e.g., evaluation panels, the Independent Objector, ICANN). This section of the Program Implementation Review discusses the following aspects of the application comments process:

- Application Comments Window
- Application Comments Forum
- Application Comment Submission and Review

### 1.3.2 Relevant Guidance

The following guidance is relevant to the topic of application comments and will be discussed in further detail in Sections 1.3.3 and 1.3.4 of this report:

- GNSO Implementation Guideline C: “ICANN will provide frequent communications with applicants and the public including comment forums.”<sup>31</sup>
- GNSO Implementation Guideline Q: “ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.”
- Applicant Guidebook, Section 1.1.2.3: Comment Period<sup>32</sup>
- Applicant Guidebook, Section 1.2.2: Required Documents
- Applicant Guidebook, Section 2.4.3.2: Code of Conduct Violations
- Applicant Guidebook, Section 3.2.5: Independent Objector
- Applicant Guidebook, Section 4.2.3: Community Priority Evaluation Criteria

### 1.3.3 Background

Section 1.1.2.3 of the AGB stated that “ICANN will open a comment period (the Application Comment period) at the time applications are publicly posted on ICANN’s website [ . . . ] This period will allow time for the community to review and submit comments on posted application materials.”

Consistent with the AGB, ICANN opened the Application Comment Forum on 13 June 2012 when the applied-for strings were published.

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<sup>31</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>32</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

The forum provided interested parties with the opportunity to submit a comment on any application in any language. Comments had to be associated with a specific application and directed to one of the evaluation panels or objection grounds. Comments not relevant to an evaluation panel or objection ground could be submitted under the “Other” category. As of 31 July 2015, 12,691 comments have been submitted. The Registry Services and String Similarity evaluation panels received the highest number of comments (23% and 17% of all comments submitted, respectively). In contrast, the String Confusion Objection Ground and DNS Stability evaluation panel each received only 1% of the total number of comments submitted. Table 1.3.i shows a breakdown of application comments submitted by category.

*Table 1.3.i: Breakdown of Application Comments Submitted by Category*

Evaluation Panel/Objection Ground	# Comments Submitted	% of Total Comments
Background Screening	1,492	12%
String Similarity	2,099	17%
DNS Stability	127	1%
Geographic Names	495	4%
Technical & Operational Capability	402	3%
Financial Capability	403	3%
Registry Services	2,967	23%
Community Priority Evaluation	1,556	12%
String Confusion Objection Ground	186	1%
Legal Rights Objection Ground	327	3%
Limited Public Interest Objection Ground	1,050	8%
Community Objection Ground	976	8%
Other	611	5%
<b>Total</b>	<b>12,691</b>	<b>100%</b>

## 1.3.4 Assessment

### 1.3.4.1 APPLICATION COMMENT WINDOW

Section 1.1.2.3 of the AGB stated: “Application comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews.” This section of the AGB further said that “This period is subject to extension, should the volume of applications or other circumstances require.” Due to the higher than expected number of applications received (1,930 instead of the 500 estimated in the AGB), and in response to requests from the community for additional time to analyze and provide thoughtful comments on the high volume of applications, ICANN extended the comment period by 45 days.<sup>33</sup> The Application

<sup>33</sup> ICANN. (10 August 2012) Announcement: New gTLD Application Comment Period Extended. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-10aug12-en>

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Comment Forum opened on 13 June 2012 when ICANN published application materials (see Section 1.1: Application Submission of this report) and the deadline for submission of comments to be considered by evaluators was extended from 12 August 2012 to 26 September 2012. A total of 11,716 comments were submitted for evaluators' consideration by 26 September 2012. Between 27 September 2012 and 31 July 2015, 975 additional comments were submitted on applications for various reasons--for example, as comments on application changes that ICANN approved, support or objection to an application on any of the objection grounds, support or objection to an application in CPE, and comments on voluntary Public Interest Commitments submitted by applicants. The total number of comments submitted as of 31 July 2015 was 12,691.

#### **1.3.4.2 APPLICATION COMMENTS FORUM**

The design of the Application Comment Forum built in some limitations; for example, a limit of 3,500 characters for each comment was put in place, and no attachments were allowed. These limitations were put in place to control processing time and costs based on concerns raised by evaluators that an unknown volume of additional materials would require an unknown number of additional resources to perform the review in order to enable them to meet the evaluation timeline set by ICANN, and that the applicants would use the Application Comments Forum as a mechanism to submit additional application materials to circumvent the character limit that the application system imposed on application responses (see Section 1.1: Application Submission of this report).

ICANN observed that commenters circumvented these limitations in several ways. Some submitted comments that exceeded the character limit by dividing them into multiple parts and submitting each part as a separate comment. Others submitted comments via correspondence to ICANN, particularly comments relating to applications in Community Priority Evaluation (CPE). Comments received via correspondence were published to the Correspondence page of the microsite. Although submission of comments in multiple parts resulted in a higher count of comments that the evaluators had to review, these alternate methods of comment submission did not create additional cost to the Program or cause delays to Program timelines.

Although these limitations achieved the intended efficiency for ICANN and evaluation panels, they may not have provided commenters with a good user experience of the tool. In addition, they might have unintentionally directed commenters away from using the forum for its intended purpose, which was to bring forward any relevant information or issues regarding an application.

GNSO Implementation Guideline Q stated that ICANN would provide an automatic reply to all those who submitted public comments that would explain the objection procedure (which was separate from the application comments procedure). This implementation guideline assumed that comments would be provided via email and thus, an automatic reply would be possible. Since the Application Comments Forum implemented as a web-based tool, in lieu of an automatic reply, information about the objection process was provided on the home page of the Application Comment Forum and the login page for submitting a comment.

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### 1.3.4.3 APPLICATION COMMENTS SUBMISSION AND REVIEW

Section 1.1.2.3 of the AGB stated: “In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant.” The evaluators followed this guidance and provided applicants with an opportunity to address any comments that would cause them to change the score of an application by issuing a Clarifying Question (see Section 2.1: Initial and Extended Evaluation of this report). Less than 1% of application comments submitted resulted in the evaluation panel issuing a Clarifying Question. Although the volume of comments resulting in Clarifying Questions was low, public comment mechanisms are a core part of ICANN’s policy development, implementation, and operational processes. Providing a public comment mechanism allows for issues and concerns relating to applications to be considered.

Also consistent with the AGB, comments directed to the Limited Public Interest and Community objection grounds were considered by the Independent Objector if they were submitted prior to the close of the formal objection window. See Section 3.1: GAC Advice of this report for more information regarding the role of the Independent Objector and the formal objection process. The Independent Objector filed 24 objections, 18 of which were filed on applications that received comment(s) directed to the Community or Limited Public Interest objection ground.

For comments directed to the CPE panel (see Section 4.1: Application Processing of this report), the AGB did not specify a specific timeline for the comment window. ICANN set the comment window as 13 June 2012 (Reveal Day) through 14 days after the CPE invitation date, which was posted on the New gTLD microsite. All comments submitted within this window were considered by the CPE panel. This comment window was communicated to applicants and the community in webinars and in FAQs that were posted on the microsite prior to the start of CPE. The CPE panel had the fourth highest number of comments out of the 13 possible categories for which comments could be submitted. Also, as mentioned in Section 1.1.4.2 above, the limitation of the Application Comment Forum of not allowing attachments resulted in commenters submitting comments for the CPE panel via correspondence. This correspondence included submission of additional letters of support and mock evaluations performed by applicants and competitors of the applicant undergoing CPE.

Outside of IE, Objections, and CPE, the Application Comment Forum was also used to solicit comments on approved application change requests (see Section 1.4: Application Change Requests of this report), on Public Interest Commitment (PIC) statements submitted by applicants, and on complaints of code of conduct violations of an evaluation panelist (as specified in Section 2.4.3.2 of the AGB). However, there were no application change request, PIC, or code of conduct violation options to choose from when submitting or viewing a comment, which did not provide clarity for viewing comments and might also have created confusion for commenters.

The AGB describes the use of comment windows for comments to be considered by the evaluation panels and Independent Objector. However, ongoing review of the comments, and whether and how comments should be responded to was not specified by the AGB. As such, ICANN reviewed comments during certain windows of time such as when approved change requests or PICs were posted for 30-day comment periods. ICANN did not perform ongoing review of comments submitted in the forum.

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In cases where the comments submitted required follow-up with applicants, ICANN performed the follow-up directly with the applicant to address any concerns or issues brought up in the comments. ICANN provided responses to commenters only in cases where the commenter also submitted a Customer Service inquiry or correspondence related to the same issue brought up in the Application Comment Forum.

## 1.3.5 Conclusion

The goal of creating the Application Comment Forum for the New gTLD Program was to provide a publicly accessible input mechanism that would be manageable given the unknown volume of applications and application comments. The Application Comment Forum was implemented in alignment with the AGB, and in some respects, it satisfied its intended purpose of providing a means for interested parties to bring forward any relevant information or issues regarding an application for consideration by those charged with handling applications.

There are some important lessons learned from the implementation of the Application Comment Forum that would be useful input to the development of procedures for future rounds.

ICANN put in place a character limit for comments and did not allow attachments to be submitted in the Application Comment Forum in order to control application processing time and costs, to prevent applicants from using the forum to supplement application materials and circumvent the character limit that TAS put in place for application responses, and to provide evaluation panels with some predictability regarding volume of comments. In spite of this, ICANN observed that applicants bypassed these limitations by breaking comments into multiple parts and submitting each part as a separate comment or by submitting comments via correspondence to ICANN. As such, the initial intention of the limitations was not met, and instead, the limitations might have diverted commenters away from using the forum to submit comments. ICANN should explore implementing additional functionalities that will improve the usability of the forum.

Outside of the AGB-prescribed uses of the Application Comment Forum, the forum was also used in this application round to obtain comment on approved application change requests and Public Interest Commitment statements submitted by applicants. However, the Application Comment Forum did not provide these as categories for commenters to select when submitting comments. This created confusion for the commenters and inefficiencies for ICANN as it was not always clear which comments were submitted for what purpose. If the Application Comment Forum is to be used for additional purposes, those purposes should be taken into consideration during the design phase of the tool.

In summary:

**1.3.a** Explore implementing additional functionality that will improve the usability of the Application Comment Forum

**1.3.b** Provide additional clarity around the intended use of the Application Comment Forum, including timelines and ways to indicate the type of comment being submitted

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## 1.4 Application Change Requests

### 1.4.1 Introduction

The application change request (ACR) process allowed applicants to notify ICANN of changes to application materials prior to the execution of the Registry Agreement. This section of the Program Implementation Review report discusses the following aspects of the application change request process:

- ACR Evaluation Criteria
- ACR Process
- Re-evaluation

### 1.4.2 Relevant Guidance

The following guidance is relevant to the topic of Contracting and will be discussed in further detail in Sections 1.4.3 and 1.4.4 of this report:

- GNSO Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.*

*All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.<sup>34</sup>*

- Applicant Guidebook, Section 1.2.7: Notice of Changes to Information<sup>35</sup>

### 1.4.3 Background

Section 1.2.7 of the AGB required applicants to promptly notify ICANN if application information became untrue or inaccurate. The requirement was intended to maintain the integrity of application materials.

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<sup>34</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>35</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

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As early as during the application window, ICANN processed change requests to application materials. Although applicants could make changes to the application anytime up to submission, the TLD Application System (see Section 1.1: Application Submission and Section 8.1: Processes, Systems, and Resources of this report) did not allow applicants to modify application information once the complete application had been submitted. The majority of the changes that ICANN processed during the application window were changes to Questions 1-11 of the questionnaire in Module 2 of the AGB, and all ACRs were accepted as applicants were allowed to make any changes to their applications prior to the close of the application window.

After the application window closed, ICANN received a large number of requests to change application materials. Thirty-three requests were submitted between the close of the application window and Reveal Day. An additional 69 requests were submitted between Reveal Day and 4 September 2012. ICANN approved 89 of these 102 requests during the period between the close of the application window and 4 September 2012.

For transparency purposes and to standardize processes, on 5 September 2012, ICANN published a process for requesting changes to application materials, as well as the criteria used to evaluate the requests.<sup>36</sup> The process consisted of four steps:

1. Verify and validate the request to ensure that only those authorized to make changes to the application were able to do so (i.e., the application's primary contact).
2. Review the change request against the seven criteria.
3. Notify the applicant of the determination.
4. If the request was approved, make the changes and post them for a 30-day comment period.

The Application Comment Forum (see Section 1.3: Application Comments of this report) was used as the mechanism to gather comments on approved change requests. Between the close of the application window and the publication of the ACR process, there were 102 change requests submitted to the Customer Service Center.

ICANN continued to process application change requests throughout application processing.

On 30 September 2014, ICANN published updates to the change request process.<sup>37</sup> One of the main updates to the process was no longer requiring a 30-day comment period for certain types of changes, such as changes to confidential portions of the application and updates to the application as a normal course of business (e.g., changes to the applicant's contact information, stock symbol, or business/ tax ID). The removal of the 30-day comment period for certain change requests was intended to allow applicants to move expeditiously forward in the Program and because less than 1% of approved change requests received comments during the 30-day comment window.

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<sup>36</sup> ICANN. (5 September 2012) Announcement: New gTLD Application Change Request Process and Criteria. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-05sep12-en>

<sup>37</sup> ICANN. (30 September 2014) Announcement: ICANN Updates Change Request Process. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-30sep14-en>

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As of 31 July 2015, ICANN had processed 2,587 change requests. Change request statistics were available on the Change Request page of the New gTLD microsite and were updated monthly.<sup>38</sup>

## 1.4.4 Assessment

### 1.4.4.1 APPLICATION CHANGE REQUEST EVALUATION CRITERIA

To provide predictability and to allow for objective and consistent review of ACRs, ICANN published the seven criteria used to evaluate change requests.<sup>39</sup> These criteria were carefully developed to balance applicants' needs to update application information as a normal course of business and to provide fairness to all other applicants and third parties. The seven criteria were:

1. Explanation: Is a reasonable explanation provided?
2. Evidence that original submission was in error: Are there indicia to support an assertion that the change merely corrects an error?
3. Other third parties affected: Does the change affect other third parties materially?
4. Precedents: Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. Fairness to applicants: Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. Materiality: Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. Timing: Does the timing interfere with the evaluation process in some way?

These criteria were consistently applied to evaluate each change request.

### 1.4.4.2 APPLICATION CHANGE MANAGEMENT

The questionnaire in Module 2 of the AGB specified the 50 questions that made up the application for a new gTLD. Some of the 50 questions gathered information regarding the applying entity, points of contact for communications regarding the application, and the applicant's intended operation of the TLD.

As all questions were considered part of the application, changes to any information in any of the application question had to go through the defined ACR process. For example, a change to the technical portion of the application as a result of the applicant's decision to outsource its back-end registry services to a different service provider would have required the applicant to submit a change

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<sup>38</sup> ICANN. New gTLD Application Change Request Process and Criteria: Statistics. Retrieved from <http://newgtlds.icann.org/en/applicants/customer-service/change-requests#statistics>

<sup>39</sup> ICANN. New GTLD Application Change Request Process and Criteria: Change Request Determination Criteria. Retrieved from <http://newgtlds.icann.org/en/applicants/customer-service/change-requests#determination>

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request form to ICANN, provide the required information for ICANN to verify and validate the request, and for ICANN to review the request against the seven criteria and provide the applicant with a determination. The application would then be subject to a 30-day comment period and a re-evaluation of the application if the change took place after IE results for the application had been released. A change to the applicant's business phone number, which happened as a normal course of business, would have required the applicant to go through the same process, with the exception that re-evaluation would not have been required.

#### **1.4.4.3 IMPACT OF APPLICATION CHANGE REQUEST ON PROGRAM PROCESSES**

The ACR process was an effective mechanism for applicants in some Program processes, but it also created inefficiency in other Program processes.

For applications that went through Extended Evaluation (see Section 2.1: Initial and Extended Evaluation of this report), the ACR process provided applicants with an opportunity to address the deficiencies preventing them from successfully passing IE.

The ACR process was also used as a mechanism for applicants to address GAC Early Warning and GAC Advice (see Section 3.1: GAC Advice of this report). Applicants that entered into dialogue with the government(s) that issued GAC Early Warning on their applications and arrived at a mutual understanding after such dialogue, could submit an ACR to update their applications to reflect the mutual understanding reached with the government(s). Applicants that were subject to GAC Category 2 Advice (see Section 3.1: GAC Advice of this report) could move forward to Contracting (see Section 5.1: Contracting of this report) by updating their applications so that they would be in compliance with Section 3.d of Specification 11 of the base Registry Agreement.<sup>40</sup>

However, the ACR process presented operational challenges for IE, contention resolution, and contracting.

During IE (see Section 2.1: Initial and Extended Evaluation of this report), ICANN received a number of change requests prior to the publication of the IE results. Aside from changes that arose as a normal course of business, reasons that applicants submitted changes to applications prior to the publication of IE results included:

- To address deficiencies in the application materials prior to receiving Clarifying Questions because they received Clarifying Questions on similar application materials that had gone through evaluation.
- To submit Continuing Operations Instruments (see Section 7.1: Continuing Operations Instrument of this report) because they could not meet the deadline to submit them during the window provided to respond to Clarifying Questions.
- Because they engaged a different vendor to perform the back-end registry services, resulting in changes to the technical plans for the TLD.

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<sup>40</sup> ICANN. Registry Agreement. Retrieved from <http://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf>

- Because the intended operations of the TLD changed.

Although the ACR process allowed applicants to update application information and improve their chances of successfully passing IE, ACRs during IE in most cases delayed the release of IE results for the application because of processing and review time. Changes to application materials prior to IE results release also required the evaluation panel to re-perform evaluation of the application, creating inefficiency in the evaluation process.

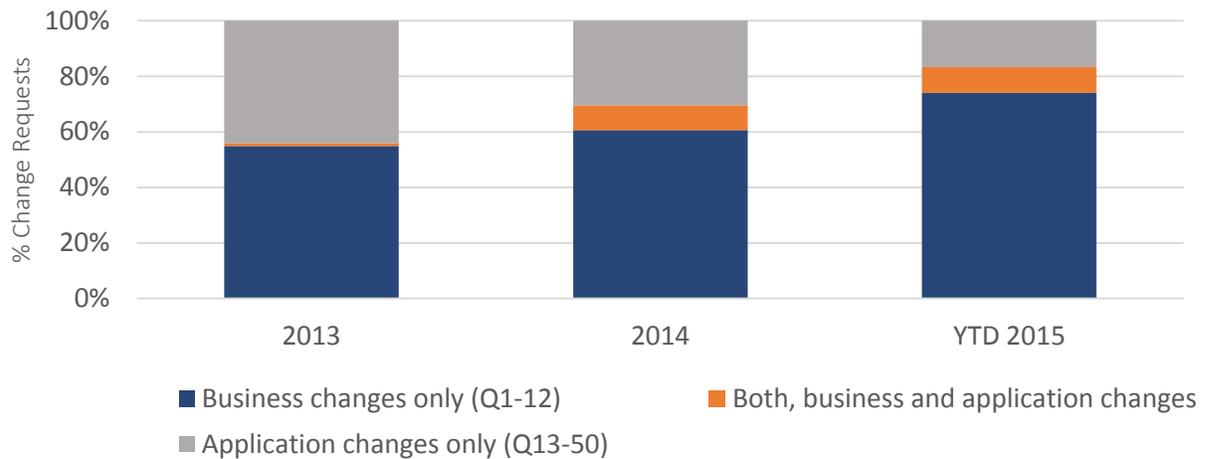
During the contention resolution process, some applicants submitted ACRs for applications that were self-designated as community applications and were qualified for CPE (see Section 4.1: Community Priority Evaluation of this report) to modify the community definition or registration policies. For these cases, ICANN deferred or denied the requests because such changes could impact the outcome of CPE. Approval of a change request to update a community definition and registration policies would have allowed a CPE applicant to update its application based on information learned from previously posted CPE results. This could have caused issues of unfairness to the first applicants who went through CPE that did not have the benefit of learning from others. Allowing such a change request would also improve the CPE applicant's chances to prevail in CPE, negatively impacting the other applicants in the same contention set. Therefore, although viewed as necessary from the CPE applicant's perspective to maximize its ability to pass CPE, approval of a change request to update a community's definition and registration policies prior to the completion of CPE would cause issues of unfairness to other applicants in the same contention set.

During the Contracting process (see Section 5.1: Contracting of this report), a number of ACRs were submitted. The majority of the changes were due to changes as a normal course of business (e.g., officer/director changes). However, it was possible that some applicants delayed the process by not providing ICANN with the necessary information to process the change request. Other changes were material changes, including changes to the entire technical portion of the application. These change requests caused delays to the applications and in some cases caused the applicants to miss the RA signing deadline date.<sup>41</sup> Table 1.4.i provides a break-down of the various types of change requests submitted.

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<sup>41</sup> On 15 September 2014, ICANN implemented a Contracting extension process to allow applicants to request additional time to complete required activities such as change request in order to sign the Registry Agreement.

Table 1.4.i: Breakdown of Change Request Types



Another operational challenge that the ACR process presented was the significant amount of time and resources required to process the high volume of change requests for both ICANN and service providers. A total of 2,587 change requests were submitted as of 31 July 2015. Each change request required administrative processing, follow-up with applicants to obtain required information, significant time and breadth of resources to review the requests, and coordination with service providers to perform any additional application evaluations required.

## 1.4.5 Conclusion

The application change request process provided applicants with a standardized way to notify ICANN of changes to application materials. The criteria used to evaluate change requests allowed for consistent review of change requests and predictability into what factors were taken into consideration when reviewing change requests.

Because the overall timeline of the New gTLD Program spanned at least 15 months, the number of application change requests submitted was larger than anticipated. The lesson learned is that ICANN should take into account application change management and, therefore, design ACR processes and criteria prior to the start of application processing.

ICANN should also consider whether certain changes could be processed differently. For example, should primary contacts be able to update certain information, such as the applicant's phone number, without having to go through the ACR process?

In summary:

- 1.4.a** Design application change request processes and criteria prior to the start of application processing

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**1.4.b** Consider whether all types of application changes should be processed the same way

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## 1.5 Application Withdrawals and Refunds

### 1.5.1 Introduction

“Application withdrawal” refers to the applicant-initiated process to withdraw an application from the Program. Depending on when an application is withdrawn, applicants may be eligible for a partial refund of the evaluation fee. This section of the Program Implementation Review report discusses the withdrawal and refund processes.

### 1.5.2 Relevant Guidance

The following guidance is relevant to the topic of Contracting and will be discussed in further detail in Sections 1.5.3 and 1.5.4 of this report:

- GNSO Implementation Guideline B:

*Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.  
Application fees may differ for applicants.<sup>42</sup>*

- Applicant Guidebook, Section 1.5.1: gTLD Evaluation Fee<sup>43</sup>

- ICANN Board Resolution 2012.05.06.NG01 (6 May 2012): New gTLD Program Application Fee Refund<sup>44</sup>

### 1.5.3 Background

The AGB anticipated that applicants might choose to withdraw applications at various points during the Program. Section 1.5.1 of the AGB provided a schedule of refunds for withdrawal of applications at these various points. The refund amount is estimated to be commensurate with the Program work associated with processing of the application up to the point of the withdrawal.

Based on available Program information such as the number of contention sets (see Chapter 4: Contention Resolution of this report) and the refund schedule in Section 1.5.1 of the AGB, the annual New gTLD Program budgets (see Section 8.3: Financial Management of this report) forecast the number of withdrawals and total refund amounts.

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<sup>42</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>43</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>44</sup> ICANN. (6 May 2012) Approved New gTLD Program Committee Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2012-05-06-en>

As of 31 July 2015, 542 applications have been withdrawn from the Program. Figure 1.5.i provides a summary of the number of withdrawals as of 31 July 2015 and the refund amount they were eligible to receive.

*Figure 1.5.i: Summary of Number of Withdrawals and Refund Amount*

Program Phase	# of Applications Withdrawn	Refund Amount (USD)	% of Total Withdrawal
Prior to Reveal Day (see section 1.1 of this report)	1	185,000	<1
Within 21 days of receipt of GAC Early Warning (see Section 3.1 of this report)	2	148,000	<1
Before IE results released (see Section 2.1 of this report)	101	130,000	19
Before RA signed – no EE, objection, or contention resolution (see Sections 5.1, 2.1, 3.1, and 4 of this report)	340	65,000	63
Before RA signed – EE, objection, or contention resolution required	97	37,000	16
After Application Support evaluation	1	47,000	<1
After RA signed	0	0	0

## 1.5.4 Assessment

### 1.5.4.1 WITHDRAWAL PROCESS

Section 1.5.1 of the AGB stated that withdrawal of applications must be initiated in the TLD Application System (TAS) (see Section 1.1: Application Submission and Section 8.1: Processes, Systems, and Resources of this report). Consistent with the AGB, ICANN implemented a withdrawal process in TAS that allowed applicants to withdraw applications and request refunds. Withdrawals performed in TAS allowed the applicant to instantaneously withdraw an application, which was important as the date of withdrawal could impact the refund amount that the applicant was eligible to receive.

At the close of the application window (see Section 1.1: Application Submission of this report), 30 May 2012, access to TAS was closed. Applicants that wished to withdraw applications while TAS was closed could submit withdrawal requests to the Customer Service Center. Withdrawal requests were processed manually by the Customer Service Center during this time. The manual process required ICANN to first confirm and validate the request, then to generate a withdrawal form that was sent to the applicant. The applicant must then complete and send the form back to ICANN. Once ICANN completed review of the form and verified the information provided, the applicant was then notified that the application had been withdrawn. Because the process was not instantaneous during this

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period, ICANN used the date of the withdrawal request submission to determine the refund amount. The manual process was not efficient for the applicant or ICANN.

On 26 November 2012, ICANN announced the reopening of TAS to release Clarifying Questions (see Section 2.1: Initial and Extended Evaluation of this report).<sup>45</sup> The reopening of TAS allowed applicants to again withdraw applications via the system.

At the end of Initial Evaluation (see Section 2.1: Initial and Extended Evaluation of this report), ICANN migrated application materials from TAS to the Customer Service Portal (see Section 8.5: Customer Service of this report) to provide a centralized location for applicants to access information, and TAS was once again closed. To retain efficiency in the withdrawal process, ICANN built application withdrawal functionality into the Customer Service Portal (see Section 8.5: Customer Service of this report) that allowed applicants to instantaneously withdraw applications.

Consistent with the AGB, when withdrawing applications, applicants had to confirm that they understood that withdrawal of the application was final and irrevocable. This step was required whether the application was withdrawn in TAS, in the Customer Service Portal, or by submitting a request to the Customer Service Center.

Once the application was withdrawn, ICANN updated the status of the application on the application status page of the microsite, which showed descriptive and administrative information (e.g., applicant name, evaluation results, string contention information) about all applications to provide transparency about where particular applications were in the process.<sup>46</sup> The update was typically reflected within 24 hours of the withdrawal, which provided visibility of application statuses to the community and other applicants as quickly as possible. If the withdrawn application belonged to a contention set (see Section 4: Contention Resolution of this report), updates to contention set information were then made.<sup>47</sup>

While the AGB anticipated withdrawal of applications initiated by applicants, it did not account for cases where the application could not proceed in the Program (e.g., did not prevail in the objection process, did not prevail contention resolution), but where the applicant did not withdraw the application. These applications were assigned an application status of “Will Not Proceed.” Applicants of some of the applications with the “Will Not Proceed” status did not agree with the outcome of their objections or contention resolution processes and filed an ICANN Accountability Mechanism in the hopes of being able to continue in the Program. This is one potential reason that applications in a “Will Not Proceed” status have not been withdrawn as of 31 July 2015.

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<sup>45</sup> ICANN. (26 November 2012) Announcement: The TLD Application System Reopens. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-26nov12-en>

<sup>46</sup> ICANN. New gTLD Current Application Status. Retrieved from <https://gtldresult.icann.org/application-result/applicationstatus>

<sup>47</sup> ICANN. Contention Set Status. Retrieved from <https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus>

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#### 1.5.4.2 REFUND PROCESS

The refund process occurred after the completion of the withdrawal of the application. Refunds were based on the fee schedule in Section 1.5.1 of the AGB.

The refund schedule presumed that Program processes were completed successively. While most Program processes were indeed completed in a linear fashion, in some cases, processes took longer than expected and overlapped with succeeding ones. For example, an application might have completed Extended Evaluation (EE), but the objection process was still ongoing. (In this round, ICANN implemented a refund amount of USD 37,000 if the application was withdrawn under the example scenario.)

Additionally, the AGB and the defined refund schedule could not account for all unique situations regarding each application. For example, if two applications that were in a contention set self-resolved (see Chapter 4: Contention Resolution of this report), and one of the applications was withdrawn, the refund amount would be USD 65,000 if the application was not subject to EE or objections. The lower amount of refund, USD 37,000, was only applicable to contention resolution via an ICANN mechanism such as CPE or auction. In those cases, the application that did not prevail in CPE or auction received a USD 37,000 refund when the application was withdrawn.

In processing refunds, ICANN observed that some applicants requested the refund to be sent to a party other than the party that paid the USD 185,000 evaluation fee. Although Section 1.5.1 of the AGB stated that “Refunds will only be issued to the organization that submitted the original payment”, out of practicality, ICANN allowed some refunds to parties and bank accounts other than those that submitted the original payment. Scenarios under which this was allowed included cases where the original bank account had been closed as of the time of withdrawal and if the party that made the original payment provided written authorization for ICANN to direct the refund amount to another party affiliated with the application.

### 1.5.5 Conclusion

The AGB anticipated that applicants would withdraw applications at various stages after application submission and stipulated an evaluation fee refund schedule that corresponded to the stage at which an application was withdrawn. ICANN implemented the withdrawal and refund processes in accordance with the AGB. Based on the implementation of the withdrawal and refund process this first round, there are valuable lessons learned that would be useful input to the development of procedures for future rounds.

While the AGB anticipated withdrawal of applications initiated by applicants, it did not account for cases where the application could not proceed in the Program (e.g., did not prevail objections, did not prevail contention resolution), but the applicant did not withdraw the application. These applications were assigned an application status of “Will Not Proceed.” As of 31 July 2015, there were 45 applications with a “Will Not Proceed” status that had not been withdrawn, so considerations

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should be given to defining a process to move these applications to a final state if the applicant does not initiate an application withdrawal.

Regarding refunds, there were various application scenarios that were not contemplated by the AGB's refund schedule (e.g., EE complete but objections were still ongoing). These various scenarios should be reviewed and the refund schedule should be updated to reflect these scenarios. A final financial review of the Program should also be undertaken and should include analysis of the refund schedule (see Section 8.3: Financial Management of this report).

In summary:

**1.5.a** Consider defining a process to move applications that may not proceed in the Program to a final status and provide a refund if they are not withdrawn

**1.5.b** Review Program financials at the conclusion of this application round to determine whether the refund schedule accurately mapped to the costs incurred at the specified Program phases

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## Chapter 2: Application Evaluation

Module 2 of the Applicant Guidebook (AGB) defined an evaluation process to determine whether an applied-for gTLD would be approved for delegation. Several types of evaluation were required, and were intended to assess both the applied-for string and the applying entity's capabilities.

ICANN engaged third-party firms as evaluation panels to review applications using the processes and criteria defined in the AGB. The evaluation panels also defined their own procedures to supplement the AGB processes and to support consistent and high-quality evaluations across all applications. A rigorous quality control program was put in place to ensure that the AGB and the panel firms' procedures were followed.

As discussed in Chapter 1: Application Processing, 1,930 applications for new gTLDs were submitted. Of these, 1,782 passed Initial Evaluation, 38 were eligible for further review during Extended Evaluation, and 110 withdrew. Ultimately, all applications that completed evaluation passed either Initial or Extended Evaluation.

Evaluations were performed in a manner consistent with the AGB. However, observations from the implementation of the evaluation process and criteria suggest that some modifications to the process could be made to increase the efficacy of evaluation. Specific lessons learned are discussed within this Sections 2.1 through 2.8 of this report.

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## 2.1 Initial and Extended Evaluation

### 2.1.1 Introduction

Initial and Extended Evaluation (IE and EE, respectively) were New gTLD Program phases during which applications were evaluated against the defined criteria in the Applicant Guidebook (AGB). This section of the Program Implementation Review report discusses the following aspects of Initial and Extended Evaluation:

- Evaluation Process
- Evaluation Timeline
- Quality Control

### 2.1.2 Relevant Guidance

The following guidance is relevant to the topic of Initial and Extended Evaluation and will be discussed in further detail in Sections 2.1.3 and 2.1.4 of this report:

- GNSO Principle D: “A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.”<sup>48</sup>
- GNSO Principle E: “A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement.”
- GNSO Principle F: “A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.”
- GNSO Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.*

- GNSO Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.”
- GNSO Recommendation 4: “Strings must not cause any technical instability.”
- GNSO Recommendation 5: “Strings must not be a Reserved Word.”

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<sup>48</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

- GNSO Recommendation 7: “Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.”
- GNSO Recommendation 8: “Applicants must be able to demonstrate their financial and organisational operational capability.”
- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- GNSO Recommendation 18: “If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>49</sup>
- Applicant Guidebook, Section 2.2: Initial Evaluation
- Applicant Guidebook, Section 2.3: Extended Evaluation
- Applicant Guidebook, Attachment to Module 2: Evaluation Questions and Criteria

## 2.1.3 Background

The AGB anticipated that Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) would take five months to complete, all IE results would be published at the conclusion of IE, and the Contracting process would commence at the end of IE. This would allow applicants that passed IE to move expeditiously toward signing an RA if there were no other issues that the application must resolve (i.e., contention resolution, dispute resolution).

Module 2 of the AGB defined IE as the period “during which ICANN assess[ed] an applied-for gTLD string, an applicant’s qualifications, and its proposed registry services.” Assessment of the applied-for string was performed during the String Similarity, DNS Stability, and Geographic Names evaluations. Assessment of the applicant’s qualifications was performed during the Technical and Operational Capability and Financial Capability evaluations. In addition, the proposed registry services were assessed during the Registry Services evaluation, and the applicant’s eligibility was assessed during the Background Screening process. All evaluations were performed by qualified third-party experts. See Section 8.2: Service Provider Coordination of this report for more information on the service provider selection process and their qualifications.

IE began after the applied-for strings were published on 13 June 2012 (see Section 1.1: Application Submission of this report). During IE, evaluation panels evaluated the applications against the relevant criteria in the AGB and in accordance with their published process documentation.<sup>50,51,52,53,54</sup>

<sup>49</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>50</sup> Insterisle Consulting Group. (7 June 2013) ICANN New gTLD Program: DNS Stability Evaluation Process. Retrieved from <http://newgtlds.icann.org/en/program-status/evaluation-panels/dns-stability-process-07jun13-en.pdf>

<sup>51</sup> ICANN. (17 May 2013) Financial and Technical/Operational Panel: Application Evaluation Process. Retrieved from <http://newgtlds.icann.org/en/program-status/evaluation-panels/fin-tech-op-process-07jun13-en.pdf>

<sup>52</sup> InterConnect Communications (7 June 2013). New gTLD Program Evaluation Panels: Geographic Names - Decision Tree/Process Flow for Geographic Names Evaluation. Retrieved from <http://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-process-07jun13-en.pdf>

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In cases where the evaluation panels did not have sufficient information to award a passing score, a Clarifying Question (CQ) was issued to the applicant. Responses to the CQs became part of the applications and were considered by the evaluation panels. Once the evaluation panels completed review of the applications, including responses to any CQs, they presented preliminary results to ICANN. ICANN then performed a quality check on the preliminary results to ensure consistency and alignment to AGB criteria. If during the quality check ICANN found that there were administrative oversights that prevented the evaluation panel from passing the application, ICANN performed outreach to the applicant to provide the applicant with an opportunity to address the administrative oversights within IE. Examples of administrative oversights included applicants providing links to acceptable documents instead of providing the documents as attachments, applicants referencing attachments in their CQ responses but not attaching them, and applicants addressing some of the questions asked but not addressing others. Responses to outreach became part of the applications and were provided to the evaluation panels for their consideration. Final results were then delivered by the evaluation panels to ICANN. ICANN aggregated results from each of the evaluation panels into IE reports that were published by priority number (see Section 1.2: Prioritization of this report).

There were three possible IE outcomes for applications:

- **Pass:** The evaluation panels determined that the application was consistent with the requirements in the Applicant Guidebook and could advance to the next phase of the Program.
- **Eligible for Extended Evaluation:** The Financial, Technical/Operational, Registry Services, or Geographic Names evaluation panels determined that the application did not have sufficient information to award a passing score. The application was eligible for EE.
- **Ineligible for Further Review:** The DNS Stability, String Similarity, Background Screening, and/or Geographic Names evaluation panels determined that the application did not meet the relevant criteria in the Applicant Guidebook, and the application was ineligible for further review.

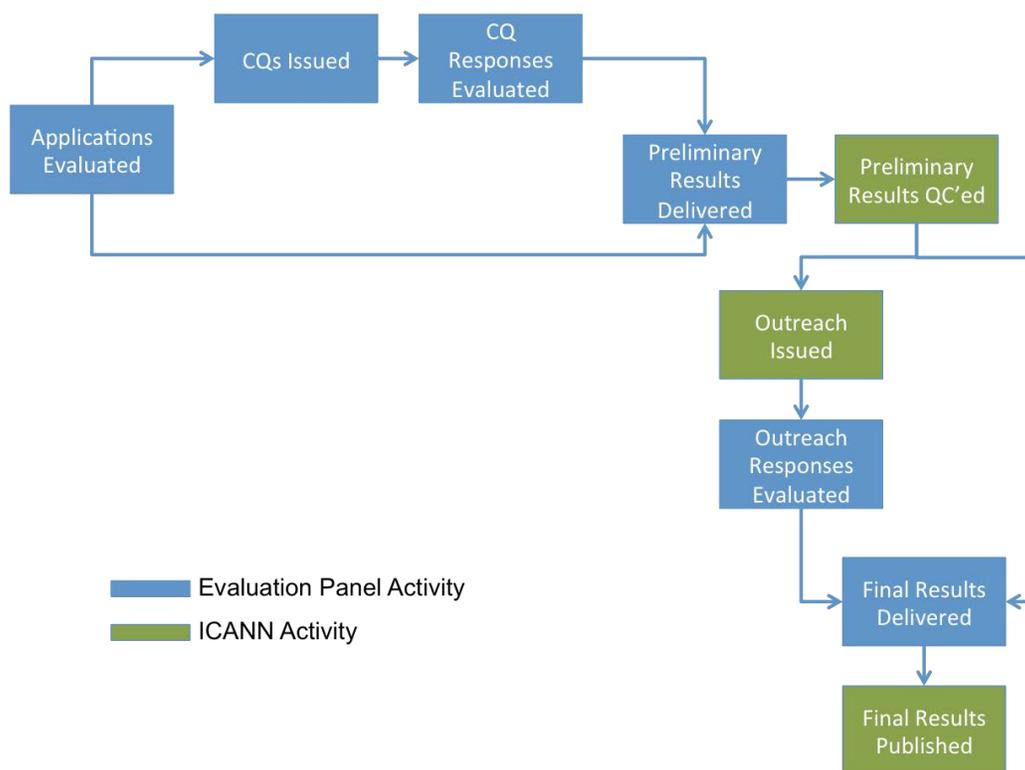
Of the 1,930 applications submitted, 1,782 applications passed IE, 38 applications were eligible for EE, and 110 withdrew prior to receiving their IE reports. An overview of the steps of Initial Evaluation is provided in Figure 2.1.i.

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<sup>53</sup> Insterisle Consulting Group. (7 June 2013). ICANN New gTLD Program: Registry Services Initial Evaluation Process. Retrieved from <http://newgtlds.icann.org/en/program-status/evaluation-panels/registry-services-initial-process-07jun13-en.pdf>

<sup>54</sup> InterConnect Communications (7 June 2013). New gTLD Program Evaluation Panels: Geographic Names - Process Flow for String Similarity Evaluation. Retrieved from <http://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-similarity-process-07jun13-en.pdf>

Figure 2.1.i: Overview of Initial Evaluation Steps



The EE period allowed for an additional exchange of information between applicants and evaluators to address any deficiencies preventing them from receiving a passing score. All 38 applications that were eligible for EE elected to participate in EE. However, three withdrew prior to receiving their Extended Evaluation results. The remaining 35 completed EE successfully with passing scores. The EE process was modeled after the IE process.<sup>55</sup> One addition to the EE process was that ICANN provided the opportunity for applicants to participate in a phone call with ICANN before electing to participate in EE, in order to better understand the remaining application deficiencies so that they could make an informed decision regarding EE election.

## 2.1.4 Assessment

### 2.1.4.1 EVALUATION PROCESS

#### *Clarifying Questions*

Section 2.2.2.3 of the AGB defines the CQ process, "The evaluators may request clarification or additional information during the Initial Evaluation period [ . . . ]. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the

<sup>55</sup> ICANN. (5 August 2013) Extended Evaluation Process Overview. Retrieved from <http://newgtlds.icann.org/en/program-status/application-results/ee-process-05aug13-en.pdf>

evaluators.” Consistent with the AGB, a CQ process was implemented in IE for all seven evaluation areas.

Prior to the issuance of CQs, ICANN worked with the evaluation panels on a standard CQ template to ensure that CQs were written in a consistent format. The CQ template defined how to structure the CQ. In the CQ template, the CQ started with a statement of the AGB criteria, then the information contained in the application, then the deficiency and the specific items required. To ensure that the CQ template was designed to elicit the required clarifying information, ICANN launched a CQ Pilot in August of 2012. A random sample of applications was selected to participate in the CQ Pilot. For those applications that were randomly selected, participation was voluntary. Participants were sent pilot CQs based on evaluation of their applications. However, these were not necessarily the final CQs that the applicants would receive once CQ process commenced for all applicants. In addition, participants also received a survey that contained questions such as whether the word limit for CQs was sufficient, whether the two-week timeframe provided in the AGB was sufficient, and whether the CQs were easy to understand.

Based on responses to pilot CQs and survey questions, the CQ template was modified slightly to make the questions more clear and succinct, with each CQ containing only one “ask.” Additionally, based on the survey responses, the window to respond to CQs was extended from two weeks to four weeks. Table 2.1.i below provides a summary of when CQs were issued per evaluation panel.

*Table 2.1.i: CQs Issued Per Evaluation Panel*

Evaluation Panel	Number of CQs Issued	Percent of Applications that Received CQs	Date CQs Issued
DNS Stability	None	0%	Not Applicable
String Similarity	None	0%	Not Applicable
Geographic Names	18	1%	November 2012 – February 2013
Background Screening	58	5% <sup>56</sup>	January 2013
Registry Services	975	52%	January 2013 – May 2013
Technical & Operational	1,690	90%	January 2013 – May 2013
Financial	1,677	90%	January 2013 – May 2013

CQs for the Technical and Operational Capability evaluation, Financial Capability evaluation, and Registry Services evaluation were issued to applicants in weekly batches of 100 applications. Almost all applications received CQs. Particularly due to the high volume of CQs, the use of prioritization numbers in this process provided predictability for applicants and helped ICANN, the evaluation panels, and applicants to manage their work.

<sup>56</sup> Background screening is performed once per applicant, not per application. This percentage is based on the total number of applicants.

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## Outreach

Outreach was not a process provided for by the AGB, but it was implemented by ICANN based on the observation that many applicants had administrative oversights that prevented them from passing IE (e.g., missing attachments). Rather than failing these applicants in IE for these administrative oversights and thus requiring them to go through EE, which could have extended the timeline for the application and incurred more cost for the Program, ICANN implemented the Outreach process to allow applicants the opportunity to address the administrative oversights within IE. Although the Outreach process typically added an additional four weeks to the application's IE timeline, that four weeks was insignificant compared to the four or more months that EE would have required. Overall, the Outreach process allowed 243 of 281 applications to successfully pass IE.

## Evaluation Results

The structure of the final results provided by the evaluation panels to ICANN was designed and defined by the respective evaluation panels and varied by evaluation panel in terms of the level of detail provided within the report. ICANN consolidated the final results into one Initial Evaluation report per application. Because ICANN's consolidated evaluation report was based on the data provided to ICANN by the individual evaluation panels, different sections of the report included different levels of detail. For example, the Registry Services, Technical and Operational Capability, and Financial Capability evaluation panels provided detailed rationale for the results, but the other evaluation panels only provided their final determinations.

Because the Financial Capability and Technical and Operational Capability evaluation panels provided detailed rationale for the determinations and the rationale contained information about confidential parts of the applications, two versions of the IE reports were necessary. One version was for the applicant and contained all rationale and determinations from all evaluation panels. The second was a public-facing version that excluded confidential information, which was published on the New gTLD microsite.<sup>57</sup>

### 2.1.4.2 EVALUATION TIMELINE

AGB Sections 1.1.2.5 and 1.1.2.8 described the anticipated timelines for IE and EE, respectively. Each of these processes was expected to take approximately five months to complete if the volume of applications received was less than 500. The AGB contemplated that if the volume significantly exceeded 500, a process for "batching" applications would be used. The first batch would include 500 applications, and the subsequent batches would include 400 applications. Using the batching method contemplated by the AGB, Initial Evaluation would have taken an estimated 25 months to complete for 1,930 applications—an initial batch of 500 applications, and four subsequent batches, each taking five months to complete.

After consultation with the community, ICANN implemented a process for prioritizing applications and processing them in smaller batches based on priority number (see Section 1.2: Prioritization of

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<sup>57</sup> ICANN. New gTLD Current Application Status. Retrieved from <https://gtldresult.icann.org/application-result/applicationstatus>

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this report).<sup>58</sup> ICANN used priority numbers to provide predictability within the evaluation process for applicants. For example, ICANN published a schedule of CQs and issued them for approximately 100 applications at a time.<sup>59</sup>

Using prioritization, the first set of IE results was published on 22 March 2013, 10 months after the application window closed on 30 May 2012.<sup>60,61</sup> Results for 98% of applications were published by 30 August 2013, and the last IE results were published in November 2013, 18 months after the application window closed.

#### **2.1.4.4 QUALITY CONTROL**

The quality and consistency of the evaluation process was a very important consideration for ICANN. Quality Assurance was a line item in the first New gTLD Program budget draft.<sup>62</sup>

The primary objectives of the Quality Program were to measure and support consistency and quality in evaluation processes and outcomes. The Quality Program was administered by JAS Global Advisors, which delivered its final report on 26 August 2014, including a detailed description of the quality control processes used and the findings of the Quality Program.<sup>63</sup>

The Quality Control procedure had two main components: the blind content inspection and the blind procedural inspection.

The blind content inspection was performed for the Financial and Technical & Operational evaluation panels in parallel with the evaluation processes. It consisted of a secondary review performed by the Quality Control panel for a randomly selected 15% of applications. For these applications, the application materials were reviewed in their entirety by both the primary firm and the Quality Control firm. Based on the review, both firms independently wrote CQs (if applicable) for the applications. The primary firm sent all CQs to ICANN for review prior to issuance. ICANN and the Quality Control firm then reviewed the primary firm's CQs. If the Quality Control firm informed ICANN that there were CQ discrepancies, or if ICANN identified any issues with the primary firm's CQs, the primary firm was asked to review their CQs and resubmit them if necessary. The applicants' CQ responses were reviewed by the primary and Quality Control firms independently. Preliminary final results were submitted to ICANN, which were made available to the Quality Control firm for comparison against its own evaluation. Of the 274 applications sampled, there were five discrepancies in terms of the outcome (pass/fail) at the panel level. However, Applicant Outreach

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<sup>58</sup> ICANN. (10 October 2012) Use of a Drawing for Prioritizing New gTLD Applications. Retrieved from <https://www.icann.org/resources/pages/drawing-prioritization-2012-10-10-en>

<sup>59</sup> ICANN. (11 January 2011) New gTLD Applicant Webinar: Status Update. Retrieved from <http://newgtlds.icann.org/en/applicants/webinar-11jan13-en.pdf>

<sup>60</sup> ICANN. (22 May 2012). Announcement: Initial Evaluation Results Released from First Set of Applications. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-22mar13-en>

<sup>61</sup> ICANN. (30 May 2012). Announcement: New gTLD Update (30 May 2012). Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-3-30may12-en>

<sup>62</sup> ICANN. (1 June 2010). New gTLD Program Explanatory Memorandum: New gTLD Budget. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/new-gtld-budget-28may10-en.pdf>

<sup>63</sup> JAS Global Advisors. (26 August 2014) gTLD Application Processing: Initial Evaluation Quality Program Report. Retrieved from <http://newgtlds.icann.org/en/program-status/application-results/ie-quality-program-26aug14-en.pdf>

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was performed for these applications, and there were no discrepancies in outcomes after the Outreach process was completed.

The blind procedural inspection was performed for the String Similarity, DNS Stability, Geographic Names, Registry Services, Technical and Operational Capability, and Financial Capability evaluations. ICANN and the panel firms developed procedural checklists based on the Program's requirements and the Panels' defined processes. Thirty-five percent of applications were randomly selected to be inspected against the checklist. The sampling was based on the number of applications receiving a priority number for the DNS Stability, Geographic Names, Registry Services, Technical and Operational Capability, and Financial Capability evaluations. Because the String Similarity panel operated on unique strings, the sampling was 35% of 1,388, the number of unique strings at the start of Initial Evaluation. The overall procedural compliance rate was 100% for the String Similarity panel and 99.84% for all other panels.

The existence of the Quality Program supported consistency in the evaluation process because it required all evaluation panels to define their processes and to be accountable for following them. Further, the Quality Program supported high-quality evaluations by requiring advanced preparation, calibration, and discussion of the evaluation among panel firms. The consistency and quality achieved within the evaluation process were validated by the Quality Report.

## 2.1.5 Conclusion

Although the 1,930 applications submitted for new gTLDs was a much higher volume than anticipated, ICANN completed IE in less time than the AGB provided for this volume of applications. However, the application volume still extended the Program timeline significantly, as IE was not complete until 18 months after the application window closed. During evaluation, ICANN worked with the evaluation panels to develop processes and procedures that would support a consistent and high-quality evaluation for all applications.

During Initial Evaluation, there were approximately 285 applications that did not meet the AGB criteria after CQs had been issued and reviewed. Two-hundred and eighty-one of these applications had administrative issues that prevented them from successfully passing IE. ICANN implemented an Outreach process to allow these applicants to address administrative issues within the IE timeline. Although this Outreach process was not provided for in the AGB, it allowed 243 applications to correct the administrative issues and pass IE instead of going to EE. There was a significant amount of time saved for the applicants, and a cost savings achieved for the Program by allowing these applicants to address the administrative issues within IE. Consideration should be given as to whether to include such a process in future application rounds, and to account for it in evaluation timelines.

The Initial Evaluation Quality Program demonstrated that a high level of consistency and quality in evaluations was achieved. Critical to this achievement was appropriate preparation for the evaluation panels, including pilots, training, and the development of detailed procedures. When developing the timeline for evaluation in future application rounds, consideration should be given to

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the amount of time that these pre-evaluation phases require, so that the panels have reasonable amounts of time to prepare for a high-quality evaluation.

In summary:

**2.1.a** Work with evaluation panels to perform pre-evaluation training and develop detailed procedures to ensure consistent and quality evaluations are achieved

**2.1.b** Program processes that allow for additional communication between the applicant and ICANN, such as the Applicant Outreach process used in evaluation, may be beneficial

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## 2.2 Background Screening

### 2.2.1 Introduction

Background screening was a review performed on all applying entities, and all individuals and organizations disclosed in Questions 9-11 of the application, which included officers and directors of the applying entities, in addition to shareholders owning a significant stake in the entity.

### 2.2.2 Relevant Guidance

The following guidance is relevant to the topic of Background Screening and will be discussed in further detail in Sections 2.2.3 and 2.2.4 of this report:

- GNSO Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.*

*All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.<sup>64</sup>*

- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- GNSO Implementation Guideline L: “The use of personal data must be limited to the purpose for which it is collected.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>65</sup>
- Applicant Guidebook, Section 2.1: Background Screening
- Applicant Guidebook, Attachment to Module 2: Evaluation Questions and Criteria

### 2.2.3 Background

Background screening was a review put in place to help protect the public interest during the allocation of critical Internet resources. It was performed on all applying entities and all individuals and organizations disclosed in Questions 9-11 of the application, which included officers and directors of the applying entities, in addition to shareholders owning a significant stake in the entity.

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<sup>64</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>65</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

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In support of GNSO Implementation Guideline L, and in recognition of the sensitive nature of the information, ICANN treated this information with care and only used it for the purpose of background screening and when required for application processing.

ICANN engaged an independent third-party service provider, PricewaterhouseCoopers (PwC), to perform background screening against criteria in Section 2.1.1 of the Applicant Guidebook in the following two areas:

1. General business diligence and criminal history
2. History of cybersquatting behavior

Background screening was performed as part of Initial Evaluation (IE). IE processes are described in detail in Section 2.1: Initial and Extended Evaluation of this report. Authorization for ICANN to perform background screening was provided by the applicant when it signed and agreed to the terms and conditions for participating in the New gTLD Program.<sup>66,67,68</sup> In order to perform background screening, ICANN collected information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders. The names and positions of individuals included in the application were published as part of the application, but other information collected about the individuals was not published.

Results of background screening were included in the IE reports. Where there were issues identified during background screening, applicants were given the opportunity to address them during IE. The AGB described the background screening process as one required to determine eligibility in the New gTLD Program. As such, background screening was not an evaluation eligible for EE. The AGB anticipated that Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) would take five months to complete, all IE results would be published at the conclusion of IE, and the Contracting process would commence at the end of IE. This would allow applicants that passed IE to move expeditiously toward signing an RA if there were no other issues that the application had to resolve (e.g., contention resolution, dispute resolution).

## 2.2.4 Assessment

Background screening was a mitigation measure intended to ensure that individuals and entities with criminal backgrounds, history of cybersquatting behavior, or other similar serious issues were not entrusted with TLDs.

Section 2.1.1 of the AGB defined specific criteria for background screening. The areas of background screening that were performed were general business diligence, criminal history, and history of

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<sup>66</sup> ICANN. New gTLD Program Personal Data Privacy Statement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/program-privacy>

<sup>67</sup> ICANN. Top-Level Domain Application Terms and Conditions. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/terms>

<sup>68</sup> ICANN. TLD Application System: Terms of Use – Applicants. Retrieved from <http://newgtlds.icann.org/en/applicants/tas/terms>

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cybersquatting behavior. ICANN worked with the background screening provider to develop a robust background screening process that would support the criteria in the AGB, including background screens of the applying entity, officers, directors, and major shareholders for general business diligence, criminal history, and history of cybersquatting behavior.

To address cybersquatting, the AGB required applicants to disclose whether the applying entity or any individuals named in the application were engaged in cybersquatting or reverse domain name hijacking as defined in the Uniform Domain-Name Dispute-Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation. The background screening provider reviewed public records of UDRP proceedings.

If an initial background screen result did not clearly satisfy the AGB criteria for an application, ICANN and the background screening provider performed additional due diligence to ensure a more comprehensive review of the entity or individual. For some applications, ICANN staff performed several rounds of outreach to the applicant in order to acquire additional information that would better inform the background screening process and to ensure that the appropriate parties were being evaluated.

The same criteria were used to evaluate all applicants. However, the Section 2.4.4 of the AGB stated, “Applying entities that [were] publicly traded corporations listed and in good standing on any of the world’s largest 25 stock exchanges [ . . . ] [would] be deemed to have passed the general business diligence and criminal history screening.” This distinction was based on the idea that publicly listed corporations were regulated by their exchanges and subject to ongoing scrutiny, which met or exceeded ICANN’s criteria.

The AGB criteria relating to top-25 exchanges referred specifically to the applying entity, but the individuals (officers, directors) associated with these publicly traded entities were not considered as being exempt from the general business diligence and criminal history screening.

Within the application, ICANN collected specific information from applicants regarding individuals associated with the application. This was based on direct input from the background screening provider, regarding the minimum amount of information required to run a meaningful background screen. ICANN received feedback from applicants who did not want to provide personal information for officers and directors. In particular, some applicants indicated that performing a background screen on their officers and directors was not necessary, as they were required to meet a higher standard by the exchanges on which they were traded.

As background screening was performed at the entity level, although there were 1,930 applications, background screens were performed on approximately 1,150 entities.

In cases where additional information was required, the background screening panel issued Clarifying Questions (CQs) to the applicant. Once the panel had reviewed all application materials and CQ responses, the panel provided a report to ICANN. ICANN evaluated the report against the criteria in the AGB, and incorporated the results into the IE report. IE reports were released on a weekly basis, by application prioritization number (see Section 1.2: Prioritization of this report).

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The AGB anticipated that IE would take five months. As the IE timeline was extended to 18 months due to the high volume of applications, the number of applications that required a rescreening was much higher than anticipated. Both during IE and beyond (during the Contracting process), many background screens had to be re-performed because of changes due to the normal course of business. Between August 2013 and July 2015, approximately 34 percent of over 1,200 change requests submitted resulted in background screening being re-performed. The high percentage could be attributed to the large gap in time between completion of IE and execution of the Registry Agreement (RA),<sup>69</sup> during which many changes occurred as part of the normal course of business. These changes created work for the applicant (to update the information in the application) and for ICANN (to re-perform the background screen). Additionally, the changes added to the cost of retaining the service provider, including the incremental cost of performing additional background screenings.

After IE results had been published, ICANN reserved the right to perform additional due diligence as required, such as before executing a Registry Agreement or after a change to certain application responses.

## 2.2.5 Conclusion

Background screening was performed in alignment with the AGB. While the process was successful in that it provided an opportunity for all applicants to be screened, observations from implementation suggest that there are opportunities for improvement to the background screening process to make it more effective.

Background screening was performed during IE. This timing was intended to prevent applicants that did not meet the eligibility criteria from progressing beyond IE and participating in downstream processes which could affect other applicants (e.g., objections, contention resolution). However, the time between the application submission deadline and the signing of Registry Agreements was longer than anticipated. This elongation of the time period required many applicants to submit application changes occurring during the normal course of business (e.g., officer and director changes) and thus require the background screening to be re-performed. Consideration should be given as to whether background screening should be performed as part of evaluation or at the time of Contracting in order to minimize the number of application updates and background screenings.

ICANN interpreted Section 2.1.1 of the AGB, which deemed that applicants that were traded on top-25 exchanges had passed the general business diligence and criminal history screening, to apply to the applying entity but not the individuals associated with the applying entity. Some applicants commented that they did not want to provide personal information on their officers and directors, and indicated that performing a background screen on their officers and directors was not necessary, as they were required to meet a higher standard by the exchanges on which they were traded. For future rounds, consideration should be given as to whether the procedures and criteria could be adjusted to account for a meaningful background screen in a variety of cases (e.g., newly formed

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<sup>69</sup> As of 31 July 2015, 59% of applicants signed the Registry Agreement within the allotted 9-month window.

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entities, publicly traded companies, companies in jurisdiction that do not provide readily available information).

In summary:

**2.2.a** Consider whether background screening should be performed during IE or at the time of contract execution

**2.2.b** Consider whether the background screening procedures and criteria could be adjusted to account for a meaningful review in a variety of cases (e.g., newly formed entities, publicly traded companies, companies in jurisdictions that do not provide readily available information)

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## 2.3 String Similarity Evaluation

### 2.3.1 Introduction

The String Similarity evaluation was a review to determine whether applied-for strings were visually similar to existing TLDs, Reserved Names, or other applied-for strings.

### 2.3.2 Relevant Guidance

The following guidance is relevant to the topic of the String Similarity evaluation and will be discussed in further detail in Sections 2.3.3 and 2.3.4 of this report:

- GNSO Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.<sup>70</sup>*

- GNSO Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.”
- GNSO Recommendation 5: “Strings must not be a Reserved Word.”
- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>71</sup>
- Applicant Guidebook, Section 2.2.1.1: String Similarity Review
- Applicant Guidebook, Section 2.4: Parties Involved in Evaluation
- Applicant Guidebook, Attachment to Module 2: Evaluation Questions and Criteria
- ICANN Board New gTLD Program Committee Resolution 2013.06.25.NG07 (25 June 2013): Singular & Plural Versions of the Same String as a TLD<sup>72</sup>

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<sup>70</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>71</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>72</sup> ICANN. (25 June 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d>

## 2.3.3 Background

The AGB anticipated that Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) would take five months to complete, all IE results would be published at the conclusion of IE, and the Contracting process would commence at the end of IE. This would allow applicants that passed IE to move expeditiously toward signing an RA if there were no other issues that the application must resolve (i.e., contention resolution, dispute resolution).

GNSO Recommendation 2 stated, “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.” The String Similarity evaluation was developed in support of this recommendation, which reviewed applied-for strings for visual similarity to existing, reserved, and other applied-for strings. As a result of the multistakeholder process, the criteria for the String Similarity evaluation were limited to review visual similarity, taking into account that the overall application process accounted for all forms of similarity. The String Similarity evaluation during IE was considered a preliminary review “to identify many instances of contention [multiple applications for one string] or user confusion as soon as possible in the process.”<sup>73</sup>

AGB Section 2.2.1.1.2 further explained user confusion:

*String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.*

Section 2.2.1.1.3 of the AGB defined the potential outcomes of the String Similarity evaluation as:

- An applicant would not be allowed to proceed if visual similarity to existing TLDs or Reserved Names is determined
- An applicant would be placed into a contention set with other applicants for strings that were determined to be exact matches or visually similar
- An applicant would not be placed into a “contention set” and would move on to the next stage of the Program if not determined to be an exact match or visually similar to any other strings (existing or applied-for)

ICANN engaged independent third-party providers, InterConnect Communications and the University College London, to act as the String Similarity evaluation panel. For more information, see Section 8.2: Service Provider Coordination of this report. To inform the panel’s review, ICANN also used the SWORD Algorithm, which was designed to be a “consistent and predictable tool [. . .] to inform the ‘string confusion’ element of the new gTLD project.”<sup>74</sup> The SWORD Algorithm also provided opportunities for the applicants to inform themselves, as it was available to applicants prior to

<sup>73</sup> ICANN. (18 February 2009). New gTLD Draft Applicant Guidebook: Analysis of Public Comment. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>

<sup>74</sup> ICANN. (1 October 2008) Minutes of the Special Meeting of the ICANN Board of Directors. Retrieved from [https://www.icann.org/resources/board-material/minutes-2008-10-01-en?routing\\_type=path](https://www.icann.org/resources/board-material/minutes-2008-10-01-en?routing_type=path)

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application submission and during the evaluation period. As described in Section 2.2.1.1.2 of the AGB, “it should be noted that the [SWORD] score [was] only indicative and that the final determination of similarity [was] entirely up to the Panel’s judgment.” Accordingly, the panel incorporated the SWORD Algorithm into its processes, but ultimately the expert evaluators made the determination.

While the String Similarity evaluation was limited to visual similarity, the String Confusion Objection process allowed parties to object to applications based on visual and other types of similarity. For more information, see Section 3.2: Objections and Dispute Resolution of this report.

String Similarity results were published on 26 February 2013.<sup>75</sup>

## 2.3.4 Assessment

String Similarity evaluation results were published later than originally scheduled by ICANN. At the ICANN 45 meeting in October 2012, ICANN had forecast the String Similarity evaluation to be completed in November of that year.<sup>76</sup> AGB Section 2.2.1.1.1 had contemplated that String Similarity evaluation results would be published prior to IE results. String Similarity evaluation results were published on 26 February 2013.<sup>77</sup> This delay was due to the volume of unique strings--there were 1,380 unique applied-for strings, resulting in over 1,000,000 combinations requiring review. In order to ensure the results were consistent, ICANN required additional time for administrative review to understand results before publicizing them.

The String Similarity evaluation results were consistent with the AGB-described outcomes. A string found to be confusingly similar to an existing TLD, a Reserved Name or a String on the “Ineligible for Delegation List” from Section 2.2.1.2.3 of the AGB did not pass the String Similarity evaluation. Applied-for strings found to be confusingly similar to other applied-for strings were placed in contention sets, along with strings that were determined to be IDN variants of one-another. Upon the completion of the review of all applications, results were released on 26 February 2013 in which the panel identified two non-exact match contentions sets (.HOTELS/.HOTEIS and .UNICORN/.UNICOM) and 230 exact match contention sets.<sup>78</sup> On 1 March 2013, an additional two non-exact match contention sets based on IDN variant relationships were published.<sup>79</sup> In total, the String Similarity evaluation identified 234 contention sets, composed of 754 applications.

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<sup>75</sup> ICANN. (26 February 2013) Announcement: New gTLD Program: String Similarity Contention Sets. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-26feb13-en>

<sup>76</sup> ICANN. (8 October 2012) Information Paper: New gTLD Update (Toronto Session). Retrieved from <http://toronto45.icann.org/meetings/toronto2012/presentation-new-gtld-update-08oct12-en.pdf>

<sup>77</sup> ICANN. (26 February 2013) Announcement: New gTLD Program: String Similarity Contention Sets. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-26feb13-en>

<sup>78</sup> ICANN. (26 February 2013) Announcement: New gTLD Program String Similarity Contention Sets. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-26feb13-en>

<sup>79</sup> ICANN. (1 March 2013) New gTLD String Similarity Contention Sets as of 1 March 2013. Retrieved from <http://newgtlds.icann.org/en/program-status/application-results/similarity-contention-01mar13-en.pdf>

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There was one area in particular where several in the community indicated dissatisfaction with the results, which was in regard to singular and plural versions of strings (which were not found to be confusingly similar by the panel).<sup>80</sup> However, neither GNSO Policy nor the AGB defined a specific rule regarding singular and plural versions of a string. As the String Similarity evaluation panel did not find singular and plural versions of the strings to be visually confusingly similar, based on the standard specified in Module 2, ICANN accepted the expert recommendations of the panel.

Following the publication of the String Similarity results, the ICANN Board considered the issue based on community feedback through public comment at ICANN meetings and advice from the GAC.<sup>81</sup> After deliberating the issue, the ICANN Board New gTLD Program Committee determined “no changes to the AGB [were] needed to address potential consumer confusion specifically resulting from allowing singular and plural versions of the same string.”<sup>82</sup> However, the ICANN Board identified string similarity as a topic that may be appropriate for the GNSO’s discussion of evaluation in the current round and adjustments for future application procedures.<sup>83</sup>

As mentioned in Section 2.3.3. Background, applicants that were dissatisfied with the results of the panel’s review had the option to pursue a String Confusion Objection to create contention between two applications. Several applicants took advantage of this process, and some objections considered singular and plural versions of strings. For more information on String Confusion Objections, see Section 3.2: Objections and Dispute Resolution of this report.

## 2.3.5 Conclusion

The String Similarity evaluation was performed in alignment with the criteria and processes defined in the AGB. Dissatisfaction was expressed by the community in regards to the timing of the results and the results themselves.

The results were released two weeks before the deadline to file a String Confusion Objection, so parties who wished to file a String Confusion Objection based on the results of the String Similarity Review (i.e., create contention where the String Similarity evaluation did not) had a limited amount of time to prepare an objection. The delayed String Similarity results in this round were caused by the high volume of unique strings, but for future rounds, consideration should be given to how to best position the relative timing of these two processes, taking into consideration unknown factors such as the volume of unique strings.

Regarding the evaluation results, the GAC and the ALAC raised concerns regarding the similarity of certain cases of “singular and plural versions of the same string.” The ICANN Board passed a

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<sup>80</sup> ICANN At-Large Advisory Committee. (16 September 2013) ALAC Statement on Confusingly Similar gTLD. Retrieved from <http://www.atlarge.icann.org/correspondence/correspondence-16sep13-en.htm>

<sup>81</sup> ICANN Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing, People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>

<sup>82</sup> ICANN. (25 June 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d>

<sup>83</sup> ICANN. (17 November 2014). Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

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resolution stating that “Due to perceived inconsistency in process results as well as questions about the means used for determining what is confusingly similar (e.g., assessing similarity between singular and plural strings), this is an area where further policy guidance could be provided.”<sup>84</sup>

In regard to IDN variants, the String Similarity evaluation panel found two sets of potential IDN variants. Once the Root Zone Label Generation Rules have been established, ICANN should leverage these rules to definitively determine IDN variants among the applied-for strings.

In summary:

**2.3.a** Review the relative timing of the String Similarity evaluation and the Objections process

**2.3.b** Consider any additional policy guidance provided to ICANN on the topic of String Similarity

**2.3.c** Leverage the Root Zone Label Generation Rules in the development of the String Similarity evaluation as it pertains to IDN variants

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<sup>84</sup> ICANN. (17 November 2014). Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

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## 2.4 DNS Stability Evaluation

### 2.4.1 Introduction

The DNS Stability evaluation was designed to ensure that applied-for gTLD strings complied with technical, IDN, and policy requirements, and to ensure that a string did not cause significant security or stability issues.

### 2.4.2 Relevant Guidance

The following guidance is relevant to the topic of the DNS Stability evaluation and will be discussed in further detail in Sections 2.4.3 and 2.4.4 of this report:

- GNSO Principle B: “Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.”<sup>85</sup>
- GNSO Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.*

- GNSO Recommendation 4: “Strings must not cause any technical instability.”
- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>86</sup>
- Applicant Guidebook, Section 2.2.1.3: DNS Stability Review
- Applicant Guidebook, Section 2.4: Parties Involved in Evaluation
- Applicant Guidebook, Attachment to Module 2: Evaluation Questions and Criteria
- ICANN Board New gTLD Program Committee Resolution 2014.07.30.NG01 - 2014.07.30.NG04 (30 July 2014): Name Collision Occurrence Management Framework<sup>87</sup>

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<sup>85</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

<sup>86</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>87</sup> ICANN. (30 July 2014) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-30-en>

## 2.4.3 Background

The AGB anticipated that Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) would take five months to complete, all IE results would be published at the conclusion of IE, and the Contracting process would commence at the end of IE. This would allow applicants that passed IE to move expeditiously toward signing an RA if there were no other issues that the application must resolve (i.e., contention resolution, dispute resolution).

The DNS Stability evaluation criteria were designed to identify labels that did not meet minimum technical criteria for TLD labels and as a result, might cause technical instability in the DNS. The AGB criteria were developed in support of GNSO Principle D and GNSO Recommendation 4, and public comment was solicited for the DNS Stability paper published in February 2008 and updated in October 2008.<sup>88,89</sup> The SAC045 report, published in November 2010 for community and ICANN Board review, was also considered and incorporated into the development of the AGB and the DNS Stability Evaluation.<sup>90</sup> ICANN engaged an independent third-party service provider, Interisle Consulting Group, to act as the DNS Stability panel. For more information about the panel, see Section 8.2: Service Provider Coordination of this report.

The DNS Stability evaluation was performed as part of Initial Evaluation (IE). IE processes are described in detail in Section 2.1: Initial and Extended Evaluation of this report.

Section 2.2.1.3.1 of the AGB stated,

*During the Initial Evaluation Period, ICANN [would] conduct a preliminary review on the set of applied-for gTLD strings to:*

- *ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and*
- *determine whether any strings raise significant security or stability issues that may require further review.*

Section 2.2.1.3.2 of the AGB defined the syntactical requirements for strings.

- Part I, the Technical Requirements for all Strings, required that the ASCII label be valid (as specified in RFC 1035 and RFC 2181), and that the ASCII label be a valid host name (as specified in RFC 952, RFC 1123, RFC 3696, and RFCs 5890-5894). These requirements included the following syntactical rules: 63-character limit, identical treatment of upper- and lowercase letters, only alphabetic characters A-Z, and valid IDNA A-labels only.

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<sup>88</sup> ICANN. (6 February 2008) Announcement: Public Comments Requested on DNS Stability: The Effect of New gTLDs on the Internet Domain Name System. Retrieved from <https://www.icann.org/news/announcement-2008-02-06-en>

<sup>89</sup> ICANN. (22 October 2008) New gTLD Program Explanatory Memorandum: Update to DNS Stability Paper. Retrieved from <http://archive.icann.org/en/topics/new-gtlds/update-dns-stability-22oct08-en.pdf>

<sup>90</sup> ICANN. (15 November 2010) ICANN Security and Stability Advisory Committee Report on Invalid Top Level Domain Queries at the Root Level of the Domain Name System. Retrieved from <https://www.icann.org/en/system/files/files/sac-045-en.pdf>.

- Part II, the Requirements for Internationalized Domain Names, required that for IDN labels, labels must be A-labels converted from a U-label consistent with the definition in IDNA and must meet the relevant criteria of the ICANN Guidelines for the Implementation of Internationalised Domain Names.<sup>91</sup>
- Part III, Policy Requirements for Generic Top-Level Domains, required that applied-for ASCII strings must be three or more characters, and that applied-for IDN strings must be two or more characters.

Should unanticipated issues have arisen beyond the defined requirements of AGB Section 2.2.1.3.2, the AGB provided for an extended review by the DNS Stability panel during IE. However, each string was reviewed against the AGB criteria in accordance with the panel’s procedures, and none of the applied-for strings required the extended review.

Results of the DNS Stability review were included in the IE reports. Applications that did not pass the DNS Stability Review were not eligible for Extended Evaluation (EE). However, all applications passed the DNS Stability Review in IE.

## 2.4.4 Assessment

The implementation of the DNS Stability review brought to light one issue with interpretation and scope of the review, referred to as “name collision.” The AGB contemplated the potential for collisions as discussed in the SAC045 report, which stated that “potential problems [...] may arise should a new TLD applicant use a string that has been seen with measurable (and meaningful) frequency in a query for resolution by the root system and the root system has previously generated a response.”<sup>92</sup> The report recommended that “ICANN promote a general awareness of the potential problems that may occur when a query for a TLD string that has historically resulted in a negative response begins to resolve to a new TLD.” These findings and recommendations were considered during the development of the AGB, which discussed the issue as a problem that a potential registry operator must prepare for from a query load perspective:

*Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries. [ . . ]*

*ICANN will take steps to alert applicants of the issues raised in SAC045, and encourage the applicant to prepare to minimize the possibility of operational difficulties that would pose a stability or availability problem for its registrants and users. However, this notice is merely an advisory to applicants and is not part of the evaluation, unless the string raises significant security or stability issues as described in the following section.<sup>93</sup>*

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<sup>91</sup> ICANN. IDN Implementation Guidelines. Retrieved from <https://www.icann.org/resources/pages/implementation-guidelines-2012-02-25-en>

<sup>92</sup> ICANN. (15 November 2010) ICANN Security and Stability Advisory Committee Report on Invalid Top Level Domain Queries at the Root Level of the Domain Name System. Retrieved from <https://www.icann.org/en/system/files/files/sac-045-en.pdf>

<sup>93</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Section 2.2.1.3: DNS Stability Review. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

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The DNS Stability evaluation panel completed its work in January 2013 and determined no strings should be ineligible for delegation based on its review.

In March 2013, ICANN’s Security and Stability Advisory Committee (SSAC) issued a report SAC 057: SSAC Advisory on Internal Name Certificates, wherein the SSAC referred to the issue of “name collision” and provided the ICANN Board with steps for mitigating the issue.<sup>94</sup> To formulate a plan to address the issue, ICANN enlisted broad community participation in the development of a solution, to further study the impact on applied-for strings (the SSAC’s list was not exhaustive).

Over the next year, ICANN worked with the community and the SSAC on a mitigation plan. The work included a study of the historical query traffic,<sup>95</sup> a mitigation development effort, and the development of educational materials for IT administrators. On 17 November 2013, ICANN began implementing an interim mitigation approach,<sup>96</sup> termed the “alternate path to delegation” as described in the New gTLD Name Collision Occurrence Management Plan,<sup>97</sup> which allowed most strings to move ahead to delegation with a set of restrictions for second-level names, while the final mitigation plan was further developed by ICANN and the community. On 30 July 2014, the ICANN Board New gTLD Program Committee (NGPC) adopted a resolution directing staff to defer delegation of the high-risk strings (i.e., HOME, CORP, MAIL) indefinitely, and outlined procedures for Controlled Interruption for new gTLDs.<sup>98</sup> On 30 July 2014, ICANN published the Name Collision Management Framework.<sup>99</sup> In the Framework, ICANN described its interest in “providing a good notification measure for those parties that may be leaking queries intended for private namespaces to the public DNS” and required that registry operators implement a period of 90 days of continuous controlled interruption to mitigate risk.

ICANN took numerous steps to minimize the potential impact of name collision. A mitigation plan was implemented for this round, and the NGPC has directed ICANN to “work with the GNSO to consider whether policy work on developing a long-term plan to manage gTLD name collision issues should be undertaken.”<sup>100</sup>

Much of the work performed during the DNS Stability evaluation related to IDNs. Since the DNS Stability evaluation during IE, considerable work has been conducted on establishing Root Zone Label Generation Rules, which are procedures for creating and maintaining the label generation

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<sup>94</sup> ICANN Security and Stability Advisory. (15 March 2013) SAC057: SSAC Advisory on Internal Name Certificates. Retrieved from <https://www.icann.org/en/system/files/files/sac-057-en.pdf>

<sup>95</sup> Interisle Consulting Group, LLC. (2 August 2013). Name Collision in the DNS. Retrieved from <https://www.icann.org/en/system/files/files/name-collision-02aug13-en.pdf>

<sup>96</sup> ICANN. (17 November 2013) Announcement: Reports for Alternate Path to Delegation Published. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-17nov13-en>

<sup>97</sup> ICANN. New gTLD Collision Occurrence Management. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-07oct13-en.pdf>

<sup>98</sup> ICANN. (30 July 2014) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-30-en#1.a>

<sup>99</sup> ICANN. (30 July 2014). Name Collision Occurrence Management Framework. Retrieved from <https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf>

<sup>100</sup> ICANN. (30 July 2014). Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-30-en#1.a>

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rules with respect to IDN labels for the root.<sup>101,102</sup> Any future instances of the DNS Stability review should incorporate or ensure compliance with such rules.

## 2.4.5 Conclusion

The DNS Stability evaluation was performed in alignment with the AGB. The review was able to assess many different potential issues, and narrower criteria could limit its ability to identify as many concerns that relate to a particular string.

In this application round, most of the processes in the DNS Stability evaluation related to IDNs. Once the Root Zone Label Generation Rules for IDNs are established, this will reduce the amount of review required for IDNs. Once the Root Zone Label Generation Rules for IDNs are adopted, the DNS Stability Review should leverage these rules and incorporate checks to ensure that the Root Label Generation Rules for IDNs are adhered to.

The Name Collision Occurrence Management Framework provided a plan for registry operators to mitigate the risk of name collision through the use of controlled interruption periods at the time of TLD introduction to the root zone. The NGPC has directed ICANN to “work with the GNSO to consider whether policy work on developing a long-term plan to manage gTLD name collision issues should be undertaken.”<sup>103</sup>

In summary:

**2.4.a** As directed in the NGPC’s 30 July 2014 resolution, “work with the GNSO to consider whether policy work on developing a long-term plan to manage gTLD name collision issues should be undertaken.”<sup>104</sup>

**2.4.b** Based on the outcome of the GNSO’s work, consider inclusion of the Name Collision Management Framework in the next application round prior to accepting applications<sup>105</sup>

**2.4.c** Leverage the Root Zone Label Generation Rules for IDNs in the DNS Stability evaluation

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<sup>101</sup>ICANN. (27 April 2015) Guidelines for Designing Script-Specific Label Generation Rules for the Root Zone. Retrieved from <https://www.icann.org/news/announcement-3-2015-04-27-en>

<sup>102</sup> ICANN. (2013 March 20) Procedure to Develop and Maintain the Label Generation Rules for the Root Zone in Respect of IDNA Labels. Retrieved from <https://www.icann.org/en/system/files/files/lgr-procedure-20mar13-en.pdf>

<sup>103</sup> ICANN (30 July 2014). Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-30-en#1.a>

<sup>104</sup> ICANN (30 July 2014). Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-30-en#1.a>

<sup>105</sup> ICANN. (30 July 2014). Name Collision Occurrence Management Framework. Retrieved from <https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf>

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## 2.5 Geographic Names Evaluation

### 2.5.1 Introduction

The Geographic Names evaluation was an aspect of the New gTLD Program intended to ensure that appropriate consideration was given to the interests of governments and authorities in regards to strings representing geographic areas.

### 2.5.2 Relevant Guidance

The following guidance is relevant to the topic of the Geographic Names evaluation and will be discussed in further detail in Sections 2.5.3 and 2.5.4 of this report:

- GNSO Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.*

- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- Applicant Guidebook, Section 2.2.1.4: Geographic Names Review<sup>106</sup>
- Applicant Guidebook, Section 2.4: Parties Involved in Evaluation
- Applicant Guidebook, Attachment to Module 2: Evaluation Questions and Criteria

### 2.5.3 Background

The AGB anticipated that Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) would take five months to complete, all IE results would be published at the conclusion of IE, and the Contracting process would commence at the end of IE. This would allow applicants that passed IE to move expeditiously toward signing an RA if there were no other issues that the application must resolve (i.e., contention resolution, dispute resolution).

The Geographic Names criteria in the AGB criteria were developed based on advice from the GAC.<sup>107</sup> The GAC Principles Regarding New gTLDs stated, “ICANN should avoid country, territory or place

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<sup>106</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

names, and country, territory or regional language or people descriptions, in agreement with the relevant governments or public authorities.”<sup>108</sup>

Question 21 of the application provided applicants with the opportunity to identify whether their application was intended to be for a geographic name. The Geographic Names evaluation was performed by InterConnect Communications (partnered with the University College London) and the Economist Intelligence Unit. For more information, see Section 3.2: Service Provider Coordination of this report.

The Geographic Names panel took note of the applicant’s self-designation. However, the panel evaluated all strings and applications and made its own determination based on the criteria in the AGB. Per Section 2.2.1.4 of the AGB:

- Applications for strings that were country or territory names were not approved.
- Strings representing geographic names required documentation of support or non-objection from the relevant governments or public authorities. Geographic names were:
  - Capital city names
  - City names, where the applicant intended to use the gTLD for purposes associated with the city
  - Strings that were exact matches of sub-national places (e.g., counties, provinces, states)
  - Strings for regions (as defined by internationally recognized lists)

In cases where the panel determined that an application met the criteria for a geographic name requiring government support, the Panel confirmed that the letters of support or non-objection met the defined criteria, and validated that they were sent by the appropriate authority. The Geographic Names evaluation was part of Initial Evaluation (IE) and eligible for Extended Evaluation (EE).

Of the 1,930 submitted applications:

- 66 applicants designated their applications as geographic names.
- The panel determined that six of the applications that had been self-designated geographic names did not meet the criteria for geographic names requiring government support, so no letters of support or non-objection were required.
- The panel determined that three applications that were not designated by the applicants as geographic names met the criteria of geographic name requiring government support.

The results for the Geographic Names evaluation were published on a weekly basis by priority number with IE and EE reports.

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<sup>107</sup> ICANN. (22 October 2008) New gTLD Program Explanatory Memorandum: Proposed Process for Geographic Name Applications. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/geographic-names-22oct08-en.pdf>

<sup>108</sup> ICANN Governmental Advisory Committee. (28 March 2007) GAC Principles regarding New gTLDs. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>

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The geographic names designation (whether designated by the applicant or the panel) did not have any contractual obligations associated with it.

## 2.5.4 Assessment

The Geographic Names panel performed its evaluation in accordance with the AGB and the processes defined by the panel.<sup>109</sup>

To support predictability and transparency, much of the Geographic Names criteria were based on established international classification lists (e.g., the ISO 3166-1 standard was used to identify names for countries and territories; the UNESCO region list<sup>110</sup> identified regions). The only exceptions to this were for applications for non-capital city names.

Applications for non-capital city names were required to provide documentation of government support in cases “where the applicant declare[d] that it intend[ed] to use the gTLD for purposes associated with the city name.”<sup>111</sup> Evaluation against this criterion required review of the proposed TLD’s intended purpose and a determination of whether this purpose related to the city.

The Geographic Names panel issued its Clarifying Questions in February 2013. Applicants were advised that the responses were due by the end of IE, which was projected to be 30 August 2013.

The AGB described the Geographic Names review as occurring within the timeframe of IE (five months, more if batching was required), plus an additional 90-day (or longer) period to obtain required documentation if necessary.<sup>112</sup> Of the 1,820 applications that completed IE, all but seven provided the required documentation to pass Geographic Names evaluation. The seven applications that did not provide the required documentation in IE were evaluated during EE.

The applicant’s designation of a string did not have an effect on the panel’s review of the application, as the panel reviewed all applications. Further, the geographic names designation did not have any contractual obligations associated with it. (However, it should be noted that a geographic names TLD might have had a contract in place with the relevant government, and that some geographic names applications were also community applications. Geographic names TLDs that were also community TLDs had contractual obligations included through Specification 12 to the Base Registry Agreement.)<sup>113</sup>

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<sup>109</sup> InterConnect Communications. (7 June 2013) New gTLD Program Evaluation Panels: Geographic Names - Decision Tree/Process Flow for Geographic Names Evaluation. Retrieved from

<http://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-process-07jun13-en.pdf>

<sup>110</sup> The United Nations Educational, Scientific and Cultural Organization. Regions and Countries. Retrieved from

<http://www.unesco.org/new/en/unesco/worldwide/regions-and-countries/>

<sup>111</sup> AGB Section 2.2.1.4.2: Geographic Names Requiring Government Support

<sup>112</sup> AGB Section 2.2.1.4.4: Review Procedure for Geographic Names

<sup>113</sup> ICANN. (9 January 2014) Registry Agreement. Retrieved from

<http://newgtlds.icann.org/en/applicants/agb/agreement-approved-09jan14-en.pdf>

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## 2.5.5 Conclusion

The Geographic Names evaluation was performed in accordance with the AGB. The use of established international classification lists and clear criteria supported a fair evaluation and predictable process. However, there are some questions around the intended purpose of the geographic name designation that may benefit from further community discussion. The geographic names designation was a self-designation. This designation did not have an effect on the panel's review of the application, as the panel reviewed all applications. Further, the geographic name designation did not have any contractual obligations associated with it. Consideration should be given as to the purpose of the self-designation, and whether it should be limited to evaluation or if there should be other implications.

In summary:

**2.5.a** Consider the purpose and the implications of the Geographic Names evaluation, particularly in terms of whether its purpose is limited to evaluation or if there are other implications to the geographic names designation

**2.5.b** Consider ongoing work by various members of the community around geographic names in defining future procedures

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## 2.6 Technical and Operational Capability Evaluation

### 2.6.1 Introduction

The Technical and Operational Capability evaluation was one of the seven evaluation streams defined in the Applicant Guidebook (AGB). The technical questions in the AGB gathered information from the applicant regarding its plans for operations so that the evaluation panel could assess whether the applicant demonstrated the technical and operational capability to run a TLD.

### 2.6.2 Relevant Guidance

The following guidance is relevant to the topic of the Technical and Operational Capability evaluation and will be discussed in further detail in Sections 2.6.3 and 2.6.4 of this report:

- GNSO Principle D: “A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.”<sup>114</sup>
- GNSO Principle E: “A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement.”
- GNSO Recommendation 1:  
*ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.*
- GNSO Recommendation 4: “Strings must not cause any technical instability.”
- GNSO Recommendation 7: “Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.”
- GNSO Recommendation 8: “Applicants must be able to demonstrate their financial and organisational operational capability.”
- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- GNSO Recommendation 18: “If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>115</sup>

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<sup>114</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

- Applicant Guidebook, Section 2.2.2: Applicant Reviews
- Applicant Guidebook, Section 2.3.2: Technical/Operational or Financial Extended Evaluation
- Applicant Guidebook, Section 2.4: Parties Involved in Evaluation
- Applicant Guidebook, Attachment to Module 2: Evaluation Questions and Criteria

## 2.6.3 Background

The AGB anticipated that Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) would take five months to complete, all IE results would be published at the conclusion of IE, and the Contracting process would commence at the end of IE. This would allow applicants that passed IE to move expeditiously toward signing an RA if there were no other issues that the application must resolve (i.e., contention resolution, dispute resolution).

AGB Section 2.2.2.1 required that “the applicant [would] respond to a set of questions (see questions 22 – 44 in the Application Form) intended to gather information about the applicant’s technical capabilities and its plans for operation of the proposed gTLD.” There were 30 points available. Twenty-two points were required to pass, with no zero scores on any question (other than the optional Question 44).

The AGB, Attachment to Module 2, Section III stated, “Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary.” To support this, ICANN selected the same panel firms for the Technical and Operational Capability evaluation and the Financial Capability evaluation, and allocated both sections of an application to the same panel firm. The panel firms for the Technical and Operational Capability evaluation and Financial Capability evaluation were Ernst & Young, KPMG, and JAS Global Advisors. For more information, see Section 8.2: Service Provider Coordination of this report.

The overall evaluation process was described in Module 2 of the AGB. The implementation of the evaluation process was performed in alignment with the AGB-defined processes, and has been described in further detail in Section 2.1: Initial and Extended Evaluation of this report.

Once the evaluation panels’ evaluations were complete, they presented their results to ICANN. The results reports provided by the Technical and Operational Capability evaluation panel included detailed rationale for applications that did not meet the AGB criteria. ICANN reviewed the results for consistency and to confirm that the results appeared to be in alignment with the AGB. After review, ICANN consolidated the results received from the panels for publication and to share with the applicants.

1,795 applications passed the Technical and Operational Capability evaluation during IE and eight applications were eligible for EE. Ultimately, all applications that participated in the Technical and Operational Capability evaluation during EE passed.

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<sup>115</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

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Once an applicant executed a Registry Agreement (RA) with ICANN, it was required to demonstrate its Technical and Operational Capability during Pre-Delegation Testing (PDT). For more information, see Section 5.2: Pre-Delegation Testing and Transition to IANA of this report.

Additionally, all registry operators were obligated to comply with the technical specifications in the Registry Agreement (RA) upon signing of the agreement.<sup>116</sup>

## 2.6.4 Assessment

GNSO Recommendation 7 stated, “Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.” To support this, the AGB criteria in Questions 24 – 44 of the application were developed. The design of the application required applicants to consider the requirements for operating a TLD, as the responses to the Technical questions were theoretical in nature. Section 2.2.2.1 of the AGB stated, “Applicants [were] not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It [would] be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation.”

Although the Technical portion of the application was not designed to test actual registry operations, if the application was successful, the registry operator was ultimately required to pass PDT and demonstrate compliance with the technical specifications defined in the RA. Per the requirements of the AGB in this application round, the Technical section of the application was intended to “gather information about the applicant’s technical capabilities and its plans for operation of the proposed gTLD,” and the applicant was not required to have deployed an operational registry.

Although 1,930 applications were submitted, most shared one of a relatively small number of technical infrastructures (less than 50). In fact, 90% of applications shared one of 13 technical infrastructures (see Table 2.6.i).

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<sup>116</sup> ICANN. Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/agreement-approved-09jan14-en.pdf>

Table 2.6.i: Registry Service Providers (RSPs) Engaged

Registry Service Provider	% of Applications Using RSP
Neustar	18%
Demand Media	17%
Afilias	16%
Verisign	12%
ARI	8%
Google Registry	5%
Minds+Machines	5%
CentralNIC	3%
ISC	3%
CORE	2%
GMO	2%
Other	8%

The application process was designed so that even if an applicant chose to engage a provider to operate its back-end registry services, the applicant would be the party accountable for the application. In addition to promoting greater accountability for the applicant, the design of the application process was intended to level the playing field for new entrants to the market, whereas had the process encouraged engagement with an RSP, new entrants may have been discouraged.

Ninety percent of applications received one or more CQs from the Technical and Operational Capability panel. The table below shows the number of applications that received CQs for each question in the Technical section.

Table 2.6.ii Clarifying Questions Issued by Application Question

Technical Question	Question Description	# Applications with CQ Issued	% Applications with CQ Issued
Q24	Shared Registration System (SRS) Performance	54	3%
Q25	EPP	919	49%
Q26	Whois	142	8%
Q27	Registration Life Cycle	181	10%
Q28	Abuse Prevention & Mitigation	72	4%
Q29	Rights Protection Mechanisms	594	32%
Q30	Security	170	9%
Q31	Technical Overview of Proposed Registry	412	22%
Q32	Architecture	65	3%
Q33	Database Capabilities	18	1%
Q34	Geographic Diversity	24	1%
Q35	DNS Service Compliance	264	14%

Q36	IPV6 Reachability	41	2%
Q37	Data Backup Policies and Procedures	27	1%
Q38	Escrow	30	2%
Q39	Registry Continuity	57	3%
Q40	Registry Transition	121	6%
Q41	Failover Testing	42	2%
Q42	Monitoring and Fault Escalation Processes	13	1%
Q43	DNSSEC	334	18%
Q44	IDNs (Optional)	170	9%

ICANN observed during the implementation of the Technical and Operational Capability Evaluation that the responses to the Technical application questions were generally provided by the applicants' RSPs. As evidenced in Table 2.6.ii, five questions in particular generated a large proportion of CQs. The use of RSPs may have skewed these results (e.g., a particular RSP may have made a minor administrative error for a single question many times), but the high rate of CQs for certain questions may also indicate a systemic issue with particular questions. ICANN should review the CQs issued and responses received to determine if changes to application questions are required.

In addition to the responses being theoretical in nature, ICANN has observed that applicants did not necessarily follow through with implementing their technical infrastructure in the manner specified within the application. While to a certain extent, Pre-Delegation Testing (PDT) tested applicants' operational technical capabilities, PDT did not confirm whether registry operators were complying with their responses to application questions, only that they met the baseline requirements of the RA. (For more information on PDT, see Section 5.2: Pre-Delegation Testing and Transition to IANA of this report.)

The fact that applicants almost universally engaged an RSP also brought to light that the existing requirement of evaluating each application on a stand-alone basis did not enable evaluation of a particular RSP's ability to support multiple TLDs. Due to the application-by-application nature of evaluation, RSPs were not evaluated across the universe of applications and existing TLDs.

GNSO Recommendation 7 called for applicants to "demonstrate their technical capability." There were several different options that could have been used to implement this policy, including a question and answer approach, an approach involving the testing of infrastructure, and a more targeted evaluation specifically focused on technical back-end providers. In this application round, a question and answer approach was implemented to address this recommendation. In future rounds, different options, such as a program to accredit registry service providers, should be explored.

For example, a program to accredit registry service providers could prove to be more efficient for applicants and providers of technical back-end services in terms of application processing. An RSP accreditation program could allow for the thorough review of an RSP's full set of services provided (across TLDs). Such a program could also streamline processes for registry operators outside of the evaluation process, such as the process for adding new registry services (i.e., services could be pre-certified at the registry service provider level and thus require less testing, if any). This form of testing

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could also fulfill some of the intent of PDT. Such an option should be carefully considered in terms of whether it supports the New gTLD Program’s objectives of competition, choice, and consumer trust.

## 2.6.5 Conclusion

The AGB criteria for Technical and Operational Capability evaluation required that applicants describe their plans for technical operations, but it did not require that actual registry operations be tested. In the execution of the Technical evaluation, ICANN observed that the majority of applicants used one of a relatively small population of back-end providers to operate their technical infrastructure. There were several possible approaches that could have been explored in order to achieve an effective evaluation of technical evaluation, and the operational experience brought to light certain inefficiencies in the evaluation approach that was taken.

To meet the objectives of GNSO Recommendation 7, consideration should be given as whether an alternate approach to the Technical and Operational Capability Evaluation would support the GNSO’s recommendation and the New gTLD Program objectives of competition, choice, and consumer trust, and whether the exploration of such an approach would be worthwhile.

In summary:

**2.6.a** Consider whether an alternate approach to the Technical and Operational Capability Evaluation would be worthwhile

**2.6.b** Review Technical and Operational Capability CQs and responses to determine whether improvements to the application questions can be made

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## 2.7 Financial Capability Evaluation

### 2.7.1 Introduction

The Financial Capability evaluation was one of the seven evaluation streams defined in the AGB. The financial questions the Applicant Guidebook (AGB) gathered information from the applicant regarding its plans for operations and financial planning so that the evaluation panel could assess whether the applicant demonstrated the financial capability to run a TLD.

### 2.7.2 Relevant Guidance

The following guidance is relevant to the topic of the Financial Capability evaluation and will be discussed in further detail in Sections 2.7.3 and 2.7.4 of this report:

- GNSO Principle E: “A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN’s registry agreement.”<sup>117</sup>
- GNSO Recommendation 1:

*ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.*

- GNSO Recommendation 8: “Applicants must be able to demonstrate their financial and organisational operational capability.”
- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>118</sup>
- Applicant Guidebook, Section 2.2.2: Applicant Reviews
- Applicant Guidebook, Section 2.3.2: Technical/Operational or Financial Extended Evaluation
- Applicant Guidebook, Section 2.4: Parties Involved in Evaluation
- Applicant Guidebook, Attachment to Module 2: Evaluation Questions and Criteria

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<sup>117</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>118</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

## 2.7.3 Background

The AGB anticipated that Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) would take five months to complete, all IE results would be published at the conclusion of IE, and the Contracting process would commence at the end of IE. This would allow applicants that passed IE to move expeditiously toward signing an RA if there were no other issues that the application must resolve (i.e., contention resolution, dispute resolution).

The Financial Capability evaluation was “intended to gather information about the applicant’s financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.”<sup>119</sup> The Financial section of the application (Questions 45 through 50) had three main components:

1. The applicant’s financial statements (Question 45),
2. Information about the applicant’s intended business model (Question 46 – Question 49), and
3. A Continuing Operations Instrument (COI) to ensure that the registry could be guaranteed to fund registry operations for a minimum of three years following the termination of the RA, for the protection of registrants (Question 50).

There were 11 points available within the Financial section, and a total of eight points were required (with no zeros on an individual question) in order to pass.

The AGB, Attachment to Module 2, Section III stated, “Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary.” To support this, ICANN selected the same panel firms for the Technical and Operational Capability evaluation and the Financial Capability evaluation, and allocated both sections of an application to the same panel firm. The panel firms for the Technical and Operational Capability Evaluation and Financial Capability evaluation were Ernst & Young, KPMG, and JAS Global Advisors. For more information, see Section 8.2: Service Provider Coordination of this report.

The overall evaluation process was described in Module 2 of the AGB. The implementation of the evaluation process was performed in alignment with the AGB-defined processes, and has been described in further detail in Section 2.1: Initial and Extended Evaluation of this report.

Once the evaluation panel’s evaluation was complete, they presented their results to ICANN. The results reports provided by the Financial Capability evaluation panel included detailed rationale for applications that did not meet the AGB criteria. ICANN reviewed the results for consistency and to confirm that the results appeared to be in alignment with the AGB. After review, for each application, ICANN consolidated the results received from the panels for publication and to share with the applicant.

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<sup>119</sup>ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 2.2.2.2: Financial Review. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

A total of 1,777 applications passed the Financial Capability evaluation during IE, and 26 applications were eligible for EE. Ultimately, all applications that participated in the Financial Capability evaluation during EE passed.

## 2.7.4 Assessment

GNSO Recommendation 8 stated, “Applicants must be able to demonstrate their financial and organisational operational capability.” In support of this recommendation, the AGB criteria in Questions 45 through 50 were developed. The AGB stated, “The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present.”<sup>120</sup> The financial criteria were not intended to be universal, rigid criteria, and were developed with the intention of being flexible enough to accommodate various business types. However, in order to ensure a consistent evaluation across all applications, the panel defined guidelines to interpret the application information as objectively and consistently as possible.

In order to provide additional clarity around the AGB criteria, before and during the application window, ICANN developed Supplemental Notes for each of the questions in the Financial section.<sup>121</sup> Table 2.7.i displays the number of Supplemental Notes (or updates) created for each of the Financial questions.

*Table 2.7.i: Supplemental Notes by Question*

Financial Question	# Supplemental Notes and Updates to Supplemental Notes
Q45	9
Q46	10
Q47	2
Q48	2
Q49	1
Q50	9

Once the panel had evaluated some applications and was developing its CQs, it was evident that a high volume of application would receive multiple CQs. To help applicants prepare for clarifying questions, ICANN issued five Applicant Advisories relating to questions in the Financial section (see table 2.7.ii).<sup>122</sup>

<sup>120</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Attachment to Module 2: Evaluation Questions and Criteria. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>121</sup> ICANN. Supplemental Notes. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/supplemental-notes>

<sup>122</sup> ICANN. Applicant Advisories. Retrieved from <http://newgtlds.icann.org/en/applicants/advisories>

Table 2.7.ii: Applicant Advisories by Question

Financial Question	Question Description	# Advisories and Updates to Advisories
Q45	Financial Statements	0
Q46	Projections Template: Costs and Funding	0
Q47	Costs: Setup and Operating	0
Q48	Funding and Revenue	1
Q49	Contingency Planning: Barriers, Funds, Volumes	0
Q50	Continuity: Continued Operations Instrument	4

Despite efforts to provide clarification, observations from the implementation of the Financial Capability evaluation suggest that there was a lack of clarity around the Financial criteria. The panel issued CQs on the Financial section for 90% of applications, which indicates that 90% of applications did not initially meet the AGB criteria based on the original application information submitted (see table 2.7.iii). A total of 4,378 CQs on the Financial Section were issued.

Table 2.7.iii: Clarifying Questions Issued by Question

Financial Questions	Question Description	# Applications	% Applications
Q45	Financial Statements	587	31%
Q46	Projections Template: Costs and Funding	126	7%
Q47	Costs: Setup and Operating	986	53%
Q48	Funding and Revenue	857	46%
Q49	Contingency Planning: Barriers, Funds, Volumes	292	16%
Q50	Continuity: Continued Operations Instrument	1,530	82%

Based on the number of Supplemental Notes, Applicant Advisories, and CQs issued, ICANN should examine the CQs issued and responses received. Consideration should be given to whether the financial criteria could be developed to better address a variety of business models and require less clarification and interaction among ICANN, applicants, and the panel.

Nine Supplemental Notes and four Advisories were issued for Question 50, which concerned the Continued Operations Instrument and required that the applicant describe the instrument that they planned to secure or provide an executed instrument. One of these updates to an Advisory, issued on 4 March 2013, was an explanation of the “unconditional withdrawal of funds” requirement within Question 50.<sup>123</sup> As evidenced by the 1,530 applications that received CQs on Question 50, the majority of applicants faced challenges in addressing Question 50, including many which received CQs

<sup>123</sup> ICANN. Continuing Operations Instrument: Unconditional Withdrawal of Funds. Retrieved from <http://newgtlds.icann.org/en/applicants/advisories/coi-withdrawal-05dec12-en>

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regarding the “unconditional withdrawal of funds” requirement. On 5 June 2013, ICANN announced that as a result of some of the challenges faced by applicants, and inconsistent application and usage of the conditional language included in the letters of credit submitted in response to Question 50, the financial evaluation would focus on the financial aspects of the COI (most notably the amount) and address the legal language (such as conditions) during the Contracting process.<sup>124</sup> Continued Operations Instruments are discussed in greater detail in Section 7.1: Continued Operations Instruments of this report.

Another observation from implementation was that there were applicants that applied for many TLDs. As each was evaluated individually by priority number, the evaluation process as implemented in this round did not allow for evaluation of the applicant’s financial scalability in relation to its entire portfolio of applications.

While the criteria were developed to support the GNSO’s recommendation that applicants demonstrate financial capability, the number and nature of Supplemental Notes, Applicant Advisories, and CQs issued suggest that there was some level of administrative burden in the evaluation process for both applicants and the evaluation panels. Eighty-two percent of all applications received a CQ on Question 50, many of which were administrative corrections to the COI.

GNSO Recommendation 8 required that applicants be able to “demonstrate their financial and organisational operational capability.” There were several different options that could have been used to apply this policy, including a question and answer approach, a third-party certification of an applicant’s financial situation, or a mandatory insurance policy in lieu of a financial evaluation. In this application round, a question and answer approach was implemented to address this recommendation. For future rounds, consideration should be given to whether a third-party certification would allow applicants to demonstrate financial capability while providing the flexibility to evaluate various applications’ business models, including applicants that have applied for many TLDs.

## 2.7.5 Conclusion

The Financial Capability Evaluation criteria were developed in support of GNSO Recommendation 8, which stated, “Applicants must be able to demonstrate their financial and organisational operational capability.” The evaluation was performed in alignment with the AGB, and all applications met the AGB criteria in either IE or EE.

However, observations from implementation suggest that there were inefficiencies in the process that should be reviewed. There were many instances where a group of related applications was almost identical, but due to the application-by-application design of the evaluation process, applications were considered individually based on priority number. This reduced efficiency for both the panel and the applicants, and did not allow for an applicant’s financial scalability to be

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<sup>124</sup> ICANN. (Updated 10 June 2013) Continuing Operations Instrument: Unconditional Withdrawal of Funds. Retrieved from <http://newgtlds.icann.org/en/applicants/advisories/coi-withdrawal-05dec12-en>

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considered within evaluation. Additionally, the vast majority of applications received CQs, and for Question 50 (Continued Operations Instrument) in particular, 82% of applications received a CQ.

For future rounds, alternative approaches to the Financial Capability evaluation should be explored. For example, consideration should be given to whether a third-party certification (comparable to an audit performed by a certified auditor) would satisfy the intent of GNSO Recommendation 8 and provide for the flexibility to evaluate various applications' business models. ICANN should also review the CQs issued and consider whether criteria could be developed that would require less clarification among the evaluation panel, ICANN, and applicants.

In summary:

**2.7.a** Consider whether an alternative approach to the Financial Capability evaluation would be worthwhile

**2.7.b** Review Financial Capability CQs and responses to determine whether improvements to the application questions can be made

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## 2.8 Registry Services Evaluation

### 2.8.1 Introduction

The Registry Services evaluation was one of the seven evaluation streams defined in the Applicant Guidebook (AGB). It served to evaluate each application’s proposed registry services for any possible adverse impact to the security and stability of the DNS.

### 2.8.2 Relevant Guidance

The following guidance is relevant to the topic of Registry Services evaluation and will be discussed in further detail in Sections 2.8.3 and 2.8.4 of this report:

- GNSO Principle D: “A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise<sup>88</sup> the risk of harming the operational stability, security and global interoperability of the Internet.”<sup>125</sup>
- GNSO Principle E: “A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN’s registry agreement.”
- GNSO Recommendation 1:  
*ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.*
- GNSO Recommendation 7: “Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.”
- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- GNSO Recommendation 18: “If an applicant offers an IDN service, then ICANN’s IDN guidelines must be followed.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>126</sup>
- Applicant Guidebook, Section 2.2.3: Registry Services Review
- Applicant Guidebook, Section 2.3.3: Registry Services Extended Evaluation
- Applicant Guidebook, Section 2.4: Parties Involved in Evaluation

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<sup>125</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

<sup>126</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

- Applicant Guidebook, Attachment to Module 2: Evaluation Questions and Criteria
- ICANN Board New gTLD Program Committee Resolution 2013.08.13.NG02 (13 August 2013): : Dotless Domains<sup>127</sup>

## 2.8.3 Background

The AGB anticipated that Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) would take five months to complete, all IE results would be published at the conclusion of IE, and the Contracting process would commence at the end of IE. This would allow applicants that passed IE to move expeditiously toward signing an RA if there were no other issues that the application must resolve (i.e., contention resolution, dispute resolution).

The Registry Services evaluation was one of seven evaluation streams defined in the AGB. Its purpose was to evaluate each application’s proposed registry services “for any possible adverse impact on security or stability.”<sup>128</sup> The Registry Services evaluation was part of Initial Evaluation (IE) and eligible for Extended Evaluation (EE). The overall evaluation process was described in Module 2 of the AGB. The implementation of the evaluation process was performed in alignment with the AGB-defined processes, and has been described in further detail in Section 2.1: Initial and Extended Evaluation of this report.

As with all of the evaluation streams, independent third-party providers performed the review and evaluated each application against the criteria defined in the AGB. ICANN engaged Interisle Consulting Group as the Registry Services evaluation panel. (For more information, see Section 8.2: Service Provider Coordination of this report.) The Registry Services evaluation panel reviewed the five critical registry functions<sup>129</sup> and any services relating to these for each TLD for potential concerns to security or stability of the DNS.

The implementation of the evaluation process was performed in alignment with the processes defined in Module 2 of the AGB and the panel’s published process documentation.<sup>130</sup> In cases where the panel required additional clarification from the applicant, clarifying questions (CQs) were issued. Nine-hundred-seventy-five of 1,930 (51%) of applications received a CQ from the Registry Services Evaluation Panel during IE.

After the responses to CQs had been reviewed, in cases where the response was incomplete, ICANN performed Applicant Outreach to ensure that applicants had the opportunity to provide complete responses for the panel’s consideration. The panel presented its results to ICANN, and ICANN

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<sup>127</sup> ICANN. (13 August 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-08-13-en#1.a>

<sup>128</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 2.2.3: Registry Services Review. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>129</sup> The five critical registry functions are 1) DNS resolution for registered domain names, 2) Operation of Shared Registration System, 3) Operation of Registration Data Directory Services (Whois), 4) Registry data escrow deposits, and 5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.

<sup>130</sup> Interisle Consulting Group. (7 June 2013). ICANN New gTLD Program Registry Services Initial Evaluation Process. Retrieved from <http://newgtlds.icann.org/en/program-status/evaluation-panels/registry-services-initial-process-07jun13-en.pdf>

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reviewed the results to ensure consistency and alignment with the AGB before sharing results with the applicant and publishing them.

Ultimately, 1,802 of 1,930 applications passed the Registry Services evaluation during IE. Some applications were withdrawn before IE results were published, but all but two applications with published IE results passed IE. Of the two applications that were eligible for EE, both applications passed.

In addition to its primary purpose as an evaluation, the Registry Services evaluation also served as a means to collect a list of the applicant's proposed registry services for inclusion in the Registry Agreement.

## 2.8.4 Assessment

Section 2.2.3 of the AGB stated, "ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability." In Question 23 of the application, applicants were required to identify and describe their proposed implementation of the five critical registry functions and any services relating to these in their response to Question 23 of the application.

In addition to its primary purpose as an evaluation, the Registry Services portion of the application acted as a mechanism to collect the list of proposed registry services for insertion into Exhibit A of the RA.<sup>131</sup> The unstructured design of the application did not efficiently collect data for this purpose. As discussed in Section 1.1: Application Submission of this report, the application form was modeled after the AGB, and many of the questions did not have restrictions in the format beyond character limits and attachment size and file types. Question 23 solicited a textual description of the proposed TLD's registry services. In order to incorporate the response into Exhibit A of the RA, the language had to be converted into contractual language, which required a significant effort from ICANN. Further, applications often included descriptions of registry services in places other than the response to Question 23. The lack of consolidation within the application caused further inefficiencies in the evaluation of the proposed registry services, as well as in the process of incorporating them into Exhibit A of the RA. All applications were evaluated on an individual basis by priority number. While this design supported fairness, consistency, and predictability in process for applicants, it presented operational challenges.

The panel was required to accommodate prioritization numbers in the CQ process and IE results process, which created inefficiencies in defining the order to evaluate applications, redundancies for the panel when issuing CQs, redundancies for the applicants when responding to CQs, and limitations in the panel's ability to normalize results across an applicant's portfolio of applications before completing its evaluation. This is discussed in further detail in Section 1.2: Prioritization of this report.

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<sup>131</sup> ICANN. Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/agreement-approved-09jan14-en.pdf>

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Ninety percent of applications shared one of 13 technical infrastructures. The application process was designed for the panel to communicate with the applicant, not with the RSP. This observation brought to light that the existing evaluation process did not consider a provider's scalability across the group of applications with which it had engaged. Due to the application-by-application nature of evaluation, the RSP's services for a particular TLD were evaluated, but the RSP was not evaluated across the universe of applications. For future rounds, the community may wish to consider evaluation of the RSP. This has been discussed further in Section 2.6: Technical and Operational Capability Evaluation of this report.

For those applications that proposed to provide IDN services, there were some challenges that affected the panel's evaluation of the IDN tables. The TLD application system (TAS) did not format the IDN tables submitted by the applicants in a machine-readable format, which was required for the panel to automate the validation of the tables. While the panel reviewed the applicant's proposed IDN policies, the panel did not validate the IDN tables provided by the applicants, and the review of IDN tables was performed during Pre-Delegation Testing (PDT) (see Section 5.2: Pre-Delegation Testing and Transition to IANA of this report). In the next round, it is probable that there will be additional tools available for the evaluation of IDNs. These tools should be leveraged in the evaluation and validation of IDN tables.

## 2.8.5 Conclusion

The Registry Services Evaluation was performed in line with the AGB. However, inefficiencies were observed in terms of how the data was captured in the application form. A more standardized format would better support efficiency in the process of incorporating registry services into the Registry Agreement. Additionally, observations from the implementation experience suggest that greater efficiency and effectiveness may be achievable through the implementation of a program to accredit registry service providers. This topic is discussed further in Section 2.6: Technical and Operational Capability Evaluation of this report.

In summary:

- 2.8.a** Update the process for collection of registry services information to better support both evaluation and contracting activities
- 2.8.b** Consider whether an alternate approach to Technical and Operational Capability evaluation would be worthwhile, and if so, how the evaluation of Registry Services could be incorporated into the approach
- 2.8.c** For future rounds, leverage the IDN tools currently under development

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## Chapter 3: Objections Procedures

In its Final Report on the Introduction of New Generic Top-Level Domains, the GNSO recommended that standards be developed to protect certain rights and interests within the New gTLD Program (see Recommendations 2, 3, 6, and 20).<sup>132</sup> The GNSO also recommended that, “Dispute resolution and challenge processes must be established prior to the start of the process” (see Recommendation 12). In the GAC Principles regarding New gTLDs, Principle 3.3 stated, “If individual GAC members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them.”<sup>133</sup>

In support of the guidance from the GNSO and the GAC, Module 3 of the Applicant Guidebook defined two processes: the GAC Advice process and the Objections and Dispute Resolution process. Through the GAC Advice process, the GAC could provide advice on new gTLDs to the ICANN Board concerning specific applications. Through the Objections process, parties with standing had the opportunity to file formal objections with designated third-party dispute resolution providers on specific applications based on the following grounds: (i) String Confusion; (ii) Legal Rights; (iii) Limited Public Interest; and (iv) Community.

The GAC issued advice to the ICANN Board through multiple GAC Communiqués beginning with the 11 April 2013 Beijing Communiqué.<sup>134</sup> The advice that the GAC issued included advice on specific applications, for broad categories of (applied-for) strings, and for all applications. Section 3.1: GAC Advice of this report discusses the various GAC Advice and how the ICANN Board addressed the advice.

There were 263 formal objections filed across the four objection grounds on 205 new gTLD applications. Objections were considered by experts in a dispute resolution proceeding defined in the AGB and supplemented by the dispute resolution service providers’ own procedures. There were challenges in implementing some of the dispute resolution standards because the objection standards were new and untested concepts in this round of new gTLD applications. Section 3.2: Objections and Dispute Resolution of this report discusses the various objection grounds and standards as well as the dispute resolution process.

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<sup>132</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

<sup>133</sup> Governmental Advisory Committee. (28 March 2007) GAC Principles Regarding New gTLDs. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>

<sup>134</sup> Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing, People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>

## 3.1 GAC Advice

### 3.1.1 Introduction

The GAC Advice process detailed in the Applicant Guidebook described how ICANN’s Governmental Advisory Committee (GAC) could provide the ICANN Board with Advice regarding new gTLDs that the GAC thought might be problematic. In advance of the issuance of GAC Advice, the GAC Early Warning process enabled members of the GAC to notify an applicant that its application was seen as potentially sensitive or problematic by one or more governments. This section of the Program Implementation Review report discusses the following aspects of GAC Advice:

- GAC Early Warning
- GAC Advice

### 3.1.2 Relevant Guidance

The following guidance is relevant to the topic of GAC Advice and will be discussed in further detail in Sections 3.1.3 and 3.1.4 of this report:

- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>135</sup>
- Applicant Guidebook, Section 3.1: GAC Advice on New gTLDs
- ICANN Board New gTLD Program Committee Resolution 2014.06.04.NG01 (4 June 2013): Consideration of Non-Safeguard Advice in the GAC’s Beijing Communiqué<sup>136</sup>
- ICANN Board New gTLD Program Committee Resolution 2013.09.10.NG03 (10 September 2013): GAC Communiqué Durban – Scorecard<sup>137</sup>
- ICANN Board New gTLD Program Committee Resolution 2013.09.28.NG02 (28 September 2013): Remaining Items from Beijing and Durban GAC Advice<sup>138</sup>
- ICANN Board New gTLD Program Committee Resolution 2014.02.05.NG01 (5 February 2014): Remaining Items from Beijing, Durban and Buenos Aires GAC Advice: Updates and Actions<sup>139</sup>
- ICANN Board New gTLD Program Committee Resolution 2013.04.04.NG01-2013.04.04.NG04 (4 April 2014): Applications for .vin and .wine/GAC Communiqué Singapore<sup>140</sup>

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<sup>135</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>136</sup> ICANN. (4 June 2013) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-04-en#1.a>

<sup>137</sup> ICANN. (10 September 2013) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-09-10-en#2.c>

<sup>138</sup> ICANN. (28 September 2013) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-09-28-en#2.a>

<sup>139</sup> ICANN. (5 February 2014) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>

<sup>140</sup> ICANN. (4 April 2014) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-04-04-en>

- ICANN Board New gTLD Program Committee Resolution 2014.05.04.NG02 (14 May 2014): Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC Advice<sup>141</sup>
- ICANN Board New gTLD Program Committee Resolution 2014.05.04.NG03 (14 May 2014): GAC Advice on .AMAZON (and related IDNs)<sup>142</sup>
- ICANN Board New gTLD Program Committee Resolution 2014.09.08.NG02 (8 September 2014): Remaining Items from Beijing, Durban, Buenos Aires, Singapore, and London GAC Advice<sup>143</sup>
- ICANN Board New gTLD Program Committee Resolution 2015.06.21.NG02 (21 June 2015): GAC Category 2 Safeguard Advice – Exclusive Generic TLDs<sup>144</sup>

### 3.1.3 Background

The ICANN Bylaws define several Advisory Committees that provide advice to the ICANN Board. The GAC is one of these committees.

The ICANN Bylaws, Article XI, state:<sup>145</sup>

*The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.*

As an Advisory Committee, the GAC has a set of Operating Principles, which define GAC Advice as follows:<sup>146</sup>

#### *Principle 47*

*The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice, consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.*

<sup>141</sup> ICANN. (14 May 2014) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.a>

<sup>142</sup> ICANN. (14 May 2014) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b>

<sup>143</sup> ICANN. (8 September 2014) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-09-08-en#1.b>

<sup>144</sup> ICANN. (21 June 2015) Approved Resolution | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>

<sup>145</sup> ICANN. (Amended 30 July 2014) Bylaws for Internet Corporation for Assigned Names and Numbers, Article XI: Advisory Committees. Retrieved from <https://www.icann.org/resources/pages/governance/bylaws-en#XI>

<sup>146</sup> ICANN Governmental Advisory Committee. (October 2011) Governmental Advisory Committee (GAC) - Operating Principles: Article XII – Provision of Advice to the ICANN Board. Retrieved from <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles#GACOperatingPrinciples-XII>

## Principle 48

*The GAC may deliver advice on any other matter within the functions and responsibilities of ICANN, at the request of the ICANN Board or on its own initiative. The ICANN Board shall consider any advice from the GAC prior to taking action.*

Within the context of the New gTLD Program, the AGB described the role of the GAC in issuing GAC Early Warning and GAC Advice.

The GAC Early Warning process enabled individual governments within the GAC to notify an applicant that its application was seen as potentially sensitive or problematic by one or more governments.<sup>147</sup> If an applicant received an Early Warning, the applicant could use this information to work with the concerned government(s) or could withdraw the application within 21 days of the issuance of the Early Warning for an 80% refund of the application fee.<sup>148</sup>

GAC Early Warnings were issued for 187 applications on 20 November 2012.<sup>149</sup> Two of the 187 applications that received GAC Early Warning withdrew their applications within 21 days of receiving GAC Early Warning and received the 80% refund.

The GAC Advice process was “intended to address applications that [were] identified by governments to be problematic, e.g., that potentially violate[d] national law or raise[d] sensitivities.”<sup>150</sup> The design of GAC Advice within the New gTLD Program supported the concept of GAC Advice, as defined in the ICANN Bylaws,<sup>151</sup> and the GAC Operating Principles by providing an opportunity for the GAC to issue advice on ICANN’s activities as they related to the concerns of governments.<sup>152</sup>

The GAC issued its first advice on new gTLD applications in its 11 April 2013 Beijing Communiqué to the ICANN Board. In addition to advice on specific applications affecting 23 applications, the Beijing Communiqué contained advice on broad categories of strings affecting 491 applications, as well as Advice on topics affecting all applications.<sup>153</sup> As of the publication date of this report, six additional communiqués have included further Advice on the new gTLDs.

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<sup>147</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 1.1.2.4: GAC Early Warning. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>148</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 1.5.1: gTLD Evaluation Fee. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>149</sup> Governmental Advisory Committee. GAC Early Warnings. Retrieved from <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>

<sup>150</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 3.1: GAC Advice on New gTLDs. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>151</sup> ICANN. (Amended 30 July 2014) Bylaws for Internet Corporation for Assigned Names and Numbers, Article XI: Advisory Committees. Retrieved from <https://www.icann.org/resources/pages/governance/bylaws-en#XI>

<sup>152</sup> Governmental Advisory Committee. (October 2011) Governmental Advisory Committee (GAC) - Operating Principles: Article XII – Provision of Advice to the ICANN Board. Retrieved from <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles#GACOperatingPrinciples-XII>

<sup>153</sup> Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing, People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>

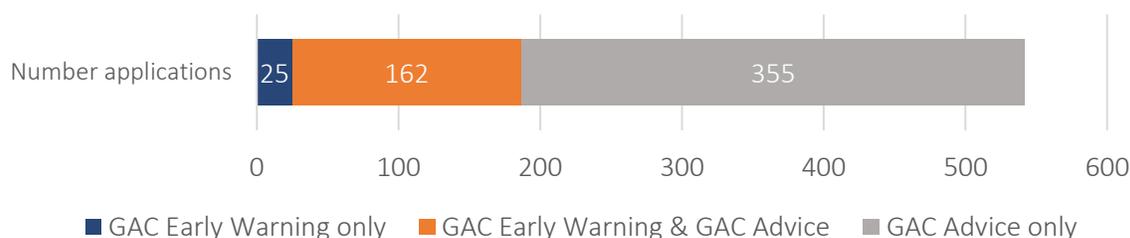
## 3.1.4 Assessment

### 3.1.4.1 GAC EARLY WARNING

#### *Early Warning and Advice Correlation*

Section 1.1.2.4 of the AGB described the GAC Early Warning process as a potential indicator that an “application could be the subject of GAC Advice on New gTLDs.” Indeed, there was some correlation between Early Warnings and Advice, but not all applications that received Advice had received an Early Warning. While only 187 applications received Early Warnings, 517 applications were subject to GAC Advice. Over 300 applications that were subject to GAC Advice did not receive any Early Warning. Based on this data, if the intent of the Early Warning process was to provide applicants with predictability, that intent was achieved in only 38% of cases. Figure 3.1.i provides a summary of applications that received GAC Early Warning and GAC Advice.

*Figure 3.1.i: Applications with GAC Early Warning and GAC Advice*



#### *Standard Form*

Early Warnings were issued using a standard form, which included rationale and possible remediation steps from the government that issued the Early Warning. ICANN assisted the GAC in its development of the form. Each government provided rationale in the Early Warning, and sometimes included possible remediation steps to help applicants to act on the Early Warnings. Some applicants cited conversations with governments as a reason for requesting changes to their applications.<sup>154</sup>

GAC Advice was communicated to the ICANN Board through communiqués.

<sup>154</sup> L. Christou, Cruise Lines International Association. (18 June 2015) Letter from Lorrie Christou to Cherine Chalaby. Retrieved from <https://www.icann.org/en/system/files/correspondence/christou-to-chalaby-18jun15-en.pdf>

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### 3.1.4.2 GAC ADVICE

#### *GAC Advice Issued*

Section 3.1 of the AGB described three possible forms of GAC Advice:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.*
- II. The GAC advises ICANN that there are concerns about a particular application “dot-example.” The ICANN Board is expected to enter into a dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.*
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.*

All three possible forms of GAC Advice described in Section 3.1 of the AGB refer to GAC Advice issued on applications. The GAC Communiqués also included advice on categories of strings impacting several applications and on topics that impacted all applications (e.g., protection of IGO acronyms, protection of Red Cross/Red Crescent names).

Outside of the GAC Advice that impacted all applications, GAC Advice issued to-date has affected a total of 517 applications. Of this total, 26 applications received application-specific GAC Advice, and 491 were subjected to GAC Advice on broad categories of strings.

Of the 26 applications that received application-specific GAC Advice, the GAC issued advice according to Section 3.1.i of the AGB on six applications. The NGPC considered the advice in accordance with the AGB, which stated that such advice would “create a strong presumption for the ICANN Board that the application[s] should not be approved.” Two applications received GAC Advice according to Section 3.1.ii of the AGB. The ICANN Board also acted in accordance with the AGB regarding these two applications and entered into dialogue with the GAC to better understand the nature of the concerns. For the remaining 18 applications, the GAC requested additional time for further consideration or noted the concerns of specific governments. After the advice was issued, ICANN provided applicants with the opportunity to submit a response to the ICANN Board (in this case, the NGPC). The NGPC considered the advice and applicant responses, and then the NGPC addressed the advice on an application-by-application basis.

Table 3.1.i provides a summary of the 26 applications that received application-specific GAC Advice.

*Table 3.1.i: Summary of the 26 Applications that Received Application-Specific GAC Advice*

Type of Applications	Number of Applications
AGB Section 3.1 part I (consensus)	6
AGB Section 3.1 part II (expressed concerns)	2
AGB Section 3.1 part III (remediation suggested)	0
Other application-specific advice <sup>155</sup>	18
<b>Total</b>	<b>26</b>

In addition to the application-specific GAC Advice described in the AGB, the GAC’s Beijing Communiqué included safeguard advice applicable to broad categories of strings. Annex 1 of the Beijing Communiqué stated, “strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws.”<sup>156</sup> The GAC proposed specific safeguards that would apply to a broad category of strings related to “consumer protection, sensitive strings, and regulated markets.” The Annex listed specific strings, referred to as “Category 1” strings.

The GAC also provided advice relating to restricted registration policies referred to as “Category 2” advice in Annex 1 of the Beijing Communiqué. Part 1 of Category 2 advice stated that for strings mentioned under Category 1, “the registration restrictions should be appropriate for the types of risks associated with the TLD” and that “[t]he registry operator should administer access in these kinds of registries in a transparent way that does not give undue preference to any registrars or registrants, including itself, and shall not subject registrars or registrants to an undue disadvantage.”

Part 2 of Category 2 advice stated that, “For strings representing generic terms, exclusive registry access should serve a public interest goal.”<sup>157</sup> The Annex also included a list of strings that the GAC considered to be generic, where the applicant was proposing to provide exclusive registry access. These strings are referred to as “Category 2” strings.

There were a total of 491 applications and 212 strings specified in the GAC Category 1 and 2 lists. Figures 3.1.ii and 3.2.iii show the distribution of the applications and strings affected by GAC Category 1 and 2 Advice.

<sup>155</sup> In some instances, the GAC advised ICANN that it required additional time to finalize any potential GAC Advice.

<sup>156</sup> Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing, People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>

<sup>157</sup> Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing, People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>

Figure 3.1.ii: Distribution of the 491 Applications Affected By GAC Category 1 and 2 Advice

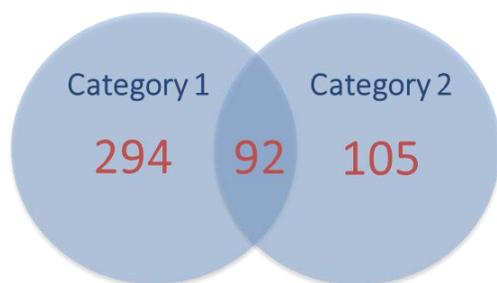
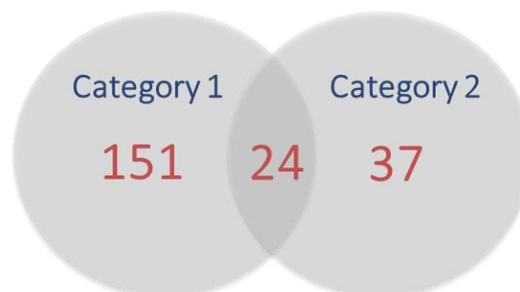


Figure 3.1.iii: Distribution of the 212 Strings Affected By GAC Category 1 and 2 Advice



### Impact on Applications

AGB Section 3.1 stated, “The receipt of GAC Advice [would] not toll the processing of any application (i.e., an application [would] not be suspended but [would] continue through the states of the application process).” However, GAC Operating Principle 48 stated: “The ICANN Board shall consider any advice from the GAC prior to taking action.”<sup>158</sup> In implementation, applications affected by application-specific and Category 1 and 2 GAC Advice were not allowed to proceed to the next step in the Program until the GAC Advice was addressed. This allowed the ICANN Board time to solicit public comment,<sup>159</sup> solicit applicant responses to GAC Advice,<sup>160</sup> and consider the comments and responses received. Further, it required time for the ICANN Board to discuss the advice with the GAC and consult with the community as appropriate on implementation plans to address the advice. Finally, it prevented ICANN and the applicants from making commitments such as resolving contention or executing a Registry Agreement (RA) based on unknown circumstances.

### Addressing GAC Advice

The way ICANN addressed application-specific GAC Advice was discussed above. With regards to GAC Category 1 Advice, ICANN implemented the advice through the use of public interest commitments (PICs). The PICs concept was originally developed to address GAC Advice in the Toronto Communiqué,<sup>161</sup> as a mechanism for applicants to elect to transform application statements into binding contractual commitments. The implementation of GAC Category 1 Advice leveraged the PICs concept by requiring the incorporation of specific safeguards into the PIC Specification of the RAs of applications subject to GAC Category 1 Advice.<sup>162</sup> The ICANN Board consulted with the community on

<sup>158</sup> ICANN Governmental Advisory Committee. (Amended October 2011) Principles: Article XII – Provision of Advice to the ICANN Board. Retrieved from

<https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles#GACOperatingPrinciples-XII>

<sup>159</sup> ICANN. (23 April 2013) Public Comment: New gTLD Board Committee Consideration of GAC Advice. Retrieved from

<https://www.icann.org/public-comments/gac-safeguard-advice-2013-04-23-en>

<sup>160</sup> ICANN. GAC Advice: GAC Communiqués & Applicant Responses. Retrieved from

<http://newgtlds.icann.org/en/applicants/gac-advice#communiques>

<sup>161</sup> ICANN Governmental Advisory Committee. (17 October 2012) GAC Communiqué – Toronto, Canada. Retrieved from

[https://gacweb.icann.org/download/attachments/27132070/FINAL\\_Toronto\\_Communique\\_20121017.pdf](https://gacweb.icann.org/download/attachments/27132070/FINAL_Toronto_Communique_20121017.pdf)

<sup>162</sup> ICANN. (5 February 2013) Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification. Retrieved from <https://www.icann.org/resources/pages/base-agreement-2013-02-05-en>

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the Safeguard Advice via a public comment period,<sup>163</sup> shared the proposed implementation framework with the GAC,<sup>164</sup> and ultimately, the implementation framework<sup>165</sup> was adopted by the NGPC on 5 February 2014.<sup>166</sup> The implementation framework classified each Category 1 string as requiring one of three levels of safeguards:

- Regulated sectors/open entry requirements in multiple jurisdictions (273 applications)
- Highly regulated sectors/closed entry requirements in multiple jurisdictions (101 applications)
- Special safeguards required (12 applications)

The adoption of the GAC Category 1 implementation framework provided predictability and consistency in terms of how Category 1 applications were processed and allowed ICANN to invite applications that previously were not allowed to move forward to the next step of the Program because of the pending GAC Advice to begin the contracting process (see Section 5.1: Contracting of this report).

To address Part 1 of GAC Category 2 Advice, on 25 June 2013, the NGPC directed staff to update the RA to include Specification 11, Section 3(d), which stated, “Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing, and adhering to clear registration policies.”<sup>167</sup>

With regard to Part 2 GAC Category 2 Advice, the NGPC passed a resolution directing staff how to process applications for proposed exclusive generic TLDs on 21 June 2015.<sup>168</sup> However, in the interest of allowing affected applications to move forward in the application process towards contention resolution and contracting before the NGPC had determined how to process applications for proposed exclusive generic TLDs, on 28 September 2013, the NGPC passed a resolution directing staff “to move forward with the contracting process for applicants for strings identified in the Category 2 Safeguard Advice that are prepared to enter into the Registry Agreement as approved.”<sup>169</sup> Section 3.d of Specification 11 of the approved Registry Agreement stated that “Registry Operator of a ‘Generic String’ TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s ‘Affiliates’ (as defined in Section 2.9(c) of the Registry Agreement).”<sup>170</sup> The adoption of this resolution by the NGPC allowed the

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<sup>163</sup> ICANN. (23 April 2013) New gTLD Board Committee Consideration of GAC Safeguard Advice. Retrieved from <https://www.icann.org/public-comments/gac-safeguard-advice-2013-04-23-en>

<sup>164</sup> S. Crocker, ICANN Board of Directors. (29 October 2013) Letter from Stephen D. Crocker to Heather Dryden. Retrieved from <https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf>

<sup>165</sup> ICANN. (5 February 2014) GAC Category 1 Strings: Annex 2 - ICANN NGPC Resolution No. 2014.02.05.NG01. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>

<sup>166</sup> ICANN. (5 February 2014) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>

<sup>167</sup> ICANN. (2 July 2013) Registry Agreement. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-item-1d-02jul13-en.pdf>

<sup>168</sup> ICANN. (21 June 2015) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>

<sup>169</sup> ICANN. (28 September 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-28sep13-en.htm#2.a>

<sup>170</sup> ICANN. (9 January 2014) Registry Agreement. Retrieved from <http://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf>

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majority of the applications subject to GAC Category 2 Advice to move forward in the application process towards contention resolution or contracting.

On 21 June 2015, the NGPC passed a resolution requesting that the “GNSO include the issue of exclusive registry access for generic strings serving a public interest goal as part of the policy work it is planning to initiate on subsequent rounds of the New gTLD Program.”<sup>171</sup> Further, the resolution directed staff to “proceed with initiating other New gTLD Program processes” for the remaining applications that proposed to provide exclusive registry access for a generic string. Exclusive generic applicants for non-contended strings or prevailing in contention resolution were given the option to submit a change request to no longer be exclusive generic TLDs, to defer their applications to the next application round of the New gTLD Program, or to withdraw their applications.

Advice on categories of strings was not contemplated by the AGB, and it presented challenges in implementation. The unanticipated form of GAC Advice and the issues that were raised were the subject of multiple conversations between the ICANN Board and the community. Ultimately, changes were made to the New gTLD Program and to the Registry Agreement (see Section 5.1: Contracting of this report), reducing the level of predictability available to applicants. It should be noted that the subject of public interest guidance was identified by the ICANN Board as a topic that may be appropriate for discussion by the GNSO.<sup>172</sup>

### 3.1.5 Conclusion

Module 3 of the AGB described three forms that GAC Advice on new gTLD applications might take. For the advice that came in a form contemplated by the AGB, ICANN implemented the advice in a manner consistent with the AGB. However, the advice that impacted the vast majority of applications subject to GAC Advice did not take one of these forms. As a result, ICANN required a significant amount of time to implement the advice, as implementation involved public comment and community discussion, applicant responses to GAC Advice, and NGPC consideration of the advice. Whenever possible, ICANN developed a framework to move applications forward before the GAC Advice had been resolved (e.g., in the case of GAC Category 2 Advice), but as over 500 applications were subject to GAC Advice (excluding GAC Advice applicable to all applications) many applications were still delayed. For future rounds, engagement with the GAC should be continued in order to ensure that its input is incorporated into relevant processes as early as possible.

In summary:

**3.1.a** Continue engagement with the GAC during the review process and the development of future procedures to ensure that its input is incorporated into relevant processes as early as possible

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<sup>171</sup> ICANN. (21 June 2015) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-06-21-en#2.a>

<sup>172</sup> ICANN. (17 November 2014). Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

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## 3.2 Objections and Dispute Resolution

### 3.2.1 Introduction

The Objections and Dispute Resolution process provided an opportunity for parties with standing to have their concerns considered by an expert or panel of experts. Objections could be filed on four defined grounds (Legal Rights, String Confusion, Community, and Limited Public Interest), each subject to their own standards. This section of the Program Implementation Review report discusses the following aspects of the Objection and Dispute Resolution process:

- Objections Grounds and Standards
- Management of Dispute Resolution Service Providers
- Objections Process
- Review Mechanism
- Independent Objector

### 3.2.2 Relevant Guidance

The following guidance is relevant to the topic of Objections and Dispute Resolution and will be discussed in further detail in Sections 3.2.3 and 3.2.4 of this report:

- GNSO Principle G: “The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.”<sup>173</sup>
- GNSO Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.”
- GNSO Recommendation 3: “Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.”
- GNSO Recommendation 6: “Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.”
- GNSO Recommendation 12: “Dispute resolution and challenge processes must be established prior to the start of the process.”
- GNSO Recommendation 20: “An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.”

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<sup>173</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

- GNSO Implementation Guideline H\*:

*Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:*

- (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and*
- (ii) a formal objection process is initiated.*

*Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.*

*Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.*

- GNSO Implementation Guideline H: “External dispute providers will give decisions on objections.”
- GNSO Implementation Guideline P: This Implementation Guideline provided additional information on the process, definitions, and guidelines relating to GNSO Recommendation 20 on Community Objections.
- GNSO Implementation Guideline R: “Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>174</sup>
- Applicant Guidebook, Section 3.2: Public Objection and Dispute Resolution Procedures
- Applicant Guidebook, Section 3.3: Filing Procedures
- Applicant Guidebook, Section 3.4: Objection Processing Overview
- Applicant Guidebook, Section 3.5: Dispute Resolution Principles (Standards)
- Applicant Guidebook, Attachment to Module 3: New gTLD Dispute Resolution Procedure
- ICANN Board New gTLD Program Committee Resolution 2013.07.13.NG02 - 2013.07.13.NG04 (13 July 2013): Ombudsman Letters to Board<sup>175</sup>
- ICANN Board New gTLD Program Committee Resolution 2013.06.25.NG07 (25 June 2013): Singular & Plural Versions of the Same String as a TLD<sup>176</sup>
- New gTLD Program Committee resolution 2014.10.12.NG02 - 2014.10.12.NG03 (12 October 2014): Perceived Inconsistent String Confusion Expert Determinations<sup>177</sup>

### 3.2.3 Background

GNSO Recommendation 12 stated, “Dispute resolution and challenge processes must be established prior to the start of the process.” Additionally, the GNSO Recommendations on the Introduction of

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<sup>174</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>175</sup> ICANN. (13 July 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-07-13-en#1.b>

<sup>176</sup> ICANN. (25 June 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-25-en#2.d>

<sup>177</sup> ICANN. (12 October 2014) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b>

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New Generic Top-Level Domains provided policy guidance which led to the development of the four objection grounds defined in the AGB:

- The Legal Rights Objection ground was developed in support of GNSO Recommendation 3: “Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.”
- The String Confusion Objection ground was developed in support of GNSO Recommendation 2: “Strings must not be confusingly similar to an existing top-level domain or a reserved name.”
- The Community Objection ground was developed in support of GNSO Recommendation 20: “An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.”
- The Limited Public Interest Objection ground was developed in support of GNSO Recommendation 6: “Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.”

These objection grounds provided safeguards for parties with standing to have their concerns considered by an expert or a panel of experts. The objection grounds were each subject to their own standing requirements and standards, which were developed and finalized as part of the AGB development process.

The dispute resolution proceedings were administered by three dispute resolution service providers (DRSPs), which were selected through a public call for expressions of interest:<sup>178</sup>

- The International Centre for Dispute Resolution (ICDR) administered String Confusion Objections
- The Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) administered Legal Rights Objections
- The International Centre for Expertise of the International Chamber of Commerce (ICC) administered Community Objections and Limited Public Interest Objections

For Legal Rights Objections, Community Objections, and Limited Public Interest Objections, the loss of a dispute resolution proceeding resulted in an application no longer proceeding in the Program. The loss of a dispute resolution proceeding for a String Confusion Objection filed by the registry operator of an existing TLD also resulted in an application no longer proceeding in the Program. For String Confusion Objections filed by another new gTLD applicant, the loss of a dispute resolution proceeding resulted in placement into string contention with another application.

The AGB provided for an Independent Objector, who would file objections and “[act] solely in the best interests of the public who use the global internet.” The Independent Objector “[could] file objections against ‘highly objectionable’ gTLD applications to which no objection [had] been

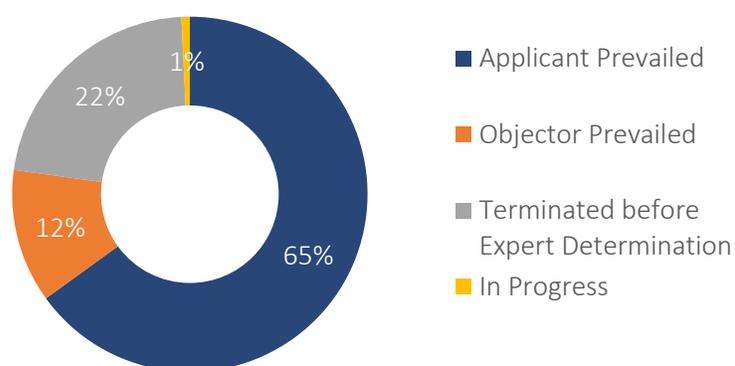
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<sup>178</sup> ICANN (2007 December 21). Announcement: ICANN Calls for Expressions of Interest from Potential Dispute Resolution Service Providers for the New gTLD Program. Retrieved from: <https://www.icann.org/news/announcement-2007-12-21-en>.

filed.”<sup>179</sup> Per Section 3.2.5 of the AGB, in order for the Independent Objector to file an objection, there had to be at least one comment in opposition to the application made in the public sphere.” The concept of the Independent Objector was introduced in draft version 2 of the AGB,<sup>180</sup> and served to prevent “obviously objectionable” applications from proceeding through the Program without objection.<sup>181</sup> The Independent Objector was selected through a public RFI process.<sup>182</sup> Alain Pellet, a professor and practitioner of law, was announced as the Independent Objector on 14 May 2012.<sup>183</sup>

The Objection filing window opened on 13 June 2012 and closed on 13 March 2013. A total of 263 objections were filed. As of 31 July 2015, 261 objections have been completed, and two are in progress. Figure 3.2.i provides a summary of objection outcome.

Figure 3.2.i: Overall Objection Outcome



## 3.2.4 Assessment

### 3.2.4.1 OBJECTIONS GROUNDS AND STANDARDS

The AGB defined four objection grounds (Legal Rights, String Confusion, Community, and Limited Public Interest), each with their own standing requirements and principles. The DRSPs administered the dispute resolution proceedings using the principles defined in the AGB.

<sup>179</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 3.2.5: Independent Objector. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>180</sup> ICANN. (18 February 2009) gTLD Draft Applicant Guidebook Version 2. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf>

<sup>181</sup> ICANN. (18 February 2009) New gTLD Draft Applicant Guidebook: Analysis of Public Comment. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf>

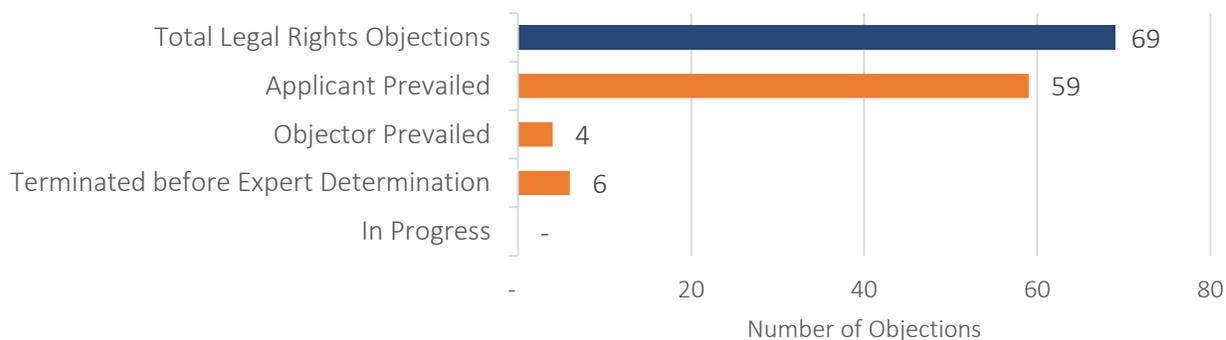
<sup>182</sup> ICANN. (21 November 2011) Announcement: New gTLD Program: ICANN Seeks Independent Objector. Retrieved from: <https://www.icann.org/news/announcement-3-2011-11-21-en>

<sup>183</sup> ICANN. (14 May 2012) Announcement: Independent Objector for New gTLD Program Selected. Retrieved from <https://www.icann.org/news/announcement-2012-05-14-en>

### Legal Rights Objections

AGB Section 3.2.1 defined the standard for Legal Rights Objections as, “The applied-for gTLD string infringe[d] the existing legal rights of the objector.” The standards for Legal Rights Objections were drawn from real-world disputes and were based on existing trademark and intellectual property laws. Figure 3.2.ii provides a summary of Legal Rights Objections outcome.

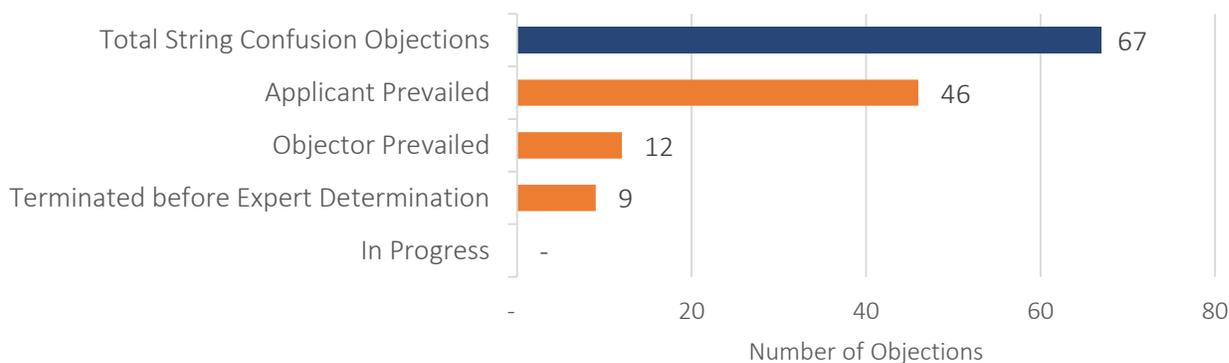
Figure 3.2.ii: Legal Rights Objections Outcomes



### String Confusion Objections

AGB Section 3.2.1 defined the standard for String Confusion Objections as, “The applied-for gTLD string [was] confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.” This standard was developed to capture the intention of avoiding user confusion caused by delegation of similar TLD strings. Figure 3.2.iii provides a summary of String Confusion objection outcome.

Figure 3.2.iii: String Confusion Objection Outcomes



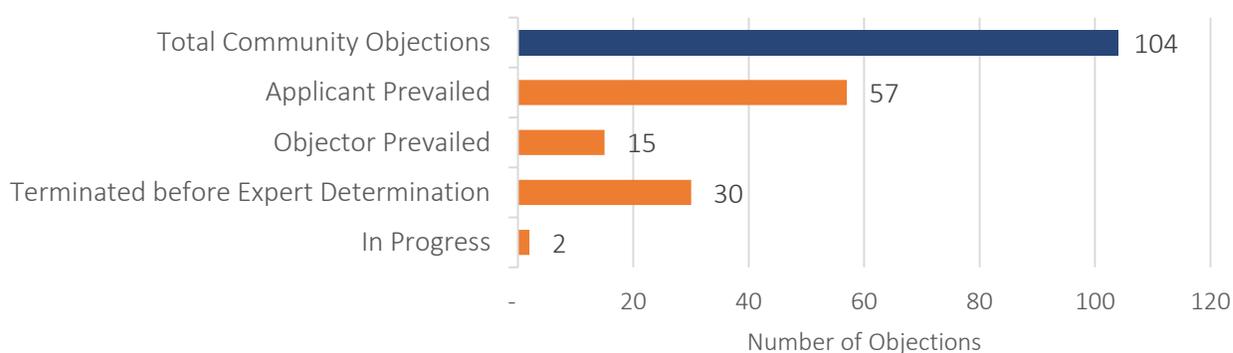
The String Confusion Objections process in this application round provided real-world examples of String Confusion Objections and outcomes. These examples could be used to aid the development of additional standards for String Confusion Objections and the String Similarity review as applicable in future rounds. (It should be noted that during this application round, the standards for String

Confusion Objections and the String Similarity review were different. Whereas the String Similarity review only assessed visual similarity, String Confusion Objections could be filed based on any type of similarity, including visual, aural, or similarity of meaning. For more information on the String Similarity review, see Section 2.3: String Similarity Evaluation of this report.)

### Community Objections

AGB Section 3.2.1 defined the standard for Community Objections as “substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.” Figure 3.2.iv provides a summary of Community Objection outcomes.

Figure 3.2.iv: Community Objections Outcomes



The AGB provided for two distinct processes that related to the concept of communities: Community Objections and Community Priority Evaluation (CPE) (see Section 4.1: Community Priority Evaluation of this report). While both processes related to communities, the processes served different purposes (a community application that prevailed in CPE eliminated all directly contending standard applications, while a Community Objection could eliminate a single application). Accordingly, the standards used for consideration of applications in Community Objections and CPE were different. The subject of community considerations has been identified by the ICANN Board as a topic that may be appropriate for discussion by the GNSO.<sup>184</sup>

### Limited Public Interest Objections

AGB Section 3.2.1 defined the standard for Limited Public Interest Objections as, “[. . .] the applied-for gTLD string [was] contrary to generally accepted legal norms of morality and public order that [were] recognized under principles of international law.”

In relation to the standing requirements for the other grounds, the standing requirements for Limited Public Interest Objections were very inclusive. Anyone could file a Limited Public Interest Objection.

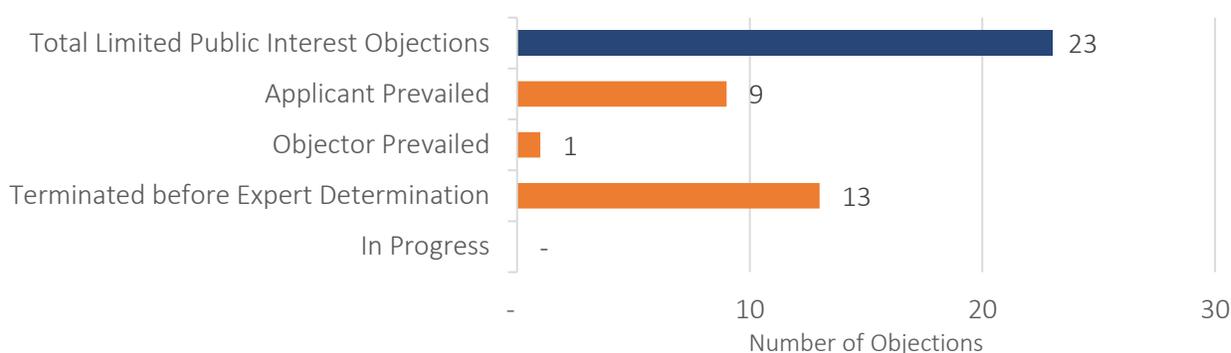
<sup>184</sup> ICANN. (17 November 2015) Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

To avoid abuse of this objection grounds due to its inclusive nature, Limited Public Interest Objections were subject to a “quick look” procedure. AGB Section 3.2.2.3 stated,

*Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a “quick look” procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.*

Despite the inclusive standing base, of the four objection grounds, the fewest Limited Public Interest Objections were filed. Figure 3.2.v provides a summary of Limited Public Interest Objection outcomes.

Figure 3.2.v: Limited Public Interest Objections Outcomes



The objection and dispute resolution processes were complex and previously untested. This round provided real-world examples of objections and determinations, so there is a stronger basis on which to develop the standards and procedures for future rounds. Additionally, concerns from both objectors and objected-to applicants that were raised through ICANN’s Accountability Mechanisms<sup>185</sup> should also be reviewed to inform any development work for the next round. Accountability Mechanisms were filed relating to objections under all of the objection grounds. Table 3.2.i provides a summary of ICANN Accountability Mechanisms filed by objection ground as of 31 July 2015.

Table 3.2.i ICANN Accountability Mechanisms Filed by Objection Ground

Ground	Approximate # of Related Accountability Mechanisms Filed
Legal Rights	8
String Confusion	10
Community	47
Limited Public Interest	3

<sup>185</sup> ICANN. (Amended 30 July 2014) Bylaws for Internet Corporation for Assigned Names and, Article IV: Accountability and Review. Retrieved from <https://www.icann.org/resources/pages/governance/bylaws-en/#IV>

### 3.2.4.2 MANAGEMENT OF DISPUTE RESOLUTION SERVICE PROVIDERS (DRSPS)

The dispute resolution process as included in the AGB is an independent process administered by dispute resolution service providers. These DRSPs were selected through a public call for expressions of interest<sup>186</sup> before the AGB was finalized, so that ICANN and the DRSPs could work together to finalize the guidelines and processes. Each of the DRSPs selected by ICANN was a globally recognized firm with experience in dispute resolution. See Section 8.2: Service Provider Coordination of this report for more information on these DRSPs.

Recognizing that all of the selected DRSPs are world-renowned experts in the field of dispute resolution, and to support the intent to maintain independence in the dispute resolution process, ICANN did not attempt to direct or provide the DRSPs with interpretive guidance that might unduly influence the outcomes. However, ICANN received comments from the community regarding the areas of expertise of the panelists and suggestions that the panelists lacked training on the objection standards.<sup>187</sup> Given the untested nature of the standards of the objection grounds, ICANN may wish to provide training for the DRSPs in the next round to ensure that all expert panelists have a consistent baseline understanding of the relevant objection grounds.

As provided for by the AGB,<sup>188</sup> each Dispute Resolution Service Provider (DRSP) supplemented the AGB with its own respective procedures, which were published on the various DRSPs' websites.<sup>189,190,191</sup> ICANN received many questions from applicants regarding procedures that are published on the DRSPs' websites, potentially due to difficulties in finding this information on each of the DRSPs' websites or of being unsure of the relevant source for particular information. Examples of the types of questions received included fees and refunds, expert panelist selection criteria and process, and filing deadlines.

Although the DRSPs and ICANN published fee information in advance of the objection filing window,<sup>192</sup> during the window, ICANN received questions about fees and refund amounts, feedback that fee information was not easily accessible, and in some cases, feedback that the fees charged by the DRSPs were high. To address these areas of interest, ICANN hosted a webinar<sup>193</sup> to provide clarification on the DRSPs' processes, procedures, and fees. However, some of these questions might

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<sup>186</sup> ICANN (21 December 2007). Announcement: ICANN Calls for Expressions of Interest from Potential Dispute Resolution Service Providers for the New gTLD Program. Retrieved from <https://www.icann.org/news/announcement-2007-12-21-en>

<sup>187</sup> S. Sahjwani, J. Westerdal. (24 September 2013) Letter from Radix Registry, and Fegistry, LLC to ICANN. Retrieved from <https://www.icann.org/en/system/files/correspondence/sahjwani-westerdal-to-chalaby-et-al-24sep13-en.pdf>

<sup>188</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Attachment to Module 3: New gTLD Dispute Resolution Procedure, Article 4. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>189</sup> International Centre for Dispute Resolution (ICDR). (10 January 2012) Supplementary Procedures for String Confusion Objections (Rules). Retrieved from [https://www.adr.org/cs/idcplg?IdcService=GET\\_FILE&dDocName=ADRSTG\\_017409&RevisionSelectionMethod=LatestReleased](https://www.adr.org/cs/idcplg?IdcService=GET_FILE&dDocName=ADRSTG_017409&RevisionSelectionMethod=LatestReleased)

<sup>190</sup> International Chamber of Commerce (ICC). (November 2013) ICC Rules for Expertise. Retrieved from <http://www.iccwbo.org/WorkArea/DownloadAsset.aspx?id=2147489562>

<sup>191</sup> World Intellectual Property Organization (WIPO). (20 June 2011) WIPO Rules for New gTLD Dispute Resolution. Retrieved from <http://www.wipo.int/export/sites/www/amc/en/docs/wipolrorules.pdf>

<sup>192</sup> ICANN. Objection and Dispute Resolution. Retrieved from <http://newgtlds.icann.org/en/program-status/odr>

<sup>193</sup> ICANN. (29 January 2013). New gTLD Objection Process. Retrieved from <http://newgtlds.icann.org/en/program-status/objection-dispute-resolution/process-29jan13-en.pdf>

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have been avoided or addressed earlier in the process if ICANN had provided centralized information from all of the DRSPs about the procedures that each would follow with respect to refunds and in calculating estimated fees for those objection proceedings based on hourly rates, rather than fixed fees. Additionally, in regards to the feedback received about high fees, it should be noted that quality and expertise of the expert panelists were major factors in the selection of the DRSPs, which correlated to the amount of fees charged by the DRSPs.

For each objection filed, the expert selection process was managed by the DRSP administering the case, which used its established procedures and criteria to do so. For each case, the DRSPs selected experts in the field of dispute resolution who understood the applicable laws and how to apply them in dispute cases. These experts selected were also experienced in considering arguments presented by two sides and in making determinations based on the applicable laws and the arguments presented. Regarding expert panelist selection criteria and process, ICANN received community comments citing lack of transparency in the expert panelist selection process and in the experts' qualifications as they related to the dispute resolution proceedings.<sup>194</sup> To provide greater transparency in the process in future rounds, ICANN could ask the DRSPs to provide more information on their selection processes before Objections are filed.

Regarding filing deadlines, there were at least six instances where the outcome of an objection was impacted by the objector or applicant missing the filing deadline by several minutes.<sup>195</sup> The AGB defined precise deadlines for filing and responding to objections. Soon after the close of the objections filing window, the DRSPs agreed to provide a five-minute grace period for objection submissions. Even with this grace period, applicants/objectors were in some cases dissatisfied with the decisions made by the DRSPs in strictly adhering to the AGB-defined deadlines. Some applicants/objectors filed complaints with the ICANN Ombudsman, who reviewed the complaints and made a formal recommendation to the NGPC. The NGPC provided guidance to the DRSPs and encouraged them to use their discretion on whether to grant extensions.<sup>196</sup>

*Resolved (2013.07.13.NG04), in the interests of fairness and reasonableness, notwithstanding the deadlines set out in the Applicant Guidebook, in the future, the DRSPs are permitted and encouraged to use their discretion, in light of the facts and circumstances of each matter, and in cases where it is shown that the affected party is making a good faith effort to comply with the deadlines, as to whether to grant extensions, or deviate from the deadlines set forth in the Applicant Guidebook.*

In light of the observations made during implementation and the NGPC's 13 July 2013 resolution, the community may wish to consider whether such discretion should be accounted for in the standard process. If discretion were permitted, it would be beneficial for the DRSPs to notify ICANN of deviations from the standard process, and for ICANN to discuss such cases with all of the DRSPs to ensure that all parties are treated consistently across providers.

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<sup>194</sup> S. Sahjwani, Radix FZC et al. (1 November 2013) Letter from Radix FZC et al. to ICANN. Retrieved from <https://www.icann.org/en/system/files/correspondence/sahjwani-et-al-to-chalaby-et-al-01nov13-en.pdf>

<sup>195</sup> ICANN. (19 October 2013) Reconsideration Request 13-13:Christopher Barron. Retrieved from <https://www.icann.org/resources/pages/13-13-2014-02-13-en>

<sup>196</sup> ICANN. (13 July 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-07-13-en#1.b>

### 3.2.4.3 OBJECTIONS PROCESS

ICANN's implementation of the Objection and Dispute Resolution processes largely aligned to the processes defined in the AGB.

#### *Timeline*

One area where implementation was not in alignment with the AGB was in terms of the timeline. The AGB anticipated that the objection filing window would last for approximately seven months, and that “The objection filing period will close following the end of the Initial Evaluation period [ . . . ], with a two-week window of time between the posting of the Initial Evaluation results and the close of the objection filing period.”<sup>197</sup>

In implementation, the objection-filing window opened on 13 June 2012 and closed on 13 March 2013. This objection window of nine months exceeded the seven-month window called for in the AGB. Further, it did not provide for the two-week window of time between the posting of the IE results (which occurred on 22 March 2013) and the close of the objection filing period. While this did not align with the AGB, the AGB did not account for prioritization (see Section 1.2: Prioritization of this report) and the impact of a longer IE period on objection filing. Extending the objection filing timeframe by six additional months to beyond the completion of IE would not have supported certainty and predictability for applicants. While the first IE results were not published until 22 March 2013, the results of the String Similarity review and the publication of contention sets occurred on 26 February 2013. Ultimately, the objection filing window was extended to 13 March 2015, which allowed for a two-week period after string contention sets were published prior to the close of the objection window for concerned parties to decide whether to file String Confusion Objections.

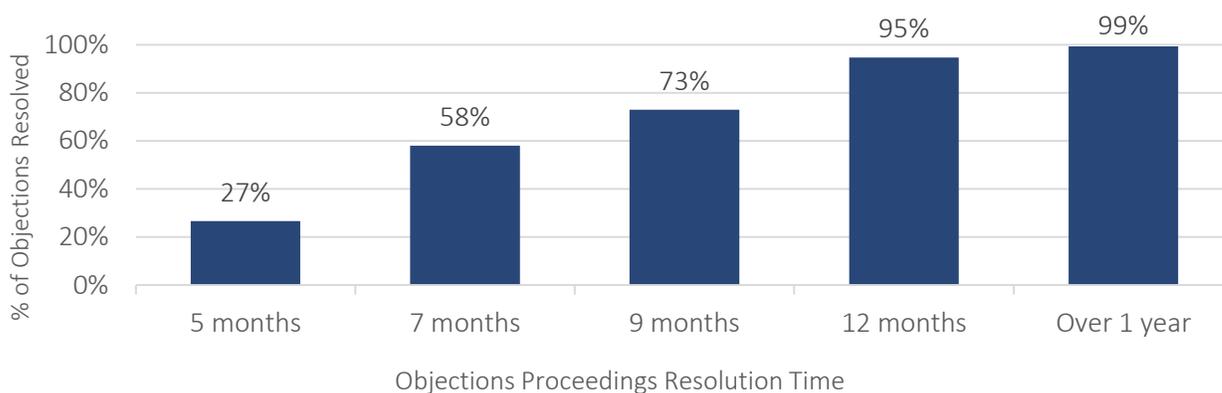
The timeline for objections to be considered and processed was also longer than contemplated by the AGB. The AGB estimated that “[d]ispute resolution proceedings, where applicable [were] expected to be completed for all applications within approximately a 5-month time frame.”<sup>198</sup> As of 31 July 2015, 28 months after the close of the objections filing window, two objections are still pending. Over a quarter of the objections completed within five months (AGB timeline). After 12 months, 95% were complete (See Figure 3.2.vi).

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<sup>197</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 1.1.2.6: Objection Filing. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>198</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 1.1.2.9: Dispute Resolution. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

Figure 3.2.vi: Objection Proceedings Completed (Cumulative)



The delays to the dispute resolution proceedings have had both operational causes (e.g., volume of objections filed and the DRSPs' processes) and causes due to the parties (e.g., negotiation and requesting stays).

### Consolidation

The AGB provided that consolidation of dispute resolution cases could occur, that is, individual objections could be considered by the same expert and processed at the same time. After the DRSPs had received all objections, they could elect to consolidate certain objections (e.g., multiple objections filed against the same application on the same grounds). Section 3.4.2 of the AGB stated, "ICANN [. . .] strongly encourage[s] all of the DRSPs to consolidate matters whenever practicable," but it did not require consolidation. In this application round, the DRSP, the Panel, or the parties could suggest consolidation, but per the DRSPs' procedures, the parties had to agree in order for the cases to be consolidated. In some cases, a party may not have wished to consolidate objections, due to reasons of confidentiality or due to the specific arguments presented in their case.

In at least one instance, the parties decided to not consolidate, and the outcomes to the objections were different. ICANN received comments from the community on consolidation,<sup>199,200</sup> and questioned whether consolidation could have prevented perceived conflicting determinations.<sup>201</sup> Mandatory consolidation of cases might increase efficiency by reducing the amount of administrative work for the DRSPs, costs for the parties, and the overall objections timeline. However, if consolidation were required, criteria would have to be defined for which cases are/are not consolidated, and consolidation might not be appropriate in all cases.

<sup>199</sup> S Hammock, United TLD Holdco Ltd. (4 November 2013) Letter from Statton Hammock to Cherine Chalaby. Retrieved from <https://www.icann.org/en/system/files/correspondence/hammock-to-chalaby-04nov13-en.pdf>

<sup>200</sup> P. Young, Famous Four Media. (9 September 2013) Letter from Peter Young to Cherine Chalaby. Retrieved from <https://www.icann.org/en/system/files/correspondence/young-to-chalaby-09sep13-en.pdf>

<sup>201</sup> ICANN. (28 September 2013). ICANN New gTLD Program Committee Paper No. 2013.09.28.2c. Retrieved from <https://www.icann.org/en/system/files/bm/briefing-materials-1-2-28sep13-en.pdf>

## Conditions

Once the Expert Panel had reached its determination, the DRSPs issued the determination directly to the parties (i.e., applicant and objector). The DRSPs also shared the determination with ICANN. ICANN accepted the determinations in that ICANN published them to the New gTLD microsite,<sup>202</sup> and processed the applications accordingly by permitting them to move forward in the application process, updating the contention set if appropriate, or updating the application status. ICANN observed that there were instances where panelists included conditions or proposed remedies in their expert determinations.<sup>203,204</sup> The AGB did not contemplate such conditions and did not provide for these conditions or remedies to be considered before ICANN accepted the determinations. The community may wish to consider whether an additional opportunity for discussion of these conditions would be beneficial to the parties.

### 3.2.4.4 REVIEW MECHANISM

After the expert panel reached a determination, this determination was shared with the parties and then with ICANN. ICANN accepted the determination and acted on the determination as appropriate (i.e., allowed the application to proceed, updated the application status, or updated the contention set). The AGB did not provide for a process by which ICANN or any other body could conduct a substantive review of an expert panelist's determination. ICANN received comments from the community about the lack of an appeal mechanism in the Objections process.<sup>205</sup> Some parties chose to invoke ICANN Accountability Mechanisms<sup>206</sup> to have their cases considered by the ICANN Board or ICANN Ombudsman. While the ICANN Accountability Mechanisms provided parties with an opportunity to challenge staff or board action or inaction in terms of procedure, these are procedures broadly applicable to ICANN's accountability in its work, and were not designed to provide an opportunity for the merits of an objections case to be reviewed. However, two of the Accountability Mechanisms invoked<sup>207,208</sup> led to the NGPC's adoption of a Final Review Mechanism for a few limited objections.<sup>209</sup>

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<sup>202</sup> See <http://newgtlds.icann.org/en/program-status/odr/determination>

<sup>203</sup> The International Centre for Expertise of the International Chamber of Commerce. (16 November 2013) Case No. EXP/390/ICANN/7: The International Lesbian Gay Bisexual Trans and Intersex Association vs. Afiliás Limited. Retrieved from <http://newgtlds.icann.org/sites/default/files/drsp/25nov13/determination-1-1-868-8822-en.pdf>

<sup>204</sup> ICANN. (13 December 2013) Reconsideration Request 13-18: ILGA. Retrieved from: <https://www.icann.org/resources/pages/13-18-2014-02-13-en>

<sup>205</sup> ICANN Correspondence. (24 September 2013) Letter from Radix Registry, and Fegistry, LLC to ICANN. Retrieved from <https://www.icann.org/en/system/files/correspondence/sahjwani-westerdal-to-chalaby-et-al-24sep13-en.pdf>

<sup>206</sup> ICANN. Bylaws for the Internet Corporation for Assigned Names and Numbers, Article IV: Accountability and Review. Retrieved from <https://www.icann.org/resources/pages/governance/bylaws-en>

<sup>207</sup> ICANN. (4 September 2013) Reconsideration Request 13-9: Amazon EU S.á.r.l.. Retrieved from <https://www.icann.org/resources/pages/13-9-2014-02-13-en>.

<sup>208</sup> ICANN. (5 September 2013) Reconsideration Request 13-10: Commercial Connect, LLC. Retrieved from <https://www.icann.org/resources/pages/13-10-2014-02-13-en>.

<sup>209</sup> ICANN. (12 October 2014) ICANN Board New gTLD Program Committee Resolution 2014.10.12.NG02 – 2014.10.12.NG03: Perceived Inconsistent String Confusion Objection Expert Determinations. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b>

For these particular String Confusion Objections, the NGPC approved a review mechanism for two specific “perceived inconsistent” expert determinations, and suggested that the community consider whether a review process should be included in the next round. “[. . .] it is recommended that the development of rules and processes for future rounds of the New gTLD Program (to be developed through the multi-stakeholder process) should explore whether there is a need for a formal review process with respect to Expert Determinations.”<sup>210</sup>

### 3.2.4.5 INDEPENDENT OBJECTOR (IO)

The AGB called for an Independent Objector (IO), who would “not act on behalf of any particular persons or entities, but [would act] solely in the best interests of the public who use the global Internet.” The IO had standing to file on the grounds of Limited Public Interest and Community. Additionally, “Absent extraordinary circumstances, the IO [was] not permitted to file an objection to an application where an objection [had] already been filed on the same ground.”<sup>211</sup> Table 3.2.ii provides a summary of objections filed by the IO.

*Table 3.2.ii: Independent Objector’s Objections*

Total Objections Filed by IO and Admitted	23 <sup>212</sup>
Applications objected to by IO	19
Community Objections Filed by IO and Admitted	12
Limited Public Interest Objections Filed by IO and Admitted	11
Objections where IO Prevailed	5

The implementation of the IO’s processes did not align with the AGB in all cases, as the IO did not withdraw his objections in all cases when another objection to the same application on the same grounds was filed. In the context of the Objections and Dispute Resolution process, “grounds” refer to the four defined objection types (i.e., Limited Public Interest, Community, Legal Rights, and String Confusion), not to the arguments made within a specific objection.

The IO was subject to the same timeline as all objectors. The community may wish to consider providing the IO with an extended timeline, to allow him/her time to review the landscape of the objections submitted before making final decisions regarding filing of his/her objections.

Public comments were a consideration for the IO in filing objections. AGB Section 3.2.5 stated, “[. . .] the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.” However, in some instances it was unclear whether a comment made in the Application Comment Forum (see Section 1.5: Application Comments of this report) was

<sup>210</sup>ICANN. (12 October 2014) ICANN Board New gTLD Program Committee Resolution 2014.10.12.NG02 – 2014.10.12.NG03: Rationale for Resolutions 2014.10.12.NG02 – 2014.10.12.NG03. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b.rationale>

<sup>211</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 3.2.4: Independent Objector. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>212</sup> The IO filed 24 objections, but one of the objected-to applications withdrew before ICANN published the Dispute Announcement, so the Objection was not admitted as an Objection.

intended to object to the string/application or to be informational in nature.<sup>213</sup> The community may wish to provide additional clarification on what should be considered as a “comment in opposition.” Consideration should be taken to determine whether the IO should be required to cite the comments on which the objection is based, and whether verification of these comments should be included in the process.

## 3.2.5 Conclusion

The objection and dispute resolution processes served their intended purpose, “External dispute providers will give decisions on objections.”<sup>214</sup> ICANN received comments from the community about the lack of an appeal mechanism in the Objections process.<sup>215</sup> In the absence of an appeal mechanism in the Objections process, some parties chose to invoke ICANN Accountability Mechanisms<sup>216</sup> to have their cases considered by the ICANN Board or ICANN Ombudsman. Two of the Accountability Mechanisms invoked<sup>217,218</sup> led to the NGPC’s adoption of a Final Review Mechanism for a few limited objections.<sup>219</sup> Consideration should be given to whether the Final Review Mechanism procedures utilized in this round or other review mechanisms should be made available in future rounds.

The intended role of the IO was to file Limited Public Interest and Community Objections in the interests of the public who use the global Internet. While the IO did act in this capacity, there are opportunities for improvement in administering the IO processes (e.g., withdrawal of the IO’s objection if another objection to the same application on the same ground was filed and how comments made in the public sphere were considered prior to the filing of an objection).

In summary:

**3.2.a** Explore a potential review mechanism for the next round

**3.2.b** Consider opportunities for improvement in administering the IO processes (e.g., withdrawal of IO objection if another objection to the same application on the same ground was filed, how comments made in the public sphere were considered prior to the filing of an objection)

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<sup>213</sup> ICANN. (17 January 2014) Reconsideration Request 14-1: Medistry LLC. Retrieved from <https://www.icann.org/resources/pages/14-1-2014-02-14-en>

<sup>214</sup> GNSO Implementation Guideline H

<sup>215</sup> ICANN Correspondence. (24 September 2013) Letter from Radix Registry, and Fegistry, LLC to ICANN. Retrieved from <https://www.icann.org/en/system/files/correspondence/sahjwani-westerdal-to-chalaby-et-al-24sep13-en.pdf>

<sup>216</sup> ICANN. Bylaws for the Internet Corporation for Assigned Names and Numbers, Article IV: Accountability and Review. Retrieved from <https://www.icann.org/resources/pages/governance/bylaws-en>

<sup>217</sup> ICANN. (4 September 2013) Reconsideration Request 13-9: Amazon EU S.á.r.l.. Retrieved from <https://www.icann.org/resources/pages/13-9-2014-02-13-en>.

<sup>218</sup> ICANN. (5 September 2013) Reconsideration Request 13-10: Commercial Connect, LLC. Retrieved from <https://www.icann.org/resources/pages/13-10-2014-02-13-en>.

<sup>219</sup> ICANN. (12 October 2014) ICANN Board New gTLD Program Committee Resolution 2014.10.12.NG02 – 2014.10.12.NG03: Perceived Inconsistent String Confusion Objection Expert Determinations. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b>

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## Chapter 4: Contention Resolution

Contention sets were groups of two or more applications that have been deemed confusingly similar to one another. The Applicant Guidebook (AGB) specified two methods for placing applications into contention sets. The first was based on the review conducted by the String Similarity panel during Initial Evaluation. The String Similarity panel created contention sets of applications that had applied for the same string, had applied for a potential IDN variant of another applied-for string, or had identified two or more strings as confusingly similar to one another. The panel identified two non-exact match contentions sets, two IDN Variant Sets, and 230 exact match contention sets—for a total of 234 contention sets composed of 754 applications. The second way an application could be placed into contention with another application was through the String Confusion Objection process, whereby an applicant could object to another application on the grounds that the two strings were confusingly similar to one another. After the String Confusion Objection process, there were 233 contention sets composed of 771 applications (some contention sets were combined).

In cases where an application had been placed into a contention set, the AGB encouraged applicants to resolve contention among themselves.<sup>220</sup> In the absence of resolution by the contending applicants, string contention cases were resolved either through Community Priority Evaluation (CPE) (if a self-designated community applicant had elected it<sup>221</sup>) or through an auction.

Table 4.i provides a breakdown of total contention sets as well as a breakdown of how sets were resolved (i.e., CPE, Auction, or Self-Resolution) as of 31 July 2015. The first column (“Contention Sets Identified by the String Similarity Panel”) refers to the entire population of contention sets resulting from the String Similarity review. As mentioned, each applicant was eligible to file a String Confusion Objection to contest an absence of contention where expected. The second column refers to the new population of contention sets after the conclusion of String Confusion Objections (i.e., two sets were combined to reduce the number of contention sets from 234 to 233). Of the 19 sets that used CPE as a contention resolution mechanism, five applications prevailed.<sup>222</sup>

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<sup>220</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04, Section 1.1.2.10: String Contention. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>221</sup> An application could only be considered for Community Priority Evaluation (CPE) if the applicant designated the application as a community application at the time of application submission. Upon becoming eligible for CPE, discussed in the paper below, a self-designated community was also given the choice to elect to proceed through CPE.

<sup>222</sup> As of 31 July 2015, because of ICANN Accountability Mechanisms, explained later in this paper, only one set has been resolved via CPE (.OSAKA). Other applications have prevailed in CPE, but the sets are not yet resolved.

*Table 4.i: New gTLD Contention Sets*

<b>Contention Sets Identified from String Similarity Evaluation</b>	<b>Contention Sets after Completion of String Confusion Dispute Resolution</b>	<b>Total Sets Resolved</b>	<b>Sets which Utilized CPE</b>	<b>Applications Prevailed in CPE</b>	<b>Sets Resolved via Auction</b>
234	233	205	19	5	13

Figures 4.i, 4.ii and 4.iii help illustrate the breakdown of sets and applications further:

Figure 4.i: Contention Set Status

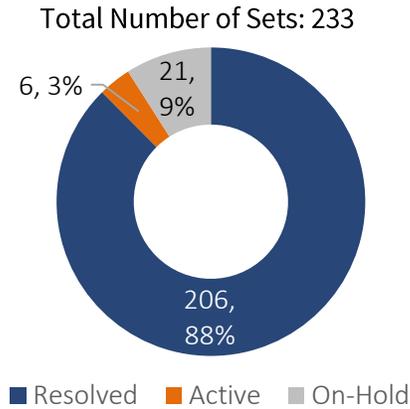


Figure 4.ii: Resolution Method

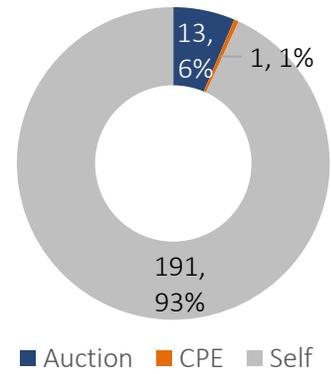
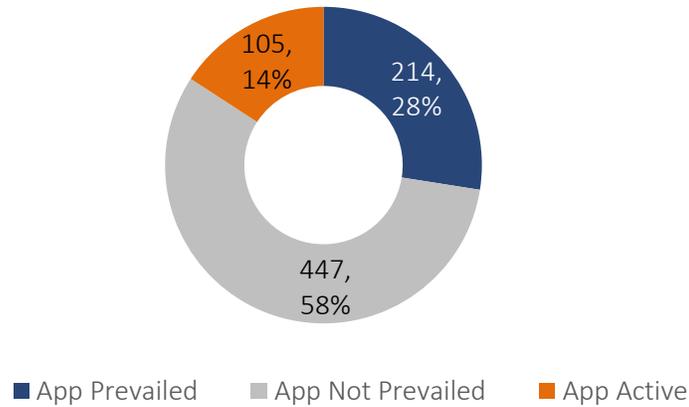


Figure 4.iii: Applications in Contention

Total Applications in Contention = 766



The string contention resolution mechanisms CPE and Auction are discussed in further detail in Section 4.1: Community Priority Evaluation and Section 4.2: Auction of this report.

## 4.1 Community Priority Evaluation

### 4.1.1 Introduction

Community Priority Evaluation (CPE) is a contention resolution mechanism available to applicants that self-designated their applications as community applications. Prevailing in CPE would allow the community applicant to gain priority within a contention set. This section of the Program Implementation Review report discusses the following aspects of CPE:

- CPE Criteria
- CPE Process Implementation
- CPE Results

### 4.1.2 Relevant Guidance

The following guidance is relevant to the topic of Community Priority Evaluation and will be discussed in further detail in Sections 4.1.3 and 4.1.4 of this report:

- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”<sup>223</sup>
- GNSO Implementation Guideline F:

*If there is contention for strings, applicants may:*

- i. resolve contention between them within a pre-established timeframe*
- ii. if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;*
- iii. the ICANN Board may be used to make a final decision, using advice from staff and expert panels.*

- GNSO Implementation Guideline H\*:

*Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:*

- i. the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and*
- ii. a formal objection process is initiated.*

*Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.*

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<sup>223</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

*Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in [Implementation Guideline] P.GNSO Recommendation 10: “There must be a base contract provided to applicants at the beginning of the application process.”*

- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>224</sup>
- Applicant Guidebook, Section 4.2: Community Priority Evaluation

### 4.1.3 Background

GNSO Implementation Guideline H acknowledged cases where an applicant may “lay claim that [a] TLD is intended to support a particular community.”<sup>225</sup> If only one applicant has made such a claim, then this claim can be “taken on trust;” if there are multiple applications for this particular TLD, then it becomes necessary to determine whether an applicant making such a claim should receive “priority” over the other applicants for that string. As part of the multi-year AGB development process, supported by consultation and input from the community,<sup>226</sup> the contention resolution mechanism CPE was developed in accordance with this GNSO Implementation Guideline.

As per the AGB and consistent with GNSO Implementation Guidelines F and H, if a community application prevailed in CPE, it was eligible to proceed to the next step in the Program, and the other applications in the contention set were eliminated.

To perform CPE evaluations, ICANN issued a call for expressions of interest in 2009 and selected two firms, Economist Intelligence Unit (EIU) and InterConnect Communications.<sup>227</sup> ICANN made the announcement of EIU and InterConnect Communications as the CPE evaluation panels at the ICANN42 Public Meeting.<sup>228</sup>

In early 2012, as publication of Initial Evaluation (IE) results (see Section 2.1: Initial and Extended Evaluation of this report) neared, ICANN began preparations for the contention resolution phase of the Program. As part of these preparations, ICANN determined that there were fewer than 40 community applications in contention (and therefore qualified for CPE). Based on the experience gained from IE, ICANN anticipated that significant training and preparation efforts would be required for the evaluation panels to achieve the desired consistency across evaluations. Given the relatively small number of potential evaluations, ICANN identified the reduction in training and preparation efforts as a potential benefit of using a single firm to act as the CPE Panel rather than dual-sourcing

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<sup>224</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>225</sup> ICANN. (8 August 2007) Final Report-Introduction of New Generic Top-Level Domains. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>226</sup> ICANN. Applicant Guidebook Historical Documents. Retrieved from <http://newgtlds.icann.org/en/about/historical-documentation>; ICANN. New gTLD Program Explanatory Memorandum: Resolving String Contention. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/string-contention-18feb09-en.pdf>

<sup>227</sup> ICANN. (25 February 2009) ICANN Call for Expressions of Interest for a New gTLD Comparative Evaluation Panel. Retrieved from <https://www.icann.org/en/topics/new-gtlds/eoi-comparative-evaluation-25feb09-en.pdf>

<sup>228</sup> ICANN. (26 October 2011) New gTLD Program Update PowerPoint Presentation, slide 19. Retrieved from <http://dakar42.icann.org/meetings/dakar2011/presentation-new-gtld-program-update-26oct11-en.pdf>

the work. With this insight, ICANN verified that a single firm could handle the workload and that the firm was able to certify that it did not have a conflict of interest with any of the potential CPE applicants, as defined by Section 2.4.3.1 of the AGB and the firm’s contracts with ICANN. The EIU was then selected as the single firm to act as the CPE Panel. The EIU was selected for this role because it offers premier business intelligence services—providing political, economic, and public policy analysis to businesses, governments, and organizations across the globe. Additionally, the EIU had the ability to meet Program capacity and timeline constraints, and could perform its role without conflict of interests with applicants.<sup>229</sup>

To maintain transparency, fairness, and predictability in the CPE process, the CPE panel drafted a set of guidelines (CPE Guidelines) that its team would use to perform evaluations. These guidelines “provide[d] additional clarity around the process and scoring principles outlined in the AGB.”<sup>230</sup> The draft of the guidelines was published on 16 August 2013 for input from the ICANN community.<sup>231</sup> Comments and input were reviewed by the CPE Panel and incorporated if they aligned with the AGB. The final version of the guidelines was published on 27 September 2013, prior to the commencement of CPE.

### *Overview of the CPE Process*

When a community applicant became eligible for CPE,<sup>232</sup> ICANN sent an invitation to the applicant and provided 21 days for the applicant to elect participation (i.e., opt in) and submit the CPE fee of USD 22,000, which was refundable if the applicant prevailed in CPE. In parallel with notifying the applicant and in an effort to ensure awareness and transparency, ICANN would notify all other members of the contention set (including applicants for standard applications as well as other community-based applications) and note the invitation on the CPE page of the New gTLD microsite.<sup>233</sup> Included in the 21-day period was a final 14-day window for any new application comments or related correspondence to be submitted for the CPE panel’s consideration.<sup>234</sup>

ICANN would provide authorization to begin an evaluation to the CPE panel after both the applicant’s CPE fee had been collected and at least 14 days had elapsed after the CPE invitation. This ensured that the CPE evaluation did not start prior to the completion of the final 14 days of public comment. Applications were evaluated against the criteria in the AGB in accordance with the CPE

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<sup>229</sup> For more information on vendor selection, see: <http://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>. For more information on the EIU’s processes in CPE, see:

<http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

<sup>230</sup> ICANN. (25 February 2009) ICANN Call for Expressions of Interest for a New gTLD Comparative Evaluation Panel. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>

<sup>231</sup> ICANN. (16 August 2013) Announcement: Community Priority Evaluation Guidelines Posted for Community Review and Input. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-4-16aug13-en>

<sup>232</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe#eligibility>

<sup>233</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe#status>

<sup>234</sup> As noted, this window marked the *final* 14 days an applicant had to gather support for its application. ICANN guaranteed the Panel would consider all letters and comments submitted up to the end of that 14-day window. After the close of the period, applicants were able to submit further letters and comments, but ICANN could not guarantee they would be reviewed by the Panel. Please see the CPE FAQs for more information on this matter: <http://newgtlds.icann.org/en/applicants/cpe/faqs-10sep14-en.pdf>

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panel's defined process.<sup>235</sup> As per the AGB, the CPE panel could use any available public information to inform its determination and could conduct independent research regarding the proposed TLD community and application. At its discretion, the CPE panel could issue Clarifying Questions (CQs) request clarification of any information required to make a determination.

The entire CPE evaluation from invitation to publication of results ranged in processing time from three to six months. The actual amount of time required depended on whether there were CQs, the number of support or opposition letters that required review and verification, and the amount of additional research performed by the CPE panel. The quantity and length of letters of support or opposition varied from less than 10 pages of additional materials to hundreds of pages of text for the panel to review.

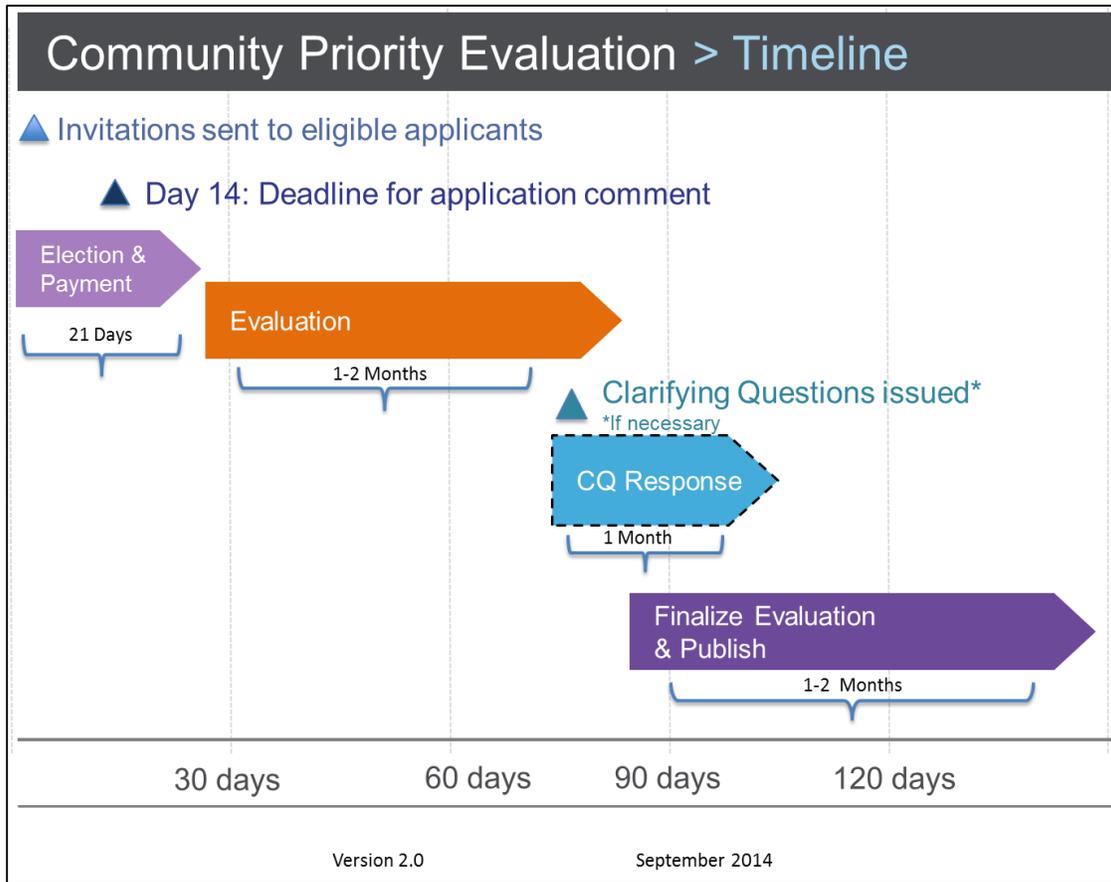
At the completion of evaluation, the CPE panel delivered a report to ICANN, which included the rationale for its determination. ICANN performed quality control on the report to ensure consistency and alignment with the AGB and CPE Guidelines as well as to ensure that adequate rationale was provided for scoring decisions. The CPE report was then published on the New gTLD microsite.<sup>236</sup> Figure 4.1.i depicts a typical CPE process timeline:

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<sup>235</sup>ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

<sup>236</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe#invitations>

Figure 4.1.i: CPE Process Timeline



As of 31 July 2015, 19 applications have completed CPE. Table 4.1.i below provides a break-down of community applications.

Table 4.1.i: Break-down of Community Applications

Number of new gTLD applications	1,930
Number of applications self-designated as community	84
Number of applications self-designated as community that were in contention	34
Number of contention sets that included self-designated community application(s)	28
Number of self-designated community applications that participated in CPE as of 31 July 2015	19
Number of self-designated applications that prevailed CPE as of 31 July 2015	5

## 4.1.4 Assessment

### 4.1.4.1 COMMUNITY PRIORITY EVALUATION CRITERIA

Awarding priority to a particular applicant type was described by the GNSO in its Final Report for the “Introduction of New Generic Top-Level Domains.” The development of a process based on GNSO Implementation Guidelines F and H required significant discussion, and establishing the CPE criteria to determine whether priority should be awarded to a community application were the results of over three years of work by the ICANN community during the development of the AGB.

Section 4.2.3 of the AGB states the goal of the CPE process was to “identify qualified community-based applications, while preventing both ‘false positives’ (awarding undue priority to an application that refers to a ‘community’ construed merely to get a sought-after generic word as a gTLD string) and ‘false negatives’ (not awarding priority to a qualified community application).” Recognizing that the outcome of CPE has significant impact on not only the community applicant but all other applicants in the contention set, the AGB states the following regarding the CPE criteria: “It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application.”<sup>237</sup> This kind of evaluation required a “holistic approach” that helped to counter the difficulty of interpreting and balancing aspects of communities. Thus, four primary criteria were established to assess an application’s qualifications for earning priority on the basis of community. In summary, they were:

1. Community Establishment – This criterion relates to the community as explicitly identified and defined according to statements in the application.
2. Nexus between Proposed String and Community – This criterion evaluates the relevance of the string to the specific community that the application claims to represent.

<sup>237</sup> AGB, Section 4.2.3: Community Priority Criteria

3. Registration Policies – This criterion evaluates the applicant’s registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants.
4. Community Endorsement – This criterion evaluates community support and/or opposition to the application.

To maintain transparency, fairness, and predictability in the CPE process, the CPE panel drafted a set of guidelines (CPE Guidelines) that its team would use to perform evaluations. The Guidelines “provide[d] additional clarity around the process and scoring principles outlined in the AGB.”<sup>238</sup> The draft of the Guidelines was published on 16 August 2013 for input from the ICANN community.<sup>239</sup> Comments and input which aligned with the AGB were incorporated into the final version of the Guidelines, which was published on 27 September 2013, prior to the commencement of CPE.<sup>240</sup>

Given that awarding priority to community-based applications is a fairly new concept, the GNSO may wish to review whether the implementation of CPE meets the GNSO’s intended goal. The ICANN Board also identified community considerations as a topic that may be appropriate for the GNSO’s discussion of evaluation in the current round and adjustments for future application procedures.<sup>241</sup>

#### 4.1.4.2 CPE PROCESS IMPLEMENTATION

In implementing CPE, ICANN focused on ensuring that all aspects of the process, from eligibility determination to result publication, were applied consistently and in accordance with the AGB.

To support process transparency, ICANN published CPE criteria prior to the opening of the application window as part of the AGB and published CPE Guidelines prior to the commencement of CPE. In addition, ICANN created a dedicated CPE page on the New gTLD microsite<sup>242</sup> to share relevant information regarding CPE with applicants and the community.

To support consistency, the CPE panel developed a process that could be applied to the evaluation of all applications and published the process on the CPE page of the New gTLD microsite.<sup>243</sup> ICANN also followed the defined and published eligibility criteria to invite applicants to CPE.<sup>244</sup> Deadlines for CPE election, payment, and final comments were also consistently applied. Finally, prior to the publication of the CPE reports, ICANN reviewed the reports for consistent application of the AGB criteria.

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<sup>238</sup> The Economist Intelligence Unit. Community Priority Evaluation Guidelines Version 2.0. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>

<sup>239</sup> ICANN. (16 August 2013) Announcement: Community Priority Evaluation Guidelines Posted for Community Review and Input. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-4-16aug13-en>

<sup>240</sup> The Economist Intelligence Unit. Community Priority Evaluation Guidelines Version 2.0. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>

<sup>241</sup> ICANN. (17 November 2015) Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

<sup>242</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe#status>

<sup>243</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe>

<sup>244</sup> ICANN. Community Priority Evaluation. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe#eligibility>

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### *Letter of Support/Opposition Verification Process*

To support an accurate evaluation, a letter verification process was instituted within CPE, similar to the process used in the context of Geographic Names evaluation. The verification process required that the authenticity of relevant letters that could impact a scoring decision be confirmed by the panel.<sup>245</sup> This process step addressed concerns expressed by both community- and non-community-based applicants prior to the beginning of CPE.

The letter verification process posed several challenges for applicants, commenting organizations, and the CPE panel. There were three avenues through which the community could provide input to a CPE evaluation: the Application Comments Forum,<sup>246</sup> by submitting a letter of support to the applicant for inclusion in their application [Question 20(f)], and by submitting correspondence to ICANN which would be posted publicly<sup>247</sup> for review and consideration by the Panel. Most applications included community input from all three avenues, and ICANN often received a fairly high volume of correspondence during the 14-day CPE invitation period or shortly after the period ended. The letters submitted via the correspondence page were challenging to review, as the letters were submitted over a long period of time (beginning “Reveal Day” in June 2012 through the CPE) and were up to several hundred pages in length. Due to the increased workload for the panel, this part of the process often extended the evaluation period for the application. Verifying the letters was sometimes complicated by a lack of contact information provided to the panel by the author of the letter or the applicant or contact information that was obsolete by the time the evaluation occurred.

To counter this challenge, ICANN encouraged applicants to provide a current list of supporters with contact information for those that authored letters by the start of the evaluation. Additionally, if the CPE panel was unable to receive the desired verification from the author and the impact of not having the verification would impact the scoring of the evaluation, the panel would issue a CQ to the applicant requesting their assistance in soliciting a response to the verification attempt and requesting that they provide current contact information for the author. Secondly, applicants or their supporters often submitted information to ICANN via correspondence after the deadline. Although the panel was not required to take these submissions into account, the panel did attempt to do so,<sup>248</sup> which extended the timeline of some evaluations.

### *Application Changes and Clarifying Questions*

The approach to CQs in CPE was intended to support the idea that applicants could not make substantive changes to their applications after the close of the objections window, as members of the community would not have the ability to file objections based on the updated application.

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<sup>245</sup> The Economist Intelligence Unit. (07 August 2014) Community Priority Evaluation Panel and Its Processes. Retrieved from <https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

<sup>246</sup> ICANN. Application Comments. Retrieved from <https://gtldcomment.icann.org/comments-feedback/applicationcomment/viewcomments>

<sup>247</sup> ICANN. gTLD Correspondence. Retrieved from <http://newgtlds.icann.org/en/program-status/correspondence>

<sup>248</sup> ICANN. (10 September 2014) Community Priority Evaluation (CPE) Frequently Asked Questions version 1.3. Retrieved from <http://newgtlds.icann.org/en/applicants/cpe/faqs-10sep14-en.pdf>.

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To support this idea, ICANN ensured that application materials for CPE applicants were not modified prior to CPE taking place. Change requests relating to the parts of the application that would be reviewed by the CPE panel were deferred until after CPE.<sup>249</sup> This was to prevent applicants from amending their applications in order to improve their chances of prevailing in CPE based on previously posted CPE results from other applications.

Secondly, the CQ process in CPE differed from IE. According to the CPE Panel Process Document,<sup>250</sup> “[i]f the core team so decides, the EIU may provide a clarifying question (CQ) to be issued via ICANN to the applicant to clarify statements in the application materials and/or to inform the applicant that letter(s) of support could not be verified.” With respect to CPE, CQs may have been issued in instances where the panel required the applicant to:

- Address any application comments that may impact the scoring of their application
- Address any letters of opposition
- Contact supporting organizations and ask them to respond to the EIU’s request for validation of letters of support
- Address any objection determinations where the applicants were the objectors and the experts did not rule in their favor
- Clarify application materials

Using a different approach to CQs in CPE than IE caused some challenges in implementation. Despite ICANN’s best efforts, it was challenging for ICANN to communicate the rationale for why applicants did not receive CQs prior to receiving their results.

The implementation of CPE strove to balance the CPE panel’s ability to request clarification without providing the applicant with the opportunity to provide new information not already in the application. Prospective community-based applicants were required to have addressed the criteria in the originally submitted application.

### *Community Priority Evaluation Results*

As of 31 July 2015, 19 applications representing 17 strings had participated in CPE and, of those, four applications had prevailed (i.e., achieved at least 14 of the 16 available points).

ICANN received complaints from applicants (both community and standard applicants) regarding the outcomes of CPE, through formal correspondence and ICANN Accountability Mechanisms. Such complaints included feedback that there was a lack of transparency, that the panel misinterpreted the applications or the communities they claimed to represent, and that the panel improperly applied the CPE criteria in reaching its determinations. ICANN observed that in any Program process where an application was eliminated or an applicant was dissatisfied with a Program outcome, it

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<sup>249</sup> ICANN. (5 September 2014) New gTLD Advisory. Retrieved from

<http://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en>

<sup>250</sup> The Economist Intelligence Unit. (6 August 2014) CPE Panel Process Document. Retrieved from

<http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

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was likely that negative feedback would be submitted and Accountability Mechanisms would be invoked. Much of the feedback received about the CPE outcomes was in line with this observation.

The GAC issued advice to ICANN in multiple Communiqués regarding CPE and the various outcomes. In its Communiqués from Beijing, Durban, and Singapore, the GAC referred to “preferential treatment” that should be given applications with “demonstrable community support” or a “collective and clear opinion.”<sup>251,252,253</sup>

In the 14 May 2014 scorecard, the NGPC responded to the GAC that it “[would] continue to protect the public interest and improve outcomes for communities, and to work with the applicants in an open and transparent manner in an effort to assist those communities within the existing framework.”<sup>254</sup> By adhering to the AGB and ensuring each CPE is consistent with the AGB criteria, ICANN has sought to meet the GAC’s advice. Additionally, the subject of community considerations has been identified by the ICANN Board as a topic that may be appropriate for discussion by the GNSO.<sup>255</sup>

## 4.1.5 Conclusion

ICANN and the CPE panel implemented processes and procedures to assure the fair, consistent, and predictable administration of the CPE process. The CPE panel consistently applied the CPE criteria from the AGB to each application it evaluated and provided its rationale for each of its scoring decisions.

The concept of awarding priority to applications based on a set of criteria was new to this round of gTLD applications. Before a next round, the following should be considered:

- Whether to continue the practice of evaluating and awarding priority to community based applications
- Whether the criteria for granting priority should be revised

Staff recommends considering all dimensions of the feedback received to revisit the CPE scoring and framework before the next application round.

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<sup>251</sup> Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>

<sup>252</sup> Governmental Advisory Committee. (18 July 2013) GAC Communiqué – Durban, South Africa. Retrieved from <http://durban47.icann.org/meetings/durban2013/presentation-gac-communique-18jul13-en.pdf>

<sup>253</sup> <sup>253</sup> Governmental Advisory Committee. (27 March 2014) GAC Communiqué – Singapore. Retrieved from <http://www.icann.org/en/news/correspondence/gac-to-board-27mar14-en.pdf>

<sup>254</sup> ICANN. (14 May 2014) Annex 1 to Resolution 2014.05.14.NG02. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-14may14-en.pdf>

<sup>255</sup> ICANN. (17 November 2015) Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

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In summary:

**4.1.a** Consider all dimensions of the feedback received to revisit the CPE scoring and framework before the next application round

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## 4.2 Auction: Mechanism of Last Resort

### 4.2.1 Introduction

Auction was the mechanism of last resort to resolve contention if applicants could not resolve contention amongst themselves or through CPE. This section of the Program Implementation Review report discusses the following aspects of ICANN-facilitated auctions:

- Auction Rules
- Auction Process and Administration

### 4.2.2 Relevant Guidance

The following guidance is relevant to the topic of Auction and will be discussed in further detail in Sections 4.2.3 and 4.2.4 of this report:

- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”<sup>256</sup>
- GNSO Implementation Guideline F:  
*If there is contention for strings, applicants may:*
  - iv. *resolve contention between them within a pre-established timeframe*
  - v. *if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;*
  - vi. *the ICANN Board may be used to make a final decision, using advice from staff and expert panels.*
- GNSO Implementation Guideline I: “An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.”
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>257</sup>
- Applicant Guidebook, Section 4.3: Auction: Mechanism of Last Resort

### 4.2.3 Background

The AGB anticipated that most contention sets would either self-resolve or be resolved through CPE (see Section 4.1: Community Priority Evaluation of this report): “It is expected that most cases of

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<sup>256</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

<sup>257</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

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contention will be resolved by the community priority evaluation or through voluntary agreement among the involved applicants.”<sup>258</sup> That is, ICANN intended auctions to be the resolution “mechanism of last resort.”

After conducting an open procurement process, ICANN selected the auction firm, Power Auctions, LLC, to facilitate the auctions.<sup>259</sup> Power Auctions was a leader on auction thought and design, helping ICANN to adhere to GNSO Implementation Guideline F, wherein an “efficient resolution of contention” was called for should there be no mutual agreement or resolution via community claim. Power Auctions also supported the development and design of both the direct and indirect auction processes as well as the implementation rules governing the auctions.

If a contention set had not been resolved after each application had completed the previous phases of the Program, essentially AGB Modules 2, 3, and Section 4.2, the contention set was scheduled for an auction to resolve the contention set. The auction process started with ICANN assessing a contention set’s eligibility for an auction and then scheduling the eligible contention set for an auction date. For a contention set to be eligible for an auction, each application in the contention set had to have completed evaluation, resolved any objections and applicable GAC Advice, and completed CPE if any community-based applicants were members of the set. An Intent to Auction notification was sent to each member of the contention set, alerting them that an auction to resolve their string contention set had been scheduled and providing a set of forms to be completed within a stated time period to be eligible to participate in the auction. The Intent to Auction notifications were sent at least two months prior to the scheduled auction date to allow for 1) a contention set to self-resolve before an auction takes place, and 2) the required forms to be completed. To participate in the auction, applicants were required to agree to abide by the Auction Rules and Bidder Agreement with the auction provider. Additionally, they were required to submit a bidding deposit by a specified time period in advance of the auction. The auction then took place according to the Auction Rules. Once the winner(s) was/were determined, they were required to pay their winning fee and move onto the next phase of the Program, Contracting (see Section 5.1: Contracting of this report). The applicants that did not prevail did not proceed further in the Program and were able to withdraw their applications, receiving a partial refund of their application fee.

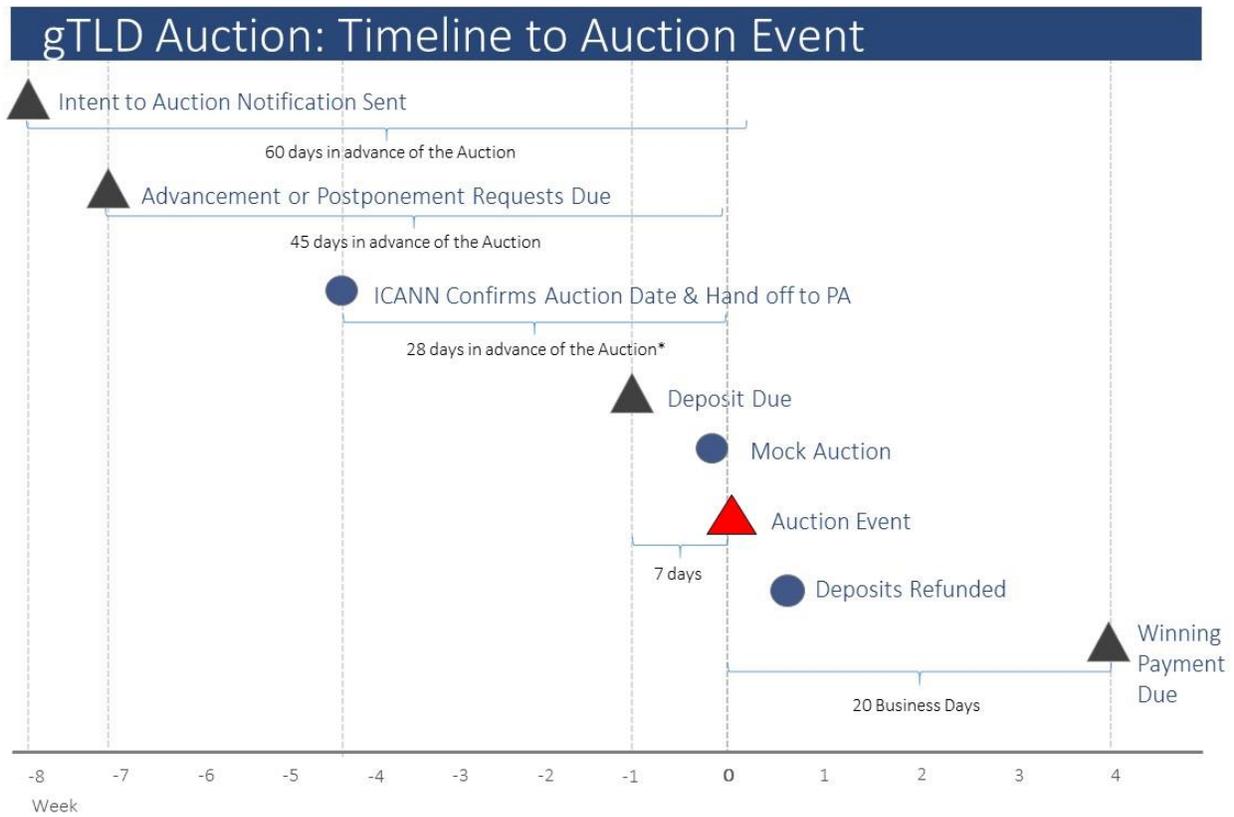
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<sup>258</sup> ICANN. gTLD Applicant Guidebook Version 2012-06-04, Section 4.3: Auction: Mechanism of Last Resort. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>259</sup> For information on the vendor selection process as well as the agreement between ICANN and Power Auctions, LLC, please see: <http://newgtlds.icann.org/en/applicants/auctions/summary-vendor-selection-10mar14-en.pdf>

Figure 4.2.i illustrates the Auctions process and timelines:

Figure 4.2.i: New gTLD Auction Timeline



\* ICANN has committed to provide confirmation of the Auction Date at least 21 days prior to the Auction; however, ICANN attempts to provide confirmation of the Auction Date at least 28 days in advance of such Auction (as illustrated).

ICANN will notify applicants of intent to Auction at least 9 weeks prior to the Auction Date. The completed intent to Auction forms are due 28 days after distribution of the intent to Auction notification.

Applicants in contention were encouraged to resolve the contention amongst themselves and were able to do so up to seven days prior to the date of the auction. Being sent to auction did not prohibit self-resolution or require the set to utilize the auction to resolve the contention; rather, it created a deadline for self-resolution which facilitated many sets to resolve. As pointed out in the introduction to Chapter 4: Contention Resolution of this report, as of 31 July 2015, only 13 sets (out of 206 resolved) have resolved by way of an ICANN auction.

## 4.2.4 Assessment

### 4.2.4.1 AUCTION RULES

The AGB defined auction procedures for those contention sets that did not come to mutual agreement or resolve through CPE. These procedures called for an ascending-clock auction which utilized a second price method and defined where the auction should take place (online), how the auction rounds should be structured, the various terms associated with the auction (e.g., proxy and exit bids), and provided various auction outcome scenarios to help illustrate the process. In general, the AGB focused on facilitating auctions for direct contention, though it did define and discuss indirect contention in Section 4.1.1 “Identification of Contention Sets.”<sup>260</sup> These procedures provided the basis for operationalizing the auction process.

From these procedures, the auction service provider developed the New gTLD Auction Rules, with versions for both direct contention sets<sup>261</sup> and sets containing indirect contention.<sup>262</sup> These rules acted as a detailed guide for applicants to facilitate auctions and included insight into eligibility, scheduling considerations, preparation procedures, deposits, bidding limits, bidding procedures, the conclusion of auctions, and payments and refunds.

The direct contention Auction Rules were posted for public comment in late 2013<sup>263</sup> with the final version published in March 2014.<sup>264,265</sup> Because of the very small number of indirect contention sets (five of the total 233) and the anticipated complexity involved in developing the rules, ICANN and the auction service provider deferred developing the rules for indirect contention until after the direct contention Auction Rules had been established. The indirect contention Auction Rules were posted for public comment in December 2014,<sup>266</sup> and the final version was published in February 2015.<sup>267</sup> The complexity associated with auction design for indirect contention sets as well as less definition in the AGB required both additional time and cost on the part of ICANN, the auction service provider, and the community for drafting and finalization.

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<sup>260</sup> An example of indirect contention would be: Application A is in direct contention with Application B. Application B is in direct contention with Application C. Applications A and C are only in indirect contention with each other. See AGB Section 4.1.1 for more information and examples of indirect contention.

<sup>261</sup> ICANN. (14 May 2014) Annex 1 to Resolution 2014.05.14.NG02. Retrieved from <http://newgtlds.icann.org/en/applicants/auctions/rules-03nov14-en.pdf>

<sup>262</sup> ICANN. (14 November 2014) Public Comment: New gTLD Auction Rules for Indirect Contention. Retrieved from <https://www.icann.org/public-comments/new-gtld-auctions-indirect-contention-2014-11-14-en>

<sup>263</sup> ICANN. New gTLD Auction Rules. Retrieved from <https://www.icann.org/public-comments/new-gtld-auction-rules-2013-12-17-en>

<sup>264</sup> Power Auctions LLC. (3 April 2014) Auction Rules for New gTLD. Retrieved from <http://newgtlds.icann.org/en/applicants/auctions/rules-03apr14-en.pdf>.

<sup>265</sup> Power Auctions LLC. (3 November 2014) Auction Rules for New gTLD. Retrieved from <http://newgtlds.icann.org/en/applicants/auctions/rules-03nov14-en.pdf>

<sup>266</sup> ICANN. (14 November 2014) Public Comment: New gTLD Auction Rules for Indirect Contention. Retrieved from <https://www.icann.org/public-comments/new-gtld-auctions-indirect-contention-2014-11-14-en>

<sup>267</sup> ICANN. (24 February 2015) Auction Rules for New gTLDs: Indirect Contentions Edition Version. Retrieved from <http://newgtlds.icann.org/en/applicants/auctions/rules-indirect-contention-24feb15-en.pdf>

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For both sets of rules, comments were considered and incorporated if they were in line with the AGB. By engaging in public consultation for the development of the Auction Rules, ICANN was able to ensure transparency in the development process and achieved predictability in process execution.

The rules ensured that bidder information, including bidding limits, remained confidential and that all participants adhered to anti-collusion restrictions.

The auction service provider facilitated the auctions in accordance with these rules, and ICANN has not received comments or complaints stating otherwise.

#### **4.2.4.2 AUCTION PROCESS AND ADMINISTRATION**

One of the advantages of ascending clock auctions was that multiple contention sets could be resolved simultaneously in a single auction event. ICANN published the first auction schedule on 19 March 2014.<sup>268</sup> There were 10 auction events scheduled over a 10-month period beginning in June 2014, with the last auction event initially scheduled for March 2015. ICANN updated the schedule on a monthly basis to reflect any changes since the previous publication of the schedule.

When ICANN published the initial auction schedule in March 2014, it simultaneously sent intent to auction notifications to all 106 contention sets which had been scheduled for one of the 10 auctions between June 2014 and March 2015. These 106 contention sets accounted for 306 applications in contention. All applicants who received the intent to auction notification were required to submit the required forms within 28 days of receipt of the notification. For several multi-application applicants, this meant completing a significant amount of paperwork within a 28-day period. There may have been some inefficiencies incurred by applicants as a result of having to complete the auction paper work well in advance of the actual auction. However, early scheduling of all contention sets for auction allowed applicants to start working toward self-resolution and ensured that applicants would be ready for auction if the need arose. The process also allowed applicants to request a postponement of the auction date. Postponements were designed to facilitate self-resolution. Thus, ICANN required that all members of the contention set agree to the postponement, and ICANN specified a deadline for when postponement requests must have been received.

As of 31 July 2015, of the 151 contention sets scheduled for auction, 58 requested postponement based on mutual consensus amongst all members of the contention set. This high number of postponement requests created additional need for ICANN to manage requests and to update auction schedules; it also extended the timeline of the contention resolution phase of the Program. However, the granting of postponements facilitated the self-resolution of contention sets. As of 31 July 2015, 93% of contention sets that elected to postpone their auction date self-resolved prior to the new auction date.

The process also helped to ensure that financial information was secure. ICANN had, for example, no knowledge of bidding deposit amounts either before or after the auction took place. Deposits were

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<sup>268</sup> ICANN. (20 July 2015) New gTLD Program Auctions: News & Views. Retrieved from <http://newgtlds.icann.org/en/applicants/auctions>

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submitted directly to an escrow account established for the bidder, and the auction service provider coordinated with the escrow provider to ensure the funds were received and the applicant was eligible to participate in the auction.

Both ICANN and the auction service provider worked to provide an easy-to-use and clear auction system that ensured that applicants were prepared to participate in an auction. Various training materials including a manual and videos were provided to applicants, and for those who were slated for an upcoming auction, the auction service provider facilitated practice auctions (referred to as “mock auctions”) in advance of each official auction.

Per Section 4.3 of the AGB, the auction process should be self-funded. Additionally, “[a]ny proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN’s Mission and Core Values and also allows ICANN to maintain its not for profit status.”

The contract with the auction service provider stipulated fees for auctions which were confirmed then canceled, as well as a 4% commission fee for auctions conducted.<sup>269</sup> ICANN took care to minimize costs associated with the operation of auctions by balancing the time that applicants would have to self-resolve with the time required by the auction provider to prepare for the Auction of Last Resort. The cancellation fee covered the work and time required by the auction service provider in preparing the auction. ICANN minimized these fees by confirming each auction with the auction service provider as close as possible to the time when the auction service provider needed to begin its preparation work (at least 21 days prior to the auction). However, because ICANN was not aware of when or if contention sets would self-resolve, it was sometimes necessary to proceed with the process and confirm the auction. ICANN considered whether it should begin the “quiet period” (the period which prevented applications from continuing to work towards self-resolution of the contention set) at the same time that it committed the minimum fees to the auction provider. However, it was ultimately decided that incurring some cancellation fees would be reasonable if it maximized the amount of time available for applicants to resolve contention without an ICANN-facilitated auction.

To further support cost minimization, when auction cancellation fees began to accumulate, ICANN initiated dialogue with the New gTLD Applicant Group (NTAG) to better educate them on the structure of ICANN’s agreement with the auction service provider and how best to avoid cancellation fees by resolving contention sets in advance of the formal auction date confirmation from ICANN. This dialogue with the community contributed to significant cost avoidance, on the order of several hundred thousand dollars. As of 31 July 2015, 5% of the total auction proceeds have been allocated towards payment of fees.

As 31 July 2015, 13 contention sets have completed an auction.<sup>270</sup> A total of USD 61.8 million has been collected from these auctions, resulting in net proceeds of USD 58.7 million.<sup>271</sup> These auction

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<sup>269</sup> ICANN. (Updated 6 October 2015) Summary of Auction Development and Management Agreement: Retrieved from <http://newgtlds.icann.org/en/applicants/auctions/summary-development-management-agreement-07oct14-en.pdf>

<sup>270</sup> ICANN. New gTLD Auction Results. Retrieved from <https://gtldresult.icann.org/application-result/applicationstatus/auctionresults>

<sup>271</sup> ICANN. New gTLD Auction Proceeds. Retrieved from <http://newgtlds.icann.org/en/applicants/auctions/proceeds>

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proceeds are segregated in a bank account separate from other ICANN and Program funds and are reserved and earmarked until the ICANN Board determines a plan for the appropriate use of the funds through consultation with the community.

## 4.2.5 Conclusion

The AGB defined auction as a mechanism of last resort and defined the basic auction process. To ensure that applicants had a clear understanding for how auctions would occur, more detailed procedures and rules for both direct contention sets and indirect contention sets were developed by the auction provider and subject to public comment. Additionally, applicants were provided with the opportunity to participate in mock auctions prior to their auction events, supporting their full understanding of the process and rules.

In support of encouraging auction only as a “mechanism of last resort,” the auction process encouraged self-resolution among applicants. Auctions were scheduled once contention sets became eligible for auction, which defined a timeline for applicants to decide whether to self-resolve. Auction postponements were also permitted and frequently requested, in support of providing applicants with sufficient time to self-resolve if desired.

In this round, auctions were implemented in a manner that supported fairness, predictability, effectiveness, and efficiency. Should auctions be included in the next application round, ICANN could replicate this process with minimal preparation.

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## Chapter 5: Transition to Delegation

“Transition to Delegation” refers to the phase of the New gTLD Program that applicants entered after successfully completing all required steps of the Program. During the Transition to Delegation phase, applicants went through the Contracting process to enter into a Registry Agreement (RA) with ICANN to operate the applied-for TLD. Also during this phase, applicants were required to complete a technical test, referred to as “Pre-Delegation Testing” (PDT), after signing an RA to demonstrate that they could operate their TLDs in a secure and stable manner. In the last step of the Transition to Delegation phase, ICANN confirmed that applicants successfully completed all required Program steps and recommended the TLDs to IANA for delegation into the root zone.

Contracting, PDT, and the IANA hand-off processes are discussed in further detail in this section of this report.

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## 5.1 Contracting

### 5.1.1 Introduction

Contracting is a process by which applicants who have successfully completed all required Program steps entered into a Registry Agreement (RA) with ICANN to operate the applied-for TLD. This section of the Program Implementation Review report discusses the following aspects of the Contracting process:

- Base Registry Agreement
- Contracting Timelines and Extensions

### 5.1.2 Relevant Guidance

The following guidance is relevant to the topic of Contracting and will be discussed in further detail in Sections 5.1.3 and 5.1.4 of this report:

- GNSO Recommendation 10: “There must be a base contract provided to applicants at the beginning of the application process.”<sup>272</sup>
- GNSO Recommendation 14: “The initial registry agreement term must be of a commercially reasonable length.”
- GNSO Recommendation 15: “There must be renewal expectancy.”
- GNSO Recommendation 16: “Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.”
- GNSO Recommendation 17: “A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.”
- GNSO Recommendation 18: “If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.”
- GNSO Recommendation 19: “Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.”
- GNSO Implementation Guideline I: “An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.”
- GNSO Implementation Guideline J: “The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.”
- GNSO Implementation Guideline K: “ICANN should take a consistent approach to the establishment of registry fees.”
- Applicant Guidebook, Section 5.1: Registry Agreement<sup>273</sup>

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<sup>272</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>273</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

- ICANN Board Resolution 2011.06.20.01 (20 June 2011): Approval of the New gTLD Program (including the 30 May 2011 version of the AGB that contained a Base RA)<sup>274</sup>
- NGPC Resolution 2013.07.02.NG09 (02 July 2013): Registry Agreement (approval of the 02 July 2013 version)<sup>275</sup>
- ICANN Board New gTLD Program Committee Resolution 2014.07.30.NG01 - 2014.07.30.NG04 (30 July 2014): Name Collision Occurrence Management Framework<sup>276</sup>
- NGPC Resolution 2014.03.26.NG01 (26 March 2014): Approval of Registry Agreement Specification 13 for Brand Category of Applicants<sup>277</sup>

### 5.1.3 Background

The AGB anticipated that Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) would take five months to complete, all IE results would be published at the conclusion of IE, and the Contracting process would commence at the end of IE. This would allow applicants that passed IE to move expeditiously toward signing an RA if there were no other issues that the application must resolve (e.g., contention resolution, dispute resolution).

On 22 March 2013, ICANN began publishing IE results on a weekly basis by priority number (see Section 2.1: Initial and Extended Evaluation of this report).<sup>278</sup> Although Section 5.1 of the AGB stated that the Contracting process would commence after IE, the final RA was not approved when the first IE results were published. Once the RA was approved by the ICANN Board New gTLD Program Committee (NGPC) on 02 July 2013, ICANN confirmed that applications were eligible to begin the Contracting process and began inviting applicants to Contracting on 05 July 2013. The same month that ICANN commenced the Contracting process, the first four RAs for four IDN new gTLDs were executed. RA execution continued with 218 RAs executed between August and December of 2013. As of 31 July 2015, 1,214 TLDs have been invited to Contracting and 1,147 have signed an RA.

#### *Overview of the Contracting Process*

In order to be eligible to be invited to Contracting, applicants were required to pass evaluation, resolve contention, clear objections, clear GAC Advice, and complete any outstanding change requests. Once eligible, applicants were invited to Contracting by priority number (see Section 1.2: Prioritization of this report), and invitations were sent in the form of a Contracting Information

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<sup>274</sup> ICANN. (20 Jun 2011) Approved Resolutions | Meeting of the ICANN Board. Approval of the New gTLD Program. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en>

<sup>275</sup> ICANN. (2 July 2013) Approved Resolutions | Meeting of the New gTLD Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-07-02-en#1.d>

<sup>276</sup> ICANN. (30 July 2014) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-07-30-en>

<sup>277</sup> ICANN. (26 March 2014) Approved Resolutions | Meeting of the New gTLD Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-03-26-en#1.a>

<sup>278</sup> ICANN. (22 March 2013) Announcement: Initial Evaluation Results Released for First Set of Applicants. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-22mar13-en>

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Request (CIR).<sup>279</sup> In October 2013, three months after ICANN began inviting applicants to Contracting, ICANN moved to a weekly Contracting operation cycle to increase efficiency and to provide applicants with a more complete understanding of Contracting process timelines.<sup>280</sup>

## 5.1.4 Assessment

### 5.1.4.1 BASE REGISTRY AGREEMENT

In accordance with GNSO Recommendation 10, a Base RA was drafted as part of the AGB development process with the community. When the ICANN Board approved the launch of the New gTLD Program on 20 June 2011, it also approved the 30 May 2011 version of the AGB<sup>281</sup> including the Base RA. This was the first version of the New gTLD Base RA approved by the ICANN Board. On 11 January 2012, ICANN published a revised AGB that included minor revisions to clarify some existing provisions of the Base RA.<sup>282</sup> This 11 January 2012 version of the RA became the Base RA available to applicants prior to “the beginning of the application process” as referenced in GNSO Recommendation 10.

Although intended to be the final form of the Base RA that successful applicants would enter into with ICANN, the RA was revised multiple times due to pending items provided for under the Program that required incorporation into the RA upon their completion, and new items that arose (e.g., GAC Advice, Name Collision).

The subject of Registry Agreement terms was identified by the ICANN Board as a topic that may be appropriate for discussion by the GNSO.<sup>283</sup>

#### *4 June 2012 Version of the Base RA*

On 4 June 2012, ICANN published a revised AGB that included a minor update to correct a reference in Specification 3 of the Base RA.<sup>284</sup>

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<sup>279</sup> ICANN. (15 July 2014) Contracting Information Request Guidance. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/cir-guidance-15jul14-en.pdf>

<sup>280</sup> ICANN. Contracting Overview. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting#overview>

<sup>281</sup> ICANN. (30 May 2011) gTLD Applicant Guidebook. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/rfp-clean-30may11-en.pdf>

<sup>282</sup> ICANN. Applicant Guidebook Version 9. Retrieved from <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v9>

<sup>283</sup> ICANN. (17 November 2015) Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

<sup>284</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

## 2 July 2013 Version of the Base RA

In its Toronto Communiqué of 17 October 2012, the GAC stated, "it is necessary or all of these statements of commitments and objectives [detailed in individual gTLD applications] to be transformed into binding contractual commitments, subject to compliance oversight by ICANN."<sup>285</sup> In response to the GAC's Advice, ICANN asked applicants to submit Public Interest Commitments to turn public interest commitments made in the applications into binding contractual provisions.<sup>286</sup> It was proposed that these commitments be included in Specification 11 to the Base RA.<sup>287</sup>

Also during this time period, ICANN and the Registrar Stakeholder Group were in the final stages of negotiating amendments to the 2009 Registrar Accreditation Agreement (RAA). The negotiations began in 2011, and the proposed new RAA was posted for public comment on 7 March 2013, with an updated version posted for public comment on 22 April 2013.<sup>288</sup> In anticipation of the finalization of the 2013 RAA, the proposed Specification 11 to the Base RA included a provision requiring operators of new gTLDs to use registrars that were party to the 2013 RAA. The ICANN Board approved the 2013 RAA on 27 June 2013.<sup>289</sup>

On 5 February 2013, ICANN published an updated Base RA for public comment.<sup>290</sup> A further updated version that incorporated community feedback was posted on 2 May 2013.<sup>291</sup> On 2 July 2013, the NGPC approved the updated version of the RA that incorporated, among other things, Specification 11 to the Base RA.<sup>292</sup>

## 16 October 2013 Version of the Base RA

On 7 October 2013, the NGPC approved<sup>293</sup> the "New gTLD Collision Occurrence Management Plan"<sup>294</sup> to mitigate the risks of potential name collisions caused by the introduction of new gTLDs. As the implementation of this plan required modifications to the Base RA, on 16 October 2013, ICANN

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<sup>285</sup> ICANN. (17 October 2012) GAC Communiqué-Toronto, Canada. Retrieved from

[https://gacweb.icann.org/download/attachments/27132070/FINAL\\_Toronto\\_Communique\\_20121017.pdf](https://gacweb.icann.org/download/attachments/27132070/FINAL_Toronto_Communique_20121017.pdf)

<sup>286</sup> ICANN. (4 March 2013) Frequently Asked Questions | Specification 11 of the Revised New gTLD Registry Agreement: Public Interest Commitments. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-pic-faqs>

<sup>287</sup> ICANN (5 February 2013) Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification. Retrieved from <https://www.icann.org/resources/pages/base-agreement-2013-02-05-en>

<sup>288</sup> ICANN. (7 March 2013) Proposed 2013 RAA Posted for Comment. Retrieved from <https://www.icann.org/public-comments/proposed-raa-2013-03-07-en>

<sup>289</sup> ICANN. (27 June 2013) ICANN Resolutions Approval of 2013 RAA. Retrieved from <https://features.icann.org/approval-2013-raa>

<sup>290</sup> ICANN. (5 February 2013) Revised New gTLD Registry Agreement Including Additional Public Interest Commitments Specification. Retrieved from <https://www.icann.org/resources/pages/base-agreement-2013-02-05-en>

<sup>291</sup> ICANN. (5 February 2013) Draft New gTLD Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/base-agreement-specs-05feb13-en.pdf>

<sup>292</sup> ICANN. (2 July 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-07-02-en#1.d>

<sup>293</sup> ICANN. (7 October 2013) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-10-07-en#1.a>

<sup>294</sup> ICANN. (4 October 2013) New gTLD Collision Occurrence Management, Proposal to manage the collision occurrences between new gTLDs and existing private uses of the same strings. Retrieved from <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf>

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published an updated version of the Base RA, which incorporated a “Name Collision Occurrence Management” section within Specification 6.<sup>295,296</sup> This update to the Base RA was automatically incorporated into the 56 RAs that had already been executed at that time. All RAs sent for signature beginning 16 October 2013 contained the updated Specification 6.

### *9 January 2014 Version of the Base RA*

The 9 January 2014 version of the Base RA<sup>297,298</sup> is the current form of the Base RA and inserted URLs in the following sections of the RA (where placeholders had existed previously):

- Section 2.19 (RRDRP)
- Section 1 of Specification 7 (Trademark Clearinghouse Requirements)
- Section 2(a) of Specification 7 (PPDRP and RRDRP)
- Section 2(b) of Specification 7 (URS)
- Section 2 of Specification 11 (PICDRP)

### *5 February 2014 – Adoption of GAC Category 1 Safeguards*

On 5 February 2014, the NGPC adopted an implementation framework to address GAC Category 1 Safeguard Advice for a broad category of strings related to “consumer protection, sensitive strings, and regulated markets.”<sup>299</sup> The implementation framework required standardized safeguards to be added to Specification 11 of the Registry Agreement as public interest commitments. For TLDs that were specified in Category 1 Advice, the safeguards were mandatory requirements. This implementation framework allowed applicants who previously could not begin Contracting because they were subject to GAC Category 1 Advice to proceed to Contracting. On 31 July 2015, 151 applicants that were subject to GAC Category 1 Safeguards were invited to Contracting. For more information about the implementation of GAC Category 1 Safeguard Advice, see Section 3.1: GAC Advice of this report.

### *9 May 2014 – Adoption of Specification 13*

On 26 March 2014, the NGPC passed a resolution approving Specification 13 to the Base RA for applicants of .Brand TLDs.<sup>300</sup> This approval followed discussions with members of the ICANN community (including the Brand Registry Group) who stated that brand owners required unique RA provisions in order to protect their brands, promote and maintain trust in their registries, and foster

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<sup>295</sup> ICANN. (16 October 2013) Announcement: NGPC Resolution on Name Collision Requires Registry Agreement Modification. Retrieved from <https://newgtlds.icann.org/en/announcements-and-media/announcement-2-16oct13-en>

<sup>296</sup> ICANN. Registry Agreement. Retrieved from <https://newgtlds.icann.org/en/applicants/agb/agreement-approved-16oct13-en.pdf>

<sup>297</sup> ICANN. (14 January 2014) Announcement: Registry Agreement Modification. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-14jan14-en>

<sup>298</sup> ICANN. Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/agreement-approved-09jan14-en.pdf>

<sup>299</sup> ICANN. (5 February 2014) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en#1.a>

<sup>300</sup> ICANN. (26 March 2014) Approved Resolutions | Meeting of the New gTLD Program Committee. Retrieved from <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-03-26-en#1.a>

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innovation. In addition to these discussions, ICANN also sought community-wide input through a public comment period in December 2013.<sup>301</sup>

When the NGPC approved Specification 13 on 26 March 2014, implementation of a particular provision within Specification 13, which allowed .Brand registry operators to designate a limited number of preferred registrars for the TLD, was delayed for 45 days to provide the GNSO an opportunity to comment on this provision, in light of GNSO policy Recommendation 19 on the Introduction of New generic Top-Level Domains.<sup>302</sup> After considering the matter, the GNSO Council informed the ICANN Board in correspondence dated 9 May 2014<sup>303</sup> that the provision in the Specification 13 allowing Registry Operators of .Brand TLDs “the right to only use up to three exclusive registrars [...] is inconsistent with Recommendation 19.” However, the GNSO Council stated it “does not object to the implementation of Specification 13 as a whole, including an additional clause which will allow a Registry Operator to designate up to three exclusive Registrars, given the specific circumstances and the fact that a public comment period on Specification 13 was conducted in 2013 without objections from the GNSO.” In the same letter, the GNSO stated it “reserves the right to initiate a policy development process, potentially resulting in Consensus Policy affecting both existing and future TLDs, if and when the right granted to .BRAND TLDs is at risk of, or bears the risk of, being used for augmenting and / or circumventing the conditions of Specification 13 or any subsequent provisions.”

### *Initiating Contracting*

Although the Base RA went through multiple revisions and its final form was not known until 9 January 2014 for non-.Brand TLDs and 9 May 2014 for .Brand TLDs, in an effort to allow applicants to move expeditiously toward signing an RA, ICANN began inviting applicants to Contracting on 5 July 2013. Because the final form of the Base RA was not known when Contracting commenced, ICANN developed a Supplement to the RA in order to allow applicants to sign an RA while certain provisions were still under consideration.<sup>304</sup> The Supplement to the RA stated that the following provisions of the Base RA could be modified by ICANN without consent from the Registry Operator:

- Specification 6 – Registry Interoperability and Continuity
- Section 1 of Specification 7 – TMCH Requirements
- Section 2.a of Specification 7 – PDDRP and RRDRP
- Section 2.b of Specification 7 – URS
- Specification 11 – Public Interest Commitments
- Any provision or term of the RA that is the subject of advice or comment from the GAC

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<sup>301</sup> ICANN. Proposal for a Specification 13 to the ICANN Registry Agreement to Contractually Reflect Certain Limited Aspects of “.Brand” New gTLDs. Retrieved from <https://www.icann.org/public-comments/spec13-2013-12-06-en>

<sup>302</sup> ICANN. Proposal for a Specification 13 to the ICANN Registry Agreement to Contractually Reflect Certain Limited Aspects of “.Brand” New gTLDs. Retrieved from <https://www.icann.org/public-comments/spec13-2013-12-06-en>

<sup>303</sup> Jonathan Robinson, ICANN GNSO Council. (9 May 2014) Letter from Jonathan Robinson to Cherine Chalaby. Retrieved from <http://gnso.icann.org/en/correspondence/robinson-to-chalaby-09may14-en.pdf>

<sup>304</sup> ICANN. Supplement to Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/agreement-supplement-14jul13-en.pdf>

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The implementation of this Supplement, which had an expiration date of 15 January 2014, allowed applicants to move forward in the process prior to resolution of the above items. ICANN signed the first four RAs for four IDN gTLDs, along with the Supplement, on 13 July 2013. By the time the Supplement expired on 15 January 2014, ICANN had signed 241 RAs with the Supplement. This represented 26% of all TLDs invited to Contracting by 15 January 2014.

### *Negotiation Process*

As detailed in Section 5.1.2 of this report, there were several GNSO Policy Recommendations related to the contract. Additionally, AGB Section 5.1 states,

*All successful registry operators are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.*

Section 7.7 of the Registry Agreement defines the annual negotiation process for revising the terms of the base RA between ICANN and the gTLD registries as a group.<sup>305</sup> The process includes a public comment period and requires approval of the new base RA from the ICANN Board.

With respect to individual RAs, when responding to a CIR, applicants had the option to request negotiation. ICANN considered each request within the framework of existing Policy, the Registry Agreement, and the AGB. In order to be fair to all applicants and to ensure that the community interests represented in the RA were preserved, ICANN did not make significant changes to the RA without a justification which matched the rationale for including the updated language. Absent a showing of extraordinary circumstances unique to any particular applicant justifying some change, ICANN took the view that the terms of the RA should remain consistent among all new gTLD registry operators.

#### **5.1.4.2 CONTRACTING TIMELINES AND EXTENSIONS**

When the 9 January 2014 version of the Base RA was published, it served as the final form of the Base RA. With the final form of the Base RA available and the Supplement to the RA expiring on 15 January 2014, ICANN announced the start of the nine-month deadline for applicants to sign the RA, as per Section 5.1 of the AGB. The announcement that 29 January 2014 served as the start of the nine-month period was made during the 22 January 2014 Applicant Update Webinar.<sup>306</sup> For the 957 applications whose nine-month period began on 29 January 2014, the RA signing deadline was 29 October 2014. Of these applicants, 440 (46%) signed the RA by the 29 October 2014 deadline.

Although ICANN envisioned that applicants would want to sign the RA quickly when the Contracting process was initiated, 517 applications did not sign by the 29 October 2014 deadline and required

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<sup>305</sup> ICANN. (9 January 2014) Registry Agreement. Retrieved from <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.pdf>

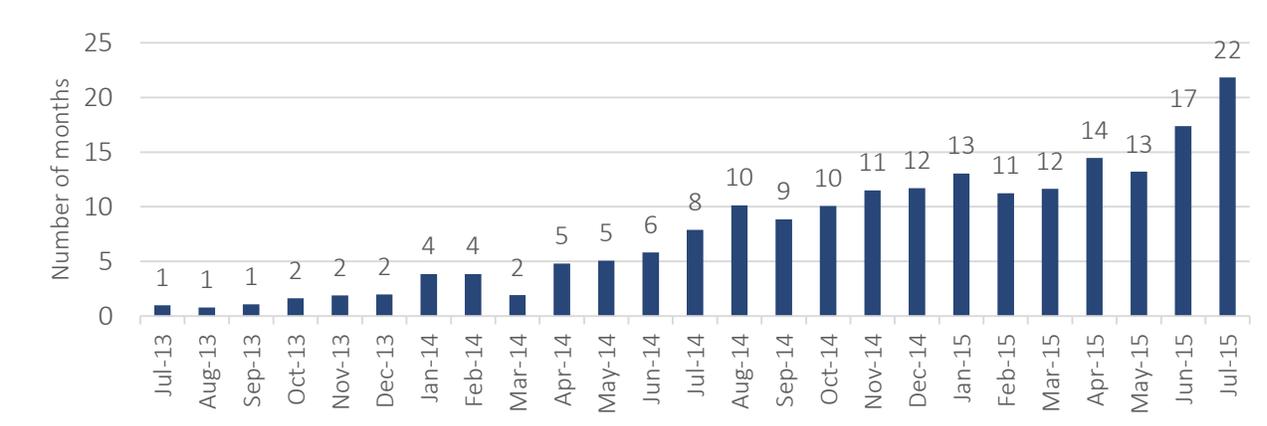
<sup>306</sup> <https://icann.adobeconnect.com/p1dbhnyzmr/>

additional time. Due to the need for additional time to sign the RA, ICANN implemented an extension request process that was available to both applicants of .Brand TLDs and applicants of non-brand TLDs.<sup>307, 308</sup>

For applicants of .Brand TLDs who had a 29 October 2014 deadline to sign the RA, the extension request process allowed them to receive an extension to 29 July 2015 if they satisfied certain criteria.<sup>309</sup> Essentially, this gave these applicants a total of 18 months from the effective date they were invited to Contracting, 29 January 2014, to sign the RA. Three-hundred-fifty applications met the criteria and received the 29 July 2015 RA signing extension. For all other applications, ICANN considered extension requests on a case-by-case basis and granted extensions of up to nine months if the applicant could demonstrate that it was working in good faith toward signing the RA.

In granting extensions, ICANN imposed upon applicants interim deadlines for activities they must have completed in order to sign the RA. The implementation of the interim deadlines allowed applicants to demonstrate progress toward signing the RA. As of 31 July 2015, ICANN had granted 517 TLDs extensions, and 97% of applicants that were granted extensions met interim deadlines. On average, applicants that were provided extensions signed the RA in 16 months. Figure 5.1.i shows the average number of months for RA execution over time.

Figure 5.1.i: Average Number of Months for RA Execution



As of 31 July 2015, a small number (13 applications) had not met their deadlines and had their application statuses changed to “Will Not Proceed” which meant loss of eligibility to sign a Registry Agreement with ICANN. On 30 June 2015, ICANN released a process for applicants with applications in a “Will Not Proceed” status due to missing a contracting-related deadline to request reinstatement of the application’s eligibility status within a defined period of time. In order to qualify for

<sup>307</sup> ICANN. (3 September 2014) Announcement: Requests for Extension to Execute New gTLD Registry Agreements. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-03sep14-en>

<sup>308</sup> ICANN. Announcement: Contracting and the Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-15sep14-en>

<sup>309</sup> ICANN. Contracting and the Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting#deadlines-extensions>

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reinstatement, applicants had to provide all pending information required for RA execution and post-contracting activities along with the reinstatement request.

## 5.1.5 Conclusion

The intent of GNSO Recommendation 10 to provide applicants with a base RA at the beginning of the application process was satisfied with the inclusion of the Base RA in Module 5 of version 9 of the AGB, which was published prior to the opening of the application window. The base RA went through several modifications during the Program, but these modifications were necessary to address topics such as GAC Advice, Name Collision, approval of the 2013 Registrar Accreditation Agreement, and community request for another form of the RA for .Brand TLDs. As these changes occurred after the base RA was published, the intent of GNSO Recommendation 10 was not fully achieved.

Consideration should be given to either not allowing changes to the base RA once the application window opens so as to provide applicants with predictability of the final form and substance of the RA, or to establishing a process for modifying the RA. Additionally, the classification of .Brand TLDs was new in this round. Consideration should be given to whether there should be different versions of the RA for different types of applications.

In summary:

**5.1.a** Explore the feasibility of finalizing the base Registry Agreement before applications are submitted or establishing a process for updating the Registry Agreement

**5.1.b** Explore whether different applicant types could be defined in a fair and objective manner, and if there are to be different applicant types, consider whether there should be different versions of the Registry Agreement

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## 5.2 Pre-Delegation Testing and Transition to IANA

### 5.2.1 Introduction

Pre-Delegation Testing (PDT) was a technical test required of applicants who had executed an RA with ICANN before delegation of the TLD into the root zone. PDT allowed the applicant to demonstrate that they could operate the TLD in a stable and secure manner.

Transition to IANA referred to the process steps by which ICANN recommended to IANA the delegation of the applied-for TLD. This section of the Program Implementation Review report discusses the following aspects of the PDT and Transition to IANA processes:

- PDT Requirements Development and Service Delivery
- Transition to IANA Process

### 5.2.2 Relevant Guidance

The following guidance is relevant to the topic of Pre-Delegation Testing and Transition to IANA and will be discussed in further detail in Sections 5.2.3 and 5.2.4 of this report:

- GNSO Principle D: “A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.”<sup>310</sup>
- GNSO Principle E: “A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement.”
- GNSO Recommendation 4: “Strings must not cause any technical instability.”
- GNSO Recommendation 7: “Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.”
- GNSO Recommendation 9: “There must be a clear and pre-published application process using objective and measurable criteria.”
- GNSO Recommendation 18: “If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.”
- GNSO Implementation Guideline I: “An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.”
- Applicant Guidebook, Section 5.2: Pre-Delegation Testing<sup>311</sup>

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<sup>310</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

<sup>311</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

- Applicant Guidebook, Sections 5.3: Delegation Process
- Registry Agreement Specifications 2, 4, 6, and 10; Exhibit A<sup>312</sup>

## 5.2.3 Background

Section 5.2 of the AGB stated that “the purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.” Further, that “the test [was] also intended to indicate that the applicant [could] operate the gTLD in a stable and secure manner.” To this end, the AGB provided high-level testing requirements for DNS Infrastructure (e.g., UDP, TCP Support) and Registry Systems (e.g., System Performance, Whois Support). In addition, the AGB specified some tests, such as load testing, be performed by the registry itself, rather than ICANN, and that the registry would submit self-certification documentation showing that the test was performed and how it was performed.

To administer the testing process, ICANN issued a Request for Proposal (RFP) and selected the vendor Stiftelsen för Internetinfrastruktur (IIS) in 2012.<sup>313</sup> IIS is the registry operator for the .SE ccTLD (Sweden) and was selected based on criteria in the RFP.<sup>314</sup>

On 28 February 2013, ICANN requested volunteers for a PDT Pilot project, which would serve as a learning period for both ICANN and the PDT Provider ahead of PDT production.<sup>315</sup> In implementing the Pilot Project, ICANN and the PDT provider sought to verify the operational process, systems, specifications and criteria of the test. Twelve applicants, each supported by a different technical back-end provider, participated in the Pilot Project. The findings from the pilot were shared with the community during the ICANN46 Meeting in Beijing, China. Following the pilot, a beta testing period was offered, geared toward helping applicants prepare for PDT. Specifically, beta testing sought to expose more participants to the full suite of tests that were to be conducted during the official PDT phase of the Program and to reveal any requirements that may have required adjustment in testing approach or criteria. Eligible applicants were not able to move forward with Contracting and subsequently PDT until the finalization of the Registry Agreement on 02 July 2013 (see Section 5.1: Contracting of this report). While anticipating the final RA, beta testing allowed applicants to prepare and learn about PDT before PDT production operations.

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<sup>312</sup> ICANN. Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/agreement-approved-09jan14-en.pdf>

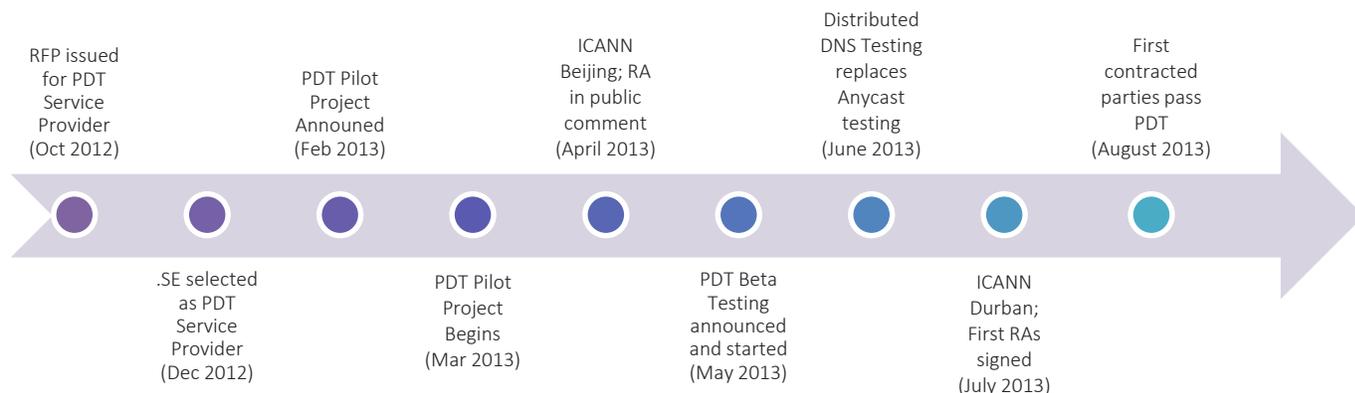
<sup>313</sup> ICANN. Request for Proposal: Pre-Delegation Testing Provider for the New gTLD Program. Retrieved from <https://www.icann.org/en/system/files/files/pre-delegation-testing-30oct12-en.pdf>

<sup>314</sup> ICANN. (21 December 2012) Announcement: Pre-Delegation Testing Services for the New gTLD Program – Selection of Provider. Retrieved from <https://www.icann.org/news/announcement-2012-12-21-en>

<sup>315</sup> ICANN. Announcement: Participants Needed for New gTLD Pre-Delegation Testing Pilot. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-28feb13-en>

The timeline to PDT production operations is illustrated in Figure 5.2.i:

Figure 5.2.i: PDT Timeline



Throughout the process, ICANN and the PDT provider continued to make updates and improvements to PDT Testing Specifications, input requirements, and FAQs.<sup>316</sup>

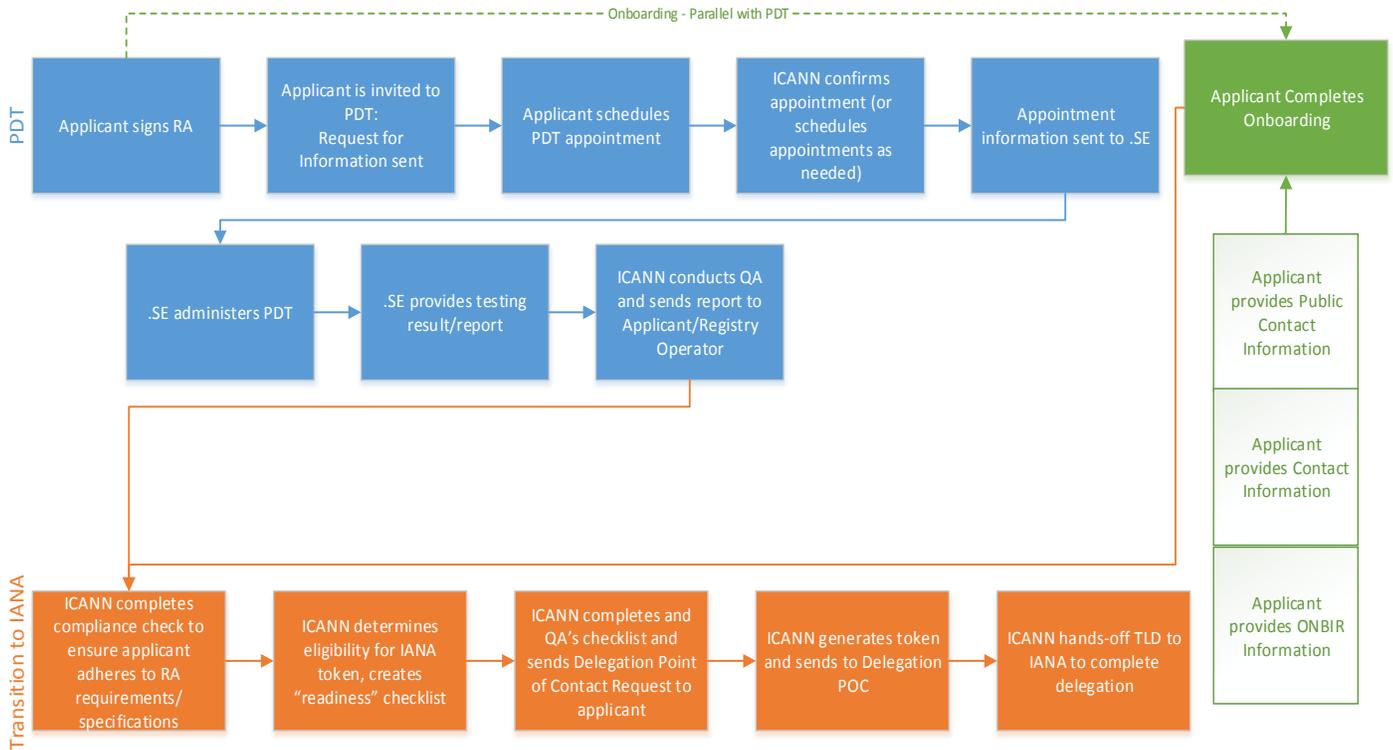
Following PDT, applicants moved to the “Transition to IANA” phase, which was a quality assurance and hand-off process that occurred before ICANN recommended the TLD to IANA for delegation into the root zone. The Transition to IANA process confirmed that the application had successfully completed all of the required Program steps and ensured that any exceptions were documented in a final report. Part of the Transition to IANA process included onboarding, where the applicant provided contact and technical information to establish an account as a registry operator with ICANN, as well as the issuing of a “token,” with which the applicant was able to access IANA’s Root Zone Management (RZM) system and initiate the delegation process.<sup>317</sup>

<sup>316</sup> ICANN. (19 March 2015) PDT Resource Update, Pre-Delegation Test Preparation Resources. Retrieved from <http://newgtlds.icann.org/en/applicants/pdt#resources>

<sup>317</sup> IANA. Root Zone Management. Retrieved from <https://www.iana.org/domains/root>

Figure 5.2.ii is a general overview of the process from Contracting to Delegation, including the PDT and Transition to IANA processes:

Figure 5.2.ii: Overview of Post-Contracting Processes



## 5.2.4 Assessment

### 5.2.4.1 PDT REQUIREMENTS DEVELOPMENT AND SERVICE DELIVERY

Section 5.2 of the AGB provided the high-level testing requirements for PDT, which “cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance.”

For implementation, ICANN issued an RFP for a PDT service provider that could administer as well as design the testing of these requirements. Specifically, the RFP required the vendor to design and develop the testing specifications, the software to perform the testing, the processes to deliver the service and the system to manage the service delivery.<sup>318</sup> It was also important that a potential PDT provider could scale to meet the demands of the Program. Although the AGB did not specify an

<sup>318</sup> ICANN. Request for Proposal: Pre-Delegation Testing Provider for the new gTLD program, page 1. Retrieved from <https://www.icann.org/en/system/files/files/pre-delegation-testing-30oct12-en.pdf>

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exact number of tests to be conducted on a weekly basis, ICANN established a baseline of 20 tests per week, which corresponded to the metering requirement of 1,000 delegations per year (i.e., 1,000 delegations/year divided by approximately 50 weeks/year = 20 tests/week).<sup>319,320</sup> The PDT provider also had to be able to ramp up to 100/week if needed, should some weeks see fewer than 20 tests and “catch-up” be desired.<sup>321</sup>

Following the RFP process in October-November 2012, IIS was selected as the PDT service provider in December 2012, as noted in the Background section of this report. By late February 2013, the Pilot Project had been announced and the PDT Documentation Instructions had been posted on the PDT microsite.<sup>322</sup> Together with IIS and technical consultants Kirei,<sup>323</sup> ICANN vetted the testing requirements and specifications before publishing in late March 2013. By posting the test requirements, ICANN helped ensure transparency and consistency. Further, ICANN implemented both a pilot and a beta testing period, which allowed ICANN and the PDT provider to help ensure that applicants were well-prepared for PDT.

The pilot and beta projects also contributed to an “evolution” of the PDT process to a more “interoperable” and service-oriented approach. Although the AGB provides for PDT to be structured in the format of asking questions and requesting clarification of any issues, it became apparent during the beta testing period that a more “interoperable” type of experience would be more beneficial. Rather than focus on the applicant providing responses to a test and the PDT provider “grading” the test as “Pass/Fail,” both the community and the PDT provider provided feedback that a more useful type of experience would be one where the applicant could work with the PDT provider regarding any issues encountered throughout the testing process.

To facilitate this change, the PDT provider made necessary enhancements to the PDT system (e.g., allowing for the threading of messages and communications between the PDT provider and the applicant) as well as allowed for extensions of tests. In the beginning of beta testing, many applicants needed longer than the two weeks prescribed by ICANN. By the time PDT was in the production phase, after these enhancements had been made and applicants were able to learn from their interactions with the PDT provider during beta testing, most applicants were able to meet the two-week timeframe to complete PDT. Finally, over the course of beta testing, and as a result of ongoing community feedback, the anycast instance testing approach was replaced by Distributed DNS Testing, which only assessed the prospective registries' public-facing DNS service.<sup>324</sup>

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<sup>319</sup> ICANN. Announcement: Roadmap for Processing New gTLD Applications. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-17aug12-en>

<sup>320</sup> ICANN. Announcement: ICANN Seeks Input on GTLD Batching. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-29jul12-en>

<sup>321</sup> Request for Proposal: Pre-Delegation Testing Provider for the new gTLD program, page 12. Retrieved from <https://www.icann.org/en/system/files/files/pre-delegation-testing-30oct12-en.pdf>

<sup>322</sup> ICANN. (19 March 2015) Pre-Delegation Testing News and Views. Retrieved from <http://newgtlds.icann.org/en/applicants/pdt#resources>

<sup>323</sup> Kirei. Retrieved from <https://www.kirei.se/en/webusaito/about/>

<sup>324</sup> For more information regarding this change, please see the announcement here: <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-06jun13-en>

All of these changes together led to a PDT production service model that worked more smoothly for both applicants and ICANN/the PDT service provider than the model used during the beta period. Applicants were both well-prepared by the beta testing as well as able to contribute feedback, leading to a testing experience that allowed applicants to demonstrate their ability to meet the DNS Infrastructure and Registry Operations requirements in the AGB. Lastly, continuous improvement extended beyond beta testing, as test requirements and specifications were periodically updated to improve clarity and ensure secure and stable delegation of all TLDs.<sup>325</sup>

From the experience of developing the PDT requirements and service delivery, ICANN has identified several lessons learned:

- Review the requirements for self-certifying tests and the effectiveness of each. For example, is Service Level Agreement (SLA) monitoring/testing most effective as a self-certifying test, or should these be converted to operational type tests?
- Reviewing PDT as a whole to determine what optimizations can be made with regard to effectiveness of the tests. Many in the community have expressed that it is inefficient to test every TLD. Consideration should be given as to which tests could be performed once per technical infrastructure implementation, and which tests should be performed for each TLD.
- Building on lesson learned 2.8.c, in the development of evaluation criteria and procedures for IDNs, ICANN recommends that the review of IDN tables during PDT be limited to confirmation of compliance with the TLD's stated IDN policy.

#### 5.2.4.3 TRANSITION PROCESS

Following PDT, applicants entered the “Transition to IANA” process, which was the final “hand-off” of the TLD to the IANA department, wherein ICANN officially recommended delegation of a TLD. This transition process was defined in Section 5.3 of the AGB. “Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database. This will include provision of additional information and completion of additional technical steps required for delegation.”

ICANN's “hand-off” process before delegation into the root zone was to confirm that the applicant had successfully completed all required Program steps and PDT. In parallel with PDT, the applicant must also have completed Onboarding as indicated in the Graphic 5.2.2.b above. For Onboarding, an applicant was provided a Welcome Kit that explains in detail the requirements for its delegation into the root zone.<sup>326</sup>

In order to help facilitate the movement of applicants through the PDT and Onboarding processes and onto delegation, ICANN set up “post-contracting milestones,” which served as intermediary deadlines from the signing of the RA to delegation, as the RA provides 12 months to complete this process.

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<sup>325</sup> The latest updates were made on 22 July 2015. For more information on these updates as well as others, please see the PDT microsite: <http://newgtlds.icann.org/en/applicants/pdt>

<sup>326</sup> ICANN. (12 June 2014) Webinar: Becoming a New gTLD Registry. Retrieved from <https://icann.adobeconnect.com/p2moysmxspv/>

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Once both PDT and Onboarding were completed, ICANN completed final verification that all information had been received and was accurate, and then provided the applicant a “token” to access IANA’s Root Zone Management (RZM) system. From this point, IANA managed the applicant into delegation.

## 5.2.5 Conclusion

The PDT and Transition to IANA processes were implemented in alignment with the AGB, and in such a way as to support transparency, predictability, and consistency. To this end, the implementation of PDT included a pilot and beta testing intended to provide applicants with a predictable and well designed experience. Updates were made to the process and system based on feedback from the pilot and beta testing project, and continuous improvement occurred throughout this phase of the New gTLD Program to enhance the quality of PDT and the Transition to IANA processes.

There are some valuable lessons learned from the implementation the Transition to Delegation phase that would be useful input to the development of procedures for future rounds. One lesson learned questions the effectiveness and efficiency of testing each TLD, when many TLDs share the same back-end registry services provider. Consideration should be given to whether some tests could be performed once per technical infrastructure implementation, while others are performed for each individual TLD. Another lesson learned is that self-certifying tests may not provide optimal effectiveness, so the community may wish to convert certain tests, such as SLA testing, into operational tests. Finally, the review of IDN tables in this round was performed during PDT, but based on the experience during this round, ICANN recommends that the review parameters be updated to leverage the IDN tools currently under development. Consideration should be given to whether the review of IDN tables during PDT could be limited to confirmation of compliance with the TLD’s stated IDN policy.

In summary:

- 5.2.a** Consider which tests should be performed once per technical infrastructure implementation and which should be performed for each TLD
- 5.2.b** Consider which, if any, tests can be converted from self-certifying tests to operational tests
- 5.2.c** In considering an alternate approach to the Technical and Operational Capability evaluation, if an RSP accreditation program is considered, explore how Pre-Delegation Testing would be impacted
- 5.2.d** Building on lesson learned 2.8.c, in the development of evaluation criteria and procedures for IDNs, consider whether review of IDN tables during Pre-Delegation Testing could be limited to confirmation of compliance with the TLD’s stated IDN policy

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# Chapter 6: Applicant Support

## 6.1 Applicant Support Program

### 6.1.1 Introduction

The Applicant Support Program was a community-driven initiative developed to promote access to the New gTLD Program. It assisted potential new gTLD applicants seeking both financial and non-financial support via the following mechanisms:

- Financial assistance in the form of new gTLD evaluation fee reduction
- Pro bono services
- Establishment of a funding mechanism for the program

This section of the Program Implementation Review report discusses these aspects of the Applicant Support Program.

### 6.1.2 Relevant Guidance

The following guidance is relevant to the topic of Applicant Support and will be discussed in further detail in Sections 6.1.3 and 6.1.4 of this report:

- GNSO Implementation Guideline N: “ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.”<sup>327</sup>
- Applicant Guidebook, Section 1.2.10: Resources for Applicant Assistance<sup>328</sup>
- New gTLD Financial Assistance Handbook<sup>329</sup>
- ICANN Board Resolution 2010.03.12.47 (12 March 2010): Support for Applicants Requesting New gTLD Applicants<sup>330</sup>
- ICANN Board Resolution 2011.06.20.01 (20 January 2011): Approval of New gTLD Program, including a program to ensure support for applicants from developing countries<sup>331</sup>
- ICANN Board Resolutions 2011.12.08-2011.12.08.03 (8 December 2011): Approval for ICANN staff to finalize the implementation plan for the Applicant Support Program and for the new

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<sup>327</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>328</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>329</sup> ICANN. New gTLD Financial Assistance Handbook, Version 2012-01-11. Retrieved from <http://newgtlds.icann.org/en/applicants/candidate-support/financial-assistance-handbook-11jan12-en.pdf>

<sup>330</sup> ICANN. (12 March 2010) Adopted Board Resolutions | Nairobi, 20. Support for Applicants Requesting New gTLD Applicants. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2010-03-12-en#20>

<sup>331</sup> ICANN. (20 June 2011) Approved Board Resolutions | Singapore. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en#1>

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gTLD evaluation fee reduction to \$47,000 USD for candidates who meet the criteria under the Applicant Support Program<sup>332</sup>

### 6.1.3 Background

On 6 September 2007, the GNSO Council approved the “Final Report of the ICANN Generic Names Supporting Organization on the Introduction of New Generic Top-Level Domains,”<sup>333,334</sup> which included seven principles, 20 recommendations, and 18 implementation guidelines for the introduction of New gTLDs. Implementation Guideline N of the GNSO Report stated: “ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.”

As the early versions of the Applicant Guidebook (AGB) were being drafted in 2009 and 2010, there were community conversations regarding inclusion of applicants from developing countries and the application fee being prohibitive to applicants from developing countries. In particular, the Government Advisory Committee (GAC) submitted comments on versions 1, 2, and 3 of the draft AGB, concerning the proposed single fee structure. The comments suggested a variable cost structure that might allow for greater inclusion of stakeholders from developing regions.<sup>335,336,337</sup>

In line with the GNSO’s Implementation Guidance and with consideration to the comments submitted by ICANN stakeholders, on 12 March 2010, the ICANN Board resolved that: “[. . .] the Board recognize[d] the importance of an inclusive New gTLD Program” and “request[ed] stakeholders to work through their [Supporting Organizations (SOs)] and [Advisory Committees (ACs)], and form a Working Group to develop a sustainable approach to providing support to applicants requiring assistance in applying for and operating new gTLDs.”<sup>338</sup> In accordance with this resolution, in late April 2010, the GNSO and ALAC organized the Joint SO/AC New gTLD Applicant Support Working Group (JAS WG), which was made up of members from the GNSO and the ALAC.<sup>339</sup>

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<sup>332</sup> ICANN. (8 December 2011) Approved Board Resolutions | Special Meeting of the ICANN Board, 1.1 Applicant Support. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-12-08-en#1.1>

<sup>333</sup> ICANN. (9 August 2007) GNSO Council Teleconference Minutes. Retrieved from <http://gnso.icann.org/en/council/resolutions#200709>

<sup>334</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report, Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>335</sup> J. Karklins. (10 March 2009) Personal communication to ICANN Board Chair. Retrieved from <https://www.icann.org/en/system/files/files/karklins-to-dengate-thrush-10mar09-en.pdf>

<sup>336</sup> J. Karklins. (18 August 2009) Personal communication to ICANN Board Chair. Retrieved from <https://www.icann.org/en/system/files/files/karklins-to-dengate-thrush-18aug09-en.pdf>

<sup>337</sup> J. Karklins. (10 March 2014) Personal communication to ICANN Board Chair. Retrieved from <https://www.icann.org/en/system/files/files/karklins-to-dengate-thrush-10mar10-en.pdf>

<sup>338</sup> ICANN. (12 March 2010) Adopted Board Resolutions | Nairobi, 20: Support for Applicants Requesting New gTLD Applicants. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2010-03-12-en#20>

<sup>339</sup> ICANN. Final Report of the Joint SO/AC New gTLD Applicant Support Working Group, Appendix 3. Retrieved from [https://community.icann.org/download/attachments/22970578/Final\\_Report\\_JASWG+%28Sept+2011%29\\_Seth+created+Submitted.pdf](https://community.icann.org/download/attachments/22970578/Final_Report_JASWG+%28Sept+2011%29_Seth+created+Submitted.pdf)

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On 20 June 2011, the ICANN Board approved the launch of the New gTLD Program, which included a requirement for “a program to ensure support for applicants from developing countries.” The resolution further stated that this program’s

*[. . .] form, structure and processes [are] to be determined by the Board in consultation with stakeholders including: (a) consideration of the GAC recommendation for a fee waiver corresponding to 76 percent of the \$185,000 USD evaluation fee, (b) consideration of recommendations of the ALAC and GNSO as chartering organizations of the Joint Applicant Support (JAS) Working Group, (c) designation of a budget of up to \$2 million USD for seed funding, and creating opportunities for other parties to provide matching funds, and (d) the review of additional community feedback, advice from ALAC, and recommendations from the GNSO following their receipt of a Final Report from the JAS Working Group (requested in time to allow staff to develop an implementation plan for the Board’s consideration at its October 2011 meeting in Dakar, Senegal), with the goal of having a sustainable applicant support system in place before the opening of the application window.<sup>340</sup>*

On 13 September 2011, less than four months before the opening of the application window for New gTLDs, the JAS WG published its “Final Report of the Joint SO/AC New gTLD Applicant Support Working Group.”<sup>341</sup> This Final Report provided the JAS WG’s recommendations for the Applicant Support Program, including recommendations for financial assistance, access to pro bono services, and donations to the Applicant Support Fund. This Final Report drove the work that the community, the ICANN Board, and ICANN staff undertook to finalize the Applicant Support Program.

## 6.1.4 Assessment

### 6.1.4.1 FINANCIAL ASSISTANCE

As mentioned in Section 6.1.3 of this report, the JAS WG published its Final Report on 13 September 2011. The ICANN Board considered the JAS WG’s Final Report and formed a working group to develop an implementation model that took into account the JAS WG Final Report and the timely implementation of the program. On 8 December 2011, the ICANN Board directed staff to finalize the implementation plan in accordance with the proposed criteria and process, for the launch of the Applicant Support Program in January 2012. Additionally, the Board approved the fee reduction to USD 47,000 for Applicant Support candidates that qualified under the Applicant Support Program.<sup>342</sup>

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<sup>340</sup> ICANN. (30 June 2011) Approved Board Resolutions | Singapore. Retrieved from

<https://www.icann.org/resources/board-material/resolutions-2011-06-20-en#1>

<sup>341</sup> ICANN. (13 September 2011) Final Report of the Joint SO/AC New gTLD Applicant Support Working Group. Retrieved from

[https://community.icann.org/download/attachments/22970578/Final\\_Report\\_JASWG+%28Sept+2011%29\\_Seth+created\\_Submitted.pdf](https://community.icann.org/download/attachments/22970578/Final_Report_JASWG+%28Sept+2011%29_Seth+created_Submitted.pdf)

<sup>342</sup> ICANN. (8 December 2011) Approved Board Resolutions | Special Meeting of the ICANN Board, 1.1. Applicant Support. Retrieved from

<https://www.icann.org/resources/board-material/resolutions-2011-12-08-en#1.1>

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As directed by the 8 December 2011 resolution, ICANN published the draft Financial Assistance Handbook for public comment on 20 December 2011,<sup>343</sup> which defined the criteria and process for financial assistance. Sixteen comments were submitted and updates were made to the Handbook, primarily to allow a refund of USD 42,000 of the USD 47,000 application fee if the applicant did not meet the criteria threshold, and to change the eligibility rules to allow communities and non-governmental organizations that are trademark holders to apply under the Applicant Support Program. The final Handbook was published on 11 January 2012, one day prior to the opening of the application window (see Section 1.1: Application Submission of this report).

The financial assistance component of the Applicant Support Program allowed applicants that can meet the established criteria threshold to pay a reduced evaluation fee of USD 47,000 instead of the full evaluation fee of USD 185,000. In order to qualify for the fee reduction, applicants were required to demonstrate financial need, provide a public interest benefit, and possess the necessary management and financial capabilities.

The JAS WG Final Report recommended that a “Support Application Review Panel (SARP) should be established to review applications.” It further recommended that the SARP “should be composed of volunteers (from the ICANN community and outside experts).” Consistent with this recommendation, on 3 February 2012, ICANN issued a request for expressions of interest to serve on the SARP.<sup>344</sup> Criteria for selecting SARP panelists included:

- Knowledge about the new gTLD process, potential gaming patterns and the general needs and capabilities of likely Support Program applicants
- Geographic diversity
- Expertise in:
  - Running a small business
  - Operating in developing economies
  - Serving in the public interest
  - Awarding grants
  - Financial experience or expertise in analyzing business plans, particularly those submitted from developing economies
  - Knowledge of domain names (or the domain name industry)
- Experience managing a domain name registry service

Eighty individuals from around the world encompassing a broad range of expertise submitted expressions of interest. Based on the volume of financial assistance applications submitted, ICANN selected five individuals to form the SARP. Collectively, the individuals selected for the SARP had experience in the domain name industry, managing small businesses, awarding grants, and assisting others on financial matters in developing countries.<sup>345</sup>

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<sup>343</sup> ICANN. New gTLD Applicant Support Program: Financial Assistance. Retrieved from <https://www.icann.org/resources/pages/new-gtld-applicant-support-handbook-2011-12-20-en>.

<sup>344</sup> ICANN. (3 February 2012) Announcement: ICANN Seeks Evaluators for the Support Applicant Review Panel. Retrieved from <https://www.icann.org/news/announcement-3-2012-02-03-en>

<sup>345</sup> ICANN. Support Application Review Panel (SARP) Member Biographies. Retrieved from <http://newgtlds.icann.org/en/applicants/candidate-support/sarp-bios-28may13-en.pdf>

To assist the SARP, ICANN provided administrative support in the form of coordinating face-to-face meetings, arranging conference calls, and providing on-line workspaces for the SARP to do its work. As the SARP was an independent panel, it defined its own procedures, methodology, timelines, and final reports. On 12 March 2013, the SARP published its report for the three applications received under the Applicant Support Program.<sup>346</sup> The results of the SARP's evaluations were that one of the three applications met the criteria under the Applicant Support Program, and two did not.

The JAS WG recommended that “[w]hen the SARP rejects a Support Candidate, the SARP should explain its reasons.” The SARP's results reports reported its ultimate conclusion, but did not provide rationale for its determinations.<sup>347</sup> Feedback from applicants indicated that the amount of detail provided in the SARP's final report was insufficient and lacked rationale. ICANN provided the feedback to the SARP and on 20 March 2013, the SARP published an updated report that provided an additional level of detail, which was the determination for each criterion for each application.<sup>348</sup> ICANN also received feedback on the updated report, suggesting that further detail in the reports would support transparency in the process.<sup>349,350</sup>

The subject of Applicant Support was identified by the ICANN Board as a topic that may be appropriate for discussion by the GNSO.<sup>351</sup>

#### 6.1.4.2 PRO BONO SERVICES

In addition to financial assistance, the JAS WG's recommendations for the Applicant Support Program also called for the availability of non-financial support. Consistent with the recommendations of the JAS WG's Final Report, on 11 January 2012, ICANN launched a directory web page<sup>352</sup> on the New gTLD microsite to allow parties interested in providing pro bono assistance and parties interested in receiving pro bono services to have their names and contact information listed. As of 31 July 2015, 45 candidates sought support,<sup>353</sup> and 21 organization offered pro bono services.<sup>354</sup> ICANN would appreciate any feedback from those who offered or received pro bono

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<sup>346</sup> ICANN. (12 March 2013) Applicant Support Program Update. Retrieved from <http://newgtlds.icann.org/en/applicants/candidate-support/sarp-results-12mar13-en.pdf>

<sup>347</sup> ICANN. (12 March 2013) Applicant Support Program Update. Retrieved from <http://newgtlds.icann.org/en/applicants/candidate-support/sarp-results-12mar13-en.pdf>

<sup>348</sup> ICANN. (20 March 2013) Applicant Support Program Update. Retrieved from <http://newgtlds.icann.org/en/applicants/candidate-support/sarp-results-20mar13-en.pdf>

<sup>349</sup> SARP Briefing Session. (8 May 2013) Retrieved from [https://community.icann.org/download/attachments/41883861/20130508\\_SARP\\_Briefing\\_English%20copy.pdf?version=1&modificationDate=1368784368000&api=v2](https://community.icann.org/download/attachments/41883861/20130508_SARP_Briefing_English%20copy.pdf?version=1&modificationDate=1368784368000&api=v2)

<sup>350</sup> ICANN. (18 July 2013) ICANN Durban Public Forum. Retrieved from <http://durban47.icann.org/meetings/durban2013/transcript-public-forum-18jul13-en.pdf>

<sup>351</sup> ICANN. (17 November 2014) Annex A to Resolutions 1014.11.17.10 – 2014.11.17.12. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-annex-a-17nov14-en.pdf>

<sup>352</sup> ICANN. Applicant Support Directory, Pro Bono Services for gTLD Startup Registries. Retrieved from <http://newgtlds.icann.org/en/applicants/candidate-support/non-financial-support>

<sup>353</sup> ICANN. Applicant Support Directory, New gTLD Candidates Seeking Support. Retrieved from <http://newgtlds.icann.org/en/applicants/candidate-support/non-financial-support#candidates-seeking-support>

<sup>354</sup> ICANN. Applicant Support Directory, Organizations Offering Support. Retrieved from <http://newgtlds.icann.org/en/applicants/candidate-support/non-financial-support#organizations-offering-support>

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services as to the effectiveness of this resource. Feedback may be submitted to the Customer Service Center at [customerservice@icann.org](mailto:customerservice@icann.org).

#### 6.1.4.3 FUNDING FOR APPLICANT SUPPORT PROGRAM

In addition to the USD 2 million seed fund, the JAS WG Final Report recommended the “creation of a foundation to collect and distribute the financial support to Support Recipients.”<sup>355</sup> As the USD 2 million seed funding was not exhausted, additional donations to fund the program were not solicited.

### 6.1.5 Conclusion

The Applicant Support Program was a community-developed initiative intended to promote access to the New gTLD Program in developing regions, by providing new gTLD applicants with access to financial and non-financial support. Three applicants applied for financial support, and one met the criteria of the Applicant Support Program to receive a reduced application fee. The ICANN Board reserved USD 2 million to provide financial assistance to qualified applicants, but these funds were not exhausted. Given the low number of applications submitted, consideration should be given to exploring how the Program can be improved to serve its intended purpose.

To the extent that such a program exists in future application rounds, there are valuable lessons learned that should be considered in the development of a financial assistance program. In regards to the development of criteria and processes, the community may wish to research globally recognized procedures that could be adapted for the implementation of a financial assistance program (e.g., World Bank programs). Additional studies may also be undertaken to better understand the needs of the target market and their obstacles to becoming registry operators (e.g., infrastructure, training). This information would help to design a program to better meet the needs of the target market.

Regarding execution of the program, in this round, the SARP was an independent panel that defined its own processes, procedures, and final reports. The SARP’s work was performed earlier than the other New gTLD Program evaluation panels, and based on lessons learned from the implementation of other panels, ICANN should consider whether additional guidance should be provided to the SARP regarding publication of their processes, final report format, and documentation of rationale.

In summary:

**6.1.a** Consider leveraging the same procedural practices used for other panels, including the publication of process documents and documentation of rationale

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<sup>355</sup> ICANN. (13 September 2011) Final Report of the Joint SO/AC New gTLD Applicant Support Working Group. Retrieved from [https://community.icann.org/download/attachments/22970578/Final\\_Report\\_JASWG+%28Sept+2011%29\\_Seth+created\\_Submitted.pdf](https://community.icann.org/download/attachments/22970578/Final_Report_JASWG+%28Sept+2011%29_Seth+created_Submitted.pdf)

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**6.1.b** Consider researching globally recognized procedures that could be adapted for the implementation of the Applicant Support Program

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# Chapter 7: Continued Operations Instrument

## 7.1 Continued Operations Instrument

### 7.1.1 Introduction

The Continued Operations Instrument (COI) is a financial instrument in the form of an irrevocable standby letter of credit (LOC) or deposit into an irrevocable cash escrow account. The purpose of the COI is to temporarily fund the continued operations of the five critical registry functions<sup>356</sup> of a new gTLD by an emergency back-end registry operator (EBERO) in the event of a TLD failure. This section of the Program Implementation Review report discusses the following aspects of the COI:

- COI Requirements
- COI Evaluation

### 7.1.2 Relevant Guidance

The following guidance is relevant to the topic of Continued Operations Instrument and will be discussed in further detail in Sections 7.1.3 and 7.1.4 of this report:

- GNSO Principle E: “A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN’s registry agreement.”<sup>357</sup>
- GNSO Recommendation 8: “Applicants must be able to demonstrate their financial and organizational operational capability.”
- Applicant Guidebook, Attachment to Module 2: Evaluation Questions and Criteria<sup>358</sup>
- Applicant Guidebook, Section 5.1: Registry Agreement
- Applicant Guidebook, Section 5.4: Ongoing Operations
- New gTLD Registry Agreement, Specification 8: Continued Operations Instrument<sup>359</sup>

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<sup>356</sup> The five critical registry functions are 1) DNS resolution for registered domain names, 2) Operation of Shared Registration System, 3) Operation of Registration Data Directory Services (Whois), 4) Registry data escrow deposits, and 5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.

<sup>357</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>

<sup>358</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>359</sup> ICANN. Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/agreement-approved-09jan14-en.pdf>

## 7.1.3 Background

Question 50 of the Applicant Guidebook (AGB) required that each applicant provide an estimate of the cost to fund the operations of the proposed registry’s five critical registry functions for at least three years. It further required that the applicant, “provide evidence as to how the funds required for performing these critical registry functions [would] be available and guaranteed,” in the form of an irrevocable standby LOC or a deposit into an irrevocable cash escrow account (these instruments are also collectively referred to as COIs”).

The requirements for the COI were specified in Question 50 of the AGB. However, because EBERO providers were not in place when the AGB was finalized, the EBERO’s cost to maintain operation of the five critical registry functions was not provided in the AGB. On 23 December 2011, prior to the opening of the application window (see Section 1.1: Application Submission of this report), ICANN published an announcement “Continued Operations Instrument Guidelines Available for New gTLD Applicants”<sup>360</sup> and provided guidance on the EBERO’s estimated cost by projected number of domains. The publication of this announcement provided applicants with the information they needed to finalize their COI.

Applicants who demonstrated an additional level of financial commitment by submitting a fully funded COI with the application were eligible to receive the maximum number of points (three) for Question 50 of the application. Of the 1,930 new gTLD applications submitted, 1,446 satisfied the AGB requirements to receive three points.

## 7.1.4 Assessment

The COIs submitted with the new gTLD applications were evaluated during Initial Evaluation (IE) (see Section 2.1: Initial and Extended Evaluation of this report) by the Financial Capability Evaluation Panel (See Section 2.7: Financial Capability Evaluation and Section 8.2: Service Provider Coordination of this report) against the requirements in Question 50 of the AGB:

- COI amount must be equal to or greater than the EBERO’s cost to fund the operations of the five critical registry functions for a period of three years
- COI must name “ICANN or its designee” as the beneficiary
- COI must have a term of at least five years from the delegation date of the TLD
- COI must be issued by a reputable financial institution insured at the highest level in its jurisdiction
- COI must provide that ICANN or its designee shall be unconditionally entitled to a release of funds
- COI must allow for partial drawing
- If an LOC, COI must be subject to ISP 98 or UCP
- If a cash escrow deposit:

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<sup>360</sup> ICANN. 23 December 2011. Announcement: Continued Operations Instrument Guidelines Available for New gTLD Applicants. Retrieved from <https://www.icann.org/news/announcement-3-2011-12-23-en>

- ❑ Cash must not comingle with other funds
- ❑ Funds are not considered to be an asset of ICANN
- ❑ Interest earnings less bank fees are to accrue to the deposit and will be paid back to the applicant upon liquidation of the account

These requirements were in place to ensure that the COI was a viable financial instrument and could be drawn upon quickly by ICANN or the EBERO should a failure occur.

Based on the evaluation performed, the Financial Capability Evaluation Panel issued 1,531 Clarifying Questions (CQs) (see Section 2.7: Financial Capability Evaluation of this report) for Question 50. This number represents 35% of CQs issued during IE regarding the six questions in the Financial section of the AGB. This shows that a large number of COIs did not meet the criteria as described above and had issues that required correction (e.g., COIs with an insufficient COI amount, the COI being provided by a bank that did not meet the defined standard or errors in the address). Although the deficiencies spanned all of the requirements of Question 50, the requirements regarding two issues in particular resulted in the highest proportion of CQs.

1. COI must provide that ICANN or its designee shall be entitled unconditionally to a release of funds. In many cases, applicants specified “ICANN” as the beneficiary but not “ICANN or its designee” as required.
2. COI must provide that ICANN or its designee shall be entitled unconditionally to a release of funds. In many cases, the COI specified conditions for the release of funds.

Eighty-two percent of all applications received a CQ for Question 50. Within this population, 90% of the CQs included a question relating to the unconditional release of funds requirement, and 45% of the CQs included a question related to the beneficiary requirement.<sup>361</sup> To clarify the requirements of Question 50 and to assist applicants with responding to their CQs, ICANN published several advisories during IE:

#### *5 December 2012 Advisory*

On 5 December 2012, ICANN published the first of three Advisories on this topic. This Advisory was published to provide applicants with an explanation for the unconditional requirement (item 2 above):

*The purpose of the continuing operations instrument (COI) is to ensure availability of funds needed to provide continuity of service to the registrants should an issue with the registry arise. ICANN's ability to exercise its rights under the COI are set forth in the new gTLD registry agreement (see Section 2.13, Section 4.5, Specification 8 and, for intergovernmental organizations and governmental entities only, Section 7.14(f)). As ICANN cannot envision all*

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<sup>361</sup> CQs were issued per question and each CQ may have contained multiple issues. For example, an applicant with issues relating to COI amount, unconditional requirement, and beneficiary requirement would receive one CQ for Q50 with all three issues specified. Percentage numbers provided are across all Question 50 CQs.

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*possible scenarios that could result in the need to draw on the COI under these provisions, the "unconditional withdrawal of funds" requirement must be met.*<sup>362</sup>

The Advisory also provided examples of statements that were not considered to be conditions for withdrawal of funds so that applicants could work with their banks to arrive at language that would be suitable for them and meet the unconditional requirement.

#### *5 February 2013 Advisory*

On 5 February 2013, ICANN followed up with publication of a second Advisory regarding the beneficiary requirement (item #1 above). This publication addressed concerns expressed by applicants who informed ICANN that due to concerns about risks, their banks could not accommodate the requirements: “The LOC must name ICANN or its designee as the beneficiary.” and “Any funds paid out would be provided to the designee who is operating the required registry functions.”<sup>363</sup> To help these applicants overcome this hurdle with their banks, ICANN provided an alternative to naming “ICANN or its designee” the beneficiary. The applicant could name ICANN as the beneficiary of the letter of credit and make the letter of credit fully transferable or assignable by ICANN, in ICANN’s sole discretion. This guidance was communicated in the Advisory and provided an option available to all applicants.

#### *4 March 2013 Update to the 5 December 2012 Advisory*

Following the publication of the 5 December 2012 Advisory and despite having provided examples of statements not considered to be conditions, ICANN continued to receive questions from applicants regarding what specific language would satisfy the unconditional requirement of Question 50 (item #2 above). On 4 March 2013, ICANN published an update to the 5 December 2012 Advisory to provide an additional example of an acceptable statement that was not considered to be a condition.

Despite good efforts by applicants to utilize the unconditional language examples that were provided in the Advisories, there continued to be confusion and inconsistent application and usage of the conditional language throughout IE. Complicating this was the fact that there were some banks that would not issue unconditional irrevocable standby LOCs. This was made more challenging because IE was not designed to facilitate extended exchanges and dialogue about these issues between the Financial Capability evaluation panel, ICANN, the applicant, and the banks. Based on the inconsistency of unconditional language and in order to allow applicants to move through IE in a timely manner, on 5 June 2013, ICANN announced during an Applicant Update Webinar that the evaluation of Question 50 would be focused on the financial aspects of the COI.<sup>364</sup> The final evaluation of the COI against the requirements of Specification 8 of the Base RA, including the unconditional language, would be performed during Contracting (see Section 5.1 of this report).

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<sup>362</sup> ICANN. 5 December 2012. New gTLD Advisory: Continuing Operations Instrument. Retrieved from <http://newgtlds.icann.org/en/applicants/advisories/coi-withdrawal-05dec12-en>

<sup>363</sup> ICANN. 5 February 2013. New gTLD Advisory: Beneficiary Requirement on Letters of Credit. Retrieved from <http://newgtlds.icann.org/en/applicants/advisories/loc-beneficiary-requirement-05feb13-en>

<sup>364</sup> ICANN. Web Conference Recording. Retrieved from <http://icann.adobeconnect.com/p8u06buwzwm/>; Additional Questions & Answers. Retrieved from <http://newgtlds.icann.org/en/applicants/webinar-qa-05jun13-en.pdf>

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At the time that this announcement was made, IE results for 600 applications had been published, and the change did not affect the result (passing IE vs. being eligible for EE) of any of these applications. The change did result in ICANN updating the IE score for Question 50 from 1 point to 3 points for 15% of the 600 applications.

In July 2013, when ICANN began inviting applicants to Contracting, ICANN began reviewing the COIs against the requirements of Specification 8 of the Base RA for Contracting purposes. One of the requirements of Question 50 and Specification 8 of the Base RA was that the COI be in place for a period of five years from the delegation date of the TLD, or six years from the effective date of the RA (as the RA provides for a period of 12 months from the effective date of the RA for the TLD to be delegated). Because Contracting commenced over two years after the close of the application window, many COIs needed to be amended to meet this requirement. In addition, many applicants needed to amend the unconditional language of the COI to meet the requirements of Specification 8 of the RA. These two issues affected approximately 85% of all non-compliant COIs at the time of Contracting.<sup>365</sup> The other COI issues that impacted applicants at Contracting included updating ICANN's office address, mailing to ICANN the physical original COI document, amending the COI to reflect appropriate choice of law, and amending the COI to ensure that the document could be transferred by ICANN.

When ICANN implemented the RA extension request process on 3 September 2014,<sup>366</sup> only 1,059 of 1,1718 active applications had compliant COIs. In order to ensure that applicants could complete the Contracting process, which required that a compliant COI be in place as per Section 5.4.1 of the AGB, an interim deadline (see Section 5.1: Contracting of this report) of 31 October 2014 was set for the submission of compliant COI for applications that were in Contracting. Two-hundred-thirty applications were received by the 31 October 2014 deadline. Of this number, 217 met the final deadline. A small number, 13 applicants, did not meet this deadline and had their application status changed to "Will Not Proceed" which meant loss of eligibility to sign a Registry Agreement with ICANN.<sup>367</sup> ICANN worked with these applicants on a one-on-one basis to address their outstanding issues.

As of 31 July 2015, 965 of the 1,390 non-withdrawn applications required at least one amendment to achieve a compliant COI, 607 required two amendments, and 316 required three or more amendments before reaching compliance.

## 7.1.5 Conclusion

COI was the financial instrument that applicants were required to submit with their applications to temporarily fund the continued operations of the five critical registry functions of a new gTLD by an emergency back-end registry operator (EBERO) in the event of a TLD failure. The majority of

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<sup>365</sup> ICANN did not track this specific statistic. This number is ICANN's estimate.

<sup>366</sup> ICANN. 3 September 2014. Announcement: Requests for Extension to Execute New GTLD Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/announcement-03sep14-en>

<sup>367</sup> ICANN. Contracting and the Registry Agreement. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting#deadlines-extensions>

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applicants had issues obtaining a COI that met the requirements of the AGB as evidenced by the fact that almost all applicants were required to make amendments to their COIs, and over 20% of applications had three or more amendments. As such, consideration should be given to whether there are other ways to fund an EBERO in the event of a TLD failure.

In summary:

**7.1.a** Explore whether there other more effective and efficient ways to fund emergency back-end registry operator in the event of a TLD failure

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# Chapter 8: Program Management

Section 1.1 of the Applicant Guidebook estimated an application volume of 500 when estimating processing times for each phase.<sup>368</sup> The total estimated lifecycle was approximately nine months for straightforward applications and up to 20 months for complex applications. In fact, 1,930 applications for new gTLD were submitted and the New gTLD Program is currently estimated to conclude in 2017, representing a five-year lifespan during which ICANN processed gTLD applications. The implementation of such a large and complex program was not a small task, and required significant effort from the community, ICANN, and service providers over the three-and-a-half-year period between the opening of the application window on 12 January 2012 and the publication of this report. This section of the Program Implementation Review Report discusses how ICANN defined operational procedures to implement the processes defined in the AGB, the systems and tools that were developed and used in support of the operational implementation of the Program, the resources that supported the Program, how and which service providers were selected to support Program processes, how ICANN managed these service providers to ensure the quality and consistency of results delivered, how ICANN managed the Program's financials, how ICANN executed various communications activities in support of the Program, and how the Customer Service Center evolved over time to provide improved services to applicants and registry operators.

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<sup>368</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

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## 8.1 Program Processes, Systems, Resources

### 8.1.1 Introduction

Program processes, systems and resources are elements that supported the implementation of the New gTLD Program. Processes and procedures provided predictability to applicants, service providers, and ICANN. Systems supported communications with applicants. Resources performed the work. This section of the Program Implementation Review report discusses the following topics:

- Program processes and procedures
- Applicant-facing systems
- ICANN’s internal resources to support Program implementation

### 8.1.2 Relevant Guidance

The following guidance is relevant to the topic of Program Processes, Systems, Resources and will be discussed in further detail in Sections 8.1.3 and 8.1.4 of this report:

- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>369</sup>

### 8.1.3 Background

On 8 August 2007, the GNSO published its Final Report for the “Introduction of New Generic Top-Level Domains.” The community and ICANN subsequently undertook the effort to draft the AGB, which would serve as a roadmap for the implementation of the policies set forth in the GNSO’s Final Report. On 24 October 2008, ICANN published the first version of the AGB for comments and input from the community.<sup>370</sup> Over the next three years, the community and ICANN continued to work on the development of the AGB.<sup>371</sup> On 11 January 2012, the current and ninth version of the AGB was published. This version served as the final roadmap for the implementation of the first round of new gTLDs.

In accordance with GNSO Recommendation 1, the AGB was developed to provide criteria and requirements that applicants must meet in order to successfully complete the evaluation process. The AGB defined the overall process flow for applications, the criteria they would be considered against, and the rules for various processes each application may be subject to; however, the AGB

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<sup>369</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>370</sup> ICANN. (24 October 2008) New gTLD Program: Draft Applicant Guidebook (Draft RFP). Retrieved from <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v1>

<sup>371</sup> ICANN. Historical Documents. Retrieved from <http://newgtlds.icann.org/en/about/historical-documentation>

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typically (and intentionally) did not contain the detailed step-by-step process descriptions necessary for the operational implementation of the New gTLD Program. The task of defining the operational processes and procedures, systems and tools, and resources required for the implementation of the New gTLD Program was ICANN's responsibility.

Although GNSO Recommendation 1 stated, “no subsequent additional selection criteria should be used in the selection process,” new requirements did come up during the implementation of the New gTLD Program (e.g., GAC Category 1 and 2 Advice, name collision, designation of .Brand TLDs). These new requirements required additional work by the community and ICANN to develop a roadmap for the implementation of these new requirements. Once the roadmap for the implementation of these new requirements was developed, ICANN defined the operational processes and procedures to support the implementation.

## 8.1.4 Assessment

### 8.1.4.1 PROGRAM PROCESSES AND PROCEDURES

#### *Consistency and Quality*

The operational implementation of the New gTLD Program was guided by the principles of consistency and quality. To achieve consistency, standardized processes and procedures were defined for all areas of the Program. An example of a standardized process and procedure was the application change request process (see Section 1.3: Application Change Requests of this report). Section 1.2.7 of the AGB stated the following: “If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms.” However, the AGB did not define the forms that the applicant could use to notify ICANN of changes to the application or the criteria and process by which ICANN had to process the notification. In order to put in place a standardized and repeatable process that could be applied consistently for all applicants, ICANN:

- Defined seven criteria that were used to assess each application change request.
- Defined a form for applicants to notify ICANN of changes to application materials.
- Defined a process for applicants to submit application change requests.
- Defined a process to review application change requests.<sup>372</sup>

Generally, defining standardized processes and procedures allowed ICANN to provide predictability to applicants and to execute the process in a repeatable manner with consistent results. Each of the previous chapters of this report describes how ICANN defined operational implementation processes and procedures for each specific area.

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<sup>372</sup> ICANN. New gTLD Application Change Request Process and Criteria. Retrieved from <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>

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Quality is the other principle that was crucial to ICANN in the implementation of the New gTLD Program. In addition to achieving quality through standardized processes that yielded consistent results, ICANN implemented quality control steps in all Program processes, including a formal Quality Control program<sup>373</sup> that was implemented in Initial Evaluation (see Section 2.1: Initial and Extended Evaluation of this report), and a quality control step that was inserted prior to the publication of any applicant report to ensure that the reports are consistent among themselves and with the AGB requirements.

Service providers, discussed in Section 8.2: Service Provider Coordination of this report, were partners to ICANN in the implementation of the New gTLD Program and shared the same principles of consistency and quality in their approach. Each documented their approach and process, which were posted on the New gTLD microsite for transparency.

### *Alignment to Relevant Guidance*

In defining operational processes and procedures, ICANN adhered to the requirements of the AGB. In cases where the AGB did not provide the level of detail required for operational implementation, ICANN relied on the expertise of the service providers engaged, as in the case of String Similarity evaluation (see Section 2.3: String Similarity Evaluation of this report), or consulted with service providers and the community, as in the case of auction rules (see Section 4.2: Auctions of this report).

### *Process Improvement*

As the Program progressed, some processes evolved to gain operational efficiency and to better meet the needs of applicants. Examples of processes that evolved included the application change request process, which was updated on 1 October 2014 to not require certain types of change requests to be subject to a 30-day window.<sup>374</sup> This update was made to improve the efficiency of the process, after the observation was made that only 25 comments were submitted on the 496 approved change requests from January 2014 through September 2014. This update allowed applicants to more expeditiously move forward in the Program (see Section 1.4: Application Change Requests of this report). Another example is the implementation of the weekly Contracting operational cycle, which was implemented in October 2013, three months after ICANN commenced the Contracting process.<sup>375</sup> The move to the weekly Contracting operational cycle allowed ICANN to gain efficiency and provide more predictability of the process to applicants (see Section 5.1: Contracting of this report).

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<sup>373</sup> JAS Global Advisors. (6 August 2014) gTLD Application Processing: Initial Evaluation Quality Program Report. Retrieved from <http://newgtlds.icann.org/en/program-status/application-results/ie-quality-program-26aug14-en.pdf>

<sup>374</sup> ICANN. Change Requests That Do Not Require A 30-day Comment Window. Retrieved from <http://newgtlds.icann.org/en/applicants/customer-service/change-requests#change-requests-comment>

<sup>375</sup> ICANN. Contracting Overview. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting#overview>

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#### 8.1.4.2 APPLICANT-FACING SYSTEMS

Applicant-facing systems refer to systems that facilitated communications between ICANN and the applicant. In this round, the TLD Application System (TAS) allowed applicants to submit applications for new gTLDs, and for ICANN to deliver Financial Capability, Technical/Operational Capability, and Registry Services CQs and IE results to applicants. The Customer Portal allowed applicants to submit questions and requests regarding Program requirements and their applications to ICANN, and it allowed ICANN to provide responses. This system was also used by ICANN to deliver Background Screening CQs, Geographic Names CQs, and EE results to applicants. The remaining applicant-facing system, the Application Comments Forum, is discussed in Section 1.3: Application Comments of this report.

##### *TLD Application System (TAS)*

There were challenges in the development of TAS. While ICANN began defining preliminary requirements for the application system in 2009, the AGB was not finalized until June 2011. ICANN had seven months between the finalization of the AGB and the opening of the application window to finalize the system requirements, complete system development, integrate the system, and perform testing. A longer period between the finalization of the requirements and the launch of the application window would have provided additional time for aspects of the development process such as system integration, user acceptance testing, security testing, and user beta testing. The limited development period may have contributed to some of the challenges identified by applicants.

In terms of usability, there were some areas that were challenging to users of the system. To access TAS, applicants had to first log into a virtual application that provided a browser-agnostic environment for applicants. Although the browser-agnostic environment might have eliminated some problems with user experience across various browsers, the virtual environment created issues for users as reported in the feedback and inquiries received by the Customer Service Center. Many applicants had issues with downloading and uploading files due to how files are handled within the virtual environment. The Customer Service Center received 108 inquiries during the application window regarding working with files within the virtual environment. To assist applicants, ICANN provided a user guide to educate applicants on how to work within the virtual environment.<sup>376,377</sup> Although the user guide was helpful, it did not solve the challenge of working with files within this environment.

The other issue that the virtual environment created was with regards to logins. Although the virtual environment provided an additional level of security by creating a second set of passwords, it also created complexity and difficulties for users. Applicants frequently forgot which password was for which system and had to reset passwords frequently. The ICANN Customer Service Center recorded 1,802 inquiries about TAS and the virtual environment passwords during the application window.

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<sup>376</sup> ICANN. TAS: TLD Application System. Retrieved from <http://newgtlds.icann.org/en/applicants/tas>

<sup>377</sup> ICANN. Accessing TAS and the CSC Portal. Retrieved from <http://newgtlds.icann.org/en/applicants/tas/access-21nov12-en.pdf>

On 12 April 2012, hours before the scheduled close of the application window (see Section 1.1: Application Submission of this report), ICANN identified a technical issue with TAS software. ICANN took the most conservative approach possible to protect all applicants and allow time to resolve the issue by taking TAS offline. ICANN informed applicants that the application window would be extended to 20 April 2012 to allow applicants sufficient time to complete their applications in TAS.<sup>378</sup> The technical issue with the TAS software allowed a limited number of users to view some other users' filenames and usernames in certain scenarios. The issue was first reported by a system user on 19 March 2012, and although ICANN believed that the reported issue had been addressed, on 12 April 2012, ICANN confirmed that there was a continuing unresolved issue and took the system offline.<sup>379</sup> At the time the system was taken offline, there were 1,268 registered users and approximately 95,000 file attachments in the system.<sup>380</sup> ICANN's review showed that 105 users might have had filenames and usernames viewed by another user, and 50 users might have viewed filenames and usernames from one or more other users. On 7 May 2012, ICANN issued an announcement that in recognition of the inconvenience caused by the TAS system being temporarily taken offline, if applicants withdrew their applications before Reveal Day, ICANN would provide a full refund of the USD 185,000 evaluation fee.<sup>381</sup> Previously, the USD 5,000 registration fee was non-refundable to reduce risk of frivolous access to TAS. TAS was brought back online on 21 May 2012, after users were notified whether they were affected or not, and after the system had been fixed and the overall system performance had been improved.<sup>382</sup> During the period from 12 April 2012 through 21 May 2012, ICANN provided frequent updates to both the applicants and the community via announcements.<sup>383</sup>

### *Customer Portal*

The Customer Portal served its intended purpose of allowing applicants to submit questions regarding the Program requirements and their applications to ICANN and for ICANN to provide responses, and to facilitate the Clarifying Question process during Initial Evaluation and Extended Evaluation (see Section 2.1: Initial and Extended Evaluation of this report). Improvements to the Customer Portal were made over time to enhance usability, such as the addition of sorting capability for the knowledge base and the migration of application data into the Customer Portal to provide applicants with a central location to manage their applications and engage with ICANN.

On 1 March 2015, ICANN announced that the Customer Portal and GDD Portal were taken offline on 27 February 2015 to investigate a reported security issue where under certain circumstances an

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<sup>378</sup> ICANN. (12 April 2012) Announcement: TAS Temporarily Offline. Retrieved from

<http://newgtlds.icann.org/en/announcements-and-media/announcement-12apr12-en>

<sup>379</sup> ICANN. (14 April 2012) Announcement: TAS Interruption – Update (14 April 2012 06:50 UTC). Retrieved from

<http://newgtlds.icann.org/en/announcements-and-media/announcement-14apr12-en>

<sup>380</sup> ICANN. (2 May 2012) Announcement: TAS Interruption – Update (2 May 2012). Retrieved from

<http://newgtlds.icann.org/en/announcements-and-media/announcement-02may12-en>

<sup>381</sup> ICANN. (7 May 2012) Announcement: TAS Interruption – Update (7 May 2012). Retrieved from

<http://newgtlds.icann.org/en/announcements-and-media/announcement-07may12-en>

<sup>382</sup> ICANN. (21 May 2012) Announcement: TAS Interruption – Update (21 May 2012). Retrieved from

<http://newgtlds.icann.org/en/announcements-and-media/announcement-21may12-en>

<sup>383</sup> ICANN. 2012 New gTLD Announcements. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/2012>

authenticated portal user could potentially view data of, or related to, other users.<sup>384</sup> The reported security issue was addressed and the Customer and GDD portals were brought back online on 2 March 2015.<sup>385</sup> On 30 April 2015, ICANN published an announcement regarding the results of the first phase of its investigation into the reported security issue.<sup>386</sup> The investigation involved two consulting firms reviewing and analyzing historical log data going back to the activation of the Customer Portal on 17 April 2013 and of the GDD portal on 17 March 2014. The results of the investigation showed that the unauthorized access resulted from advanced searches conducted using the login credentials of 19 users, which exposed 330 advanced search result records, pertaining to 96 applicants and 21 registry operators. These records may have included attachment(s). These advanced searches occurred during 36 user sessions out of a total of nearly 595,000 user sessions since April 2013. On 27 May 2015, ICANN announced that it had notified users whose credentials were used to access information that did not appear to belong to them and requested that these users: (1) provide an explanation of their activity; (2) certify that they would delete or destroy all information obtained; (3) certify that they had not used and would not use the information or convey it to any third party. In addition, ICANN provided the affected parties with the name(s) of the user(s) whose credentials were used to view their information without their authorization, or of the individuals that were not officially designated by their organization to access certain data.<sup>387</sup> On 9 June 2015, ICANN's Chief Information and Innovation Officer posted a blog to share that ICANN had engaged the services of an expert-knowledge firm to review ICANN's implementation of Salesforce.com, the software platform for the Customer and GDD portals.<sup>388</sup> The review highlighted several areas where ICANN could harden its platform. As of 31 July 2015, ICANN has since released multiple software patches to address several potential vulnerabilities that were identified, and expects that all work will be completed by the end of calendar year 2015. Several other efforts to harden ICANN's IT and digital services are also underway.

#### **8.1.4.3 ICANN'S INTERNAL RESOURCES TO SUPPORT PROGRAM IMPLEMENTATION**

Program staff was a critical component of the effective and efficient implementation of the New gTLD Program. These resources had a wide span of expertise including vendor management, system requirements gathering, business process analysis and development, operations management, technical customer service support, financial management, and program management. In addition to these skills, Program staff was also required to have a broad understanding of ICANN, the AGB, and the diverse set of technical and policy issues that affected the Program.

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<sup>384</sup> ICANN. (1 March 2015) Announcement: New gTLD Applicant and GDD Portal Update. Retrieved from <https://www.icann.org/news/announcement-2015-03-01-en>

<sup>385</sup> ICANN. (2 March 2015) Announcement: Update – New gTLD Applicant and GDD Portal Back Online. Retrieved from <https://www.icann.org/news/announcement-3-2015-03-02-en>

<sup>386</sup> ICANN. (30 April 2015) Announcement: New gTLD Applicant and GDD Portal Update. Retrieved from <https://www.icann.org/news/announcement-2015-04-30-en>

<sup>387</sup> ICANN. (27 May 2015) Announcement: New gTLD Applicant and GDD Portals Update. Retrieved from <https://www.icann.org/news/announcement-2015-05-27-en>

<sup>388</sup> A. Rangan, ICANN. (9 June 2015). Hardening ICANN's IT and Digital Services. Retrieved from <https://www.icann.org/news/blog/hardening-icann-s-it-and-digital-services>

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As the Program progressed, Program staff was required to quickly learn new content (e.g., understanding the Registry Agreement (RA) and the contracting process while still executing Initial Evaluation) and to take on the additional tasks of defining new processes and procedures while continuing to operate the previous phases of the Program. The existence of defined processes and procedures allowed for cross-training of resources to meet varying level of Program demands. Over time, Program staff built expertise and gained operational efficiency.

## 8.1.5 Conclusion

Overall, Program processes, systems, and resources were critical components in supporting the execution of the Program. Program processes and procedures were designed to ensure alignment to GNSO policy and the AGB, and to honor the principles of consistency and quality. Applicant-facing systems served their intended purpose of facilitating communications between ICANN and applicants. ICANN resources flexed to accommodate the demand and evolving needs of the Program. That said, there are additional considerations from this round that can be used to inform the next round.

In particular, the system development process may have benefited from leveraging industry standard best practices for product development. In this round, there was a limited time available between the finalization of system requirements and the launch of the TLD Application System. In future application rounds, the Program timeline should provide additional time for system development, including the definition of robust system requirements and appropriate testing.

In summary:

**8.1.a** In developing timelines for future application rounds, provide an appropriate amount of time to allow for the use of best practices in system development

**8.1.b** Explore beta testing programs for systems to allow for lessons learned, to increase effectiveness of such systems, and to provide further transparency, clarity, and opportunity for preparation to applicants

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## 8.2 Service Provider Coordination

### 8.2.1 Introduction

Service providers are strategic partners in the implementation of the New gTLD Program. This section of the Program Implementation Review Report discusses the following aspects of service provider coordination:

- Service Provider Selection Process
- Conflict of Interest Guidelines
- Service Provider Coordination Program

### 8.2.2 Relevant Guidance

The following guidance is relevant to the topic of Service Provider Coordination and will be discussed in further detail in Sections 8.2.3 and 8.2.4 of this report:

- GNSO Implementation Guideline H: “External dispute providers will give decisions on objections.”<sup>389</sup>
- Applicant Guidebook, Module 1: Introduction to the gTLD Application Process<sup>390</sup>
- Applicant Guidebook, Module 2: Evaluation Procedures
- Applicant Guidebook, Module 3: Objection Procedures
- Applicant Guidebook, Module 4: String Contention Procedures

### 8.1.3 Background

The AGB called for independent experts to perform certain Program activities such as evaluation, objection and dispute resolution proceeding, and auction management. In addition to the independent experts required by the AGB, ICANN engaged other service providers to execute other Program activities such as PDT and Quality Control.

ICANN selected all but two service providers for the Program through competitive, open processes, implemented the conflict of interest guidelines established in Section 2.4.3 of the AGB, and coordinated the service providers’ work to ensure timely and quality deliverables.

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<sup>389</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>390</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agg/guidebook-full-04jun12-en.pdf>

## 8.2.4 Assessment

### 8.2.4.1 SERVICE PROVIDER SELECTION PROCESS

Section 2.4.2 of the AGB called for service providers that were global, diverse, and that had the ability to scale quickly in order to meet the unknown demands of the New gTLD Program. Call for Expression of Interest, Requests for Proposals, and Requests for Information were issued to solicit qualified service providers to perform background screening, Financial Capability evaluation, Technical/Operational Capability evaluation, Geographic Names evaluation, String Similarity evaluation, Community Priority Evaluation, Auction, PDT, and to administer the Community, Limited Public Interest, Legal Rights, and String Confusion Objections.<sup>391, 392, 393, 394, 395, 396, 397</sup> For DNS Stability and Registry Services, ICANN performed direct procurement, which is provided for under the ICANN Procurement Guidelines,<sup>398</sup> due to the specific technical skills required for these evaluations.

Service provider selection criteria were provided in the EOIs, RFPs, and RFIs, and mapped to the criteria provided in Section 2.4.2 of the AGB. In addition to the criteria provided in the AGB, ICANN also considered the candidates' capacity to develop tools for evaluation, proposed internal processes to ensure the consistency of evaluation results, approach, experience, technical competency, commitment, and proposed costing model. Over the course of the New gTLD Program, ICANN developed best practices for sharing information with the community regarding the procurement process. To support transparency, in future application rounds, ICANN should continue to provide procurement information to the community in the form of timely updates. Such updates should include selection criteria and service provider process documentation where applicable.

Where it made sense, ICANN selected more than one service provider to perform a particular evaluation. This approach allowed ICANN to address any conflict of interest issues, increase

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<sup>391</sup> ICANN. (21 December 2007) Announcement: ICANN Calls for Expressions of Interest from Potential Dispute Resolution Service Providers for the New gTLD Program. Retrieved from <https://www.icann.org/news/announcement-2007-12-21-en>

<sup>392</sup> ICANN. (25 February 2009) Announcement: New gTLDs – Call for Applicant Evaluation Panel Expressions of Interest. Retrieved from <https://www.icann.org/news/announcement-2009-02-25-en>

<sup>393</sup> ICANN. (31 July 2009) Announcement: New gTLD Program - Update on Independent Evaluators Search <https://www.icann.org/news/announcement-2-2009-07-31-en>

<sup>394</sup> ICANN. (30 August 2011) Announcement: Safe, Stable and Secure New gTLDs – ICANN Seeks Global Background Screening Services Provider. Retrieved from <https://www.icann.org/news/announcement-2011-08-30-en>

ICANN. (21 November 2011) Announcement: New gTLD Program – ICANN Seeks Independent Objector. Retrieved from <https://www.icann.org/news/announcement-3-2011-11-21-en>

<sup>395</sup> ICANN. (21 November 2011) Announcement: New gTLD Program – ICANN Seeks Independent Objector. Retrieved from <https://www.icann.org/news/announcement-3-2011-11-21-en>

<sup>396</sup> ICANN. Request for Proposal: Pre-Delegation Testing Provider for the New gTLD Program. Retrieved from <https://www.icann.org/en/system/files/files/pre-delegation-testing-30oct12-en.pdf>

<sup>397</sup> ICANN. Summary of New gTLD Auctions Vendor Selection. Retrieved from <http://newgtlds.icann.org/en/applicants/auctions/summary-vendor-selection-10mar14-en.pdf>

<sup>398</sup> ICANN. (21 February 2010) Procurement Guidelines. Retrieved from <https://www.icann.org/en/system/files/files/procurement-guidelines-21feb10-en.pdf>

capacity, and foster competition among service providers to increase quality and minimize cost. Table 8.2.i shows the selected service providers.

*Table 8.2.i: Selected Service Providers*

Evaluation Panel	Service Provider
Background Screening Panel	• PricewaterhouseCoopers (PwC)
String Similarity Panel	• Interconnect Communications (partnering with the University College London)
DNS Stability Panel	• Interisle Consulting Group
Registry Services	• Interisle Consulting Group
Geographic Names Panel	• The Economist Intelligence Unit (EIU) • Interconnect Communications (partnering with the University College London)
Financial and Technical Evaluation Panels	• Ernst & Young • KPMG • JAS Advisors
Community Priority Evaluation Panel	• The Economist Intelligence Unit (EIU) • Interconnect Communications
Dispute Resolution Service Providers	• The International Centre for Dispute Resolution (ICDR) • The Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) • The International Centre for Expertise of the International Chamber of Commerce (ICC)
Independent Objector	• Professor Alain Pellet
Auction Provider	• Power Auctions, LLC
Pre-Delegation Testing	• Stiftelsen för Internetinfrastruktur (IIS)

### *Background Screening Panel*

ICANN selected PricewaterhouseCoopers (PwC) to perform background screening for its independence, expertise, and capacity to gather, analyze, assess, scrutinize, and report information. With more than 195,000 people in 157 countries, PwC had the global network and reach necessary to perform complete background research of applicants for the New gTLD Program as well as the ability to quickly scale to meet the demands of the Program.<sup>399</sup>

### *String Similarity Panel*

ICANN selected one service provider to perform the String Similarity evaluation because all of the strings had to be evaluated against one another. InterConnect Communications, in partnership with the University College London (UCL), was selected as the String Similarity panel firm. InterConnect Communications had nearly 30 years of experience providing consulting services in

<sup>399</sup>ICANN. (25 February 2009) ICANN Call for Expression of Interest (EOIs) for a New gTLD Geographic Names Panel. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/eoi-geonames-25feb09-en.pdf>

communications sector strategy, policy and associated regulatory frameworks.<sup>400</sup> UCL came with internationally renowned researchers with “breadth and depth of expertise across the entire range of academic disciplines.”<sup>401</sup> Together, InterConnect and UCL firms brought diverse linguistics resources offering and subject matter expertise.<sup>402</sup>

#### *DNS Stability Panel and Registry Services Panel*

ICANN selected Interisle Consulting Group to perform the DNS Stability and Registry Services evaluations for its specific subject matter expertise in the DNS. Interisle convened separate independent panels for each of these evaluations. In 2009, Interisle was selected by ICANN to perform technical string requirement evaluations for requested IDN ccTLDs under the IDN ccTLD Fast Track Process.<sup>403</sup> Within the Fast Track program, the Panel reviewed ccTLDs for confusability with two-letter codes, existing TLDs and other applied-for TLDs — this experience was valuable in determining, for instance, whether new gTLDs could cause instability based on non-compliance with ASCII/non-ASCII label requirements or ISO standards. Furthermore, Interisle had experience in ICANN’s Registry Services Evaluation Policy (RSEP) as part of the Registry Service Technical Evaluation Panel (RSTEP),<sup>404</sup> experience which was leveraged in the Registry Services evaluation.

#### *Financial Capability and Technical and Operational Capability Evaluation Panels*

The AGB, Attachment to Module 2, Section III stated, “Given the requirement that technical and financial planning be well integrated, the panels [would] work together and coordinate information transfer where necessary.” To support this, ICANN selected the same panel firms for the Technical and Operational Capability Evaluation and the Financial Capability Evaluation, and allocated both sections of an application to the same panel firm.

ICANN selected three service providers to conduct Financial Capability and Technical and Operational Capability evaluations: Ernst & Young, KPMG, and JAS Global Advisors. Ernst & Young and KPMG were selected for their expertise in technology and finance. Both firms had large and global practices that provided technology advisory and evaluate financial transactions, making them well suited to perform Technical/Operational and Financial evaluations for the Program. Their large global footprints could also effectively scale to ensure timely processing of applications. JAS Global Advisors had a decade of experience in due diligence, Internet security, and global IT operations as well as an in-depth knowledge of ICANN.<sup>405</sup>

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<sup>400</sup>InterConnect Communications. About InterConnect. Retrieved from [http://www.icc-uk.com/index.php#tab\\_2](http://www.icc-uk.com/index.php#tab_2)

<sup>401</sup>University College London. UCL Research. Retrieved from <http://www.ucl.ac.uk/research>

<sup>402</sup>M. Salazar, ICANN. (22 November 2011) Preparing Evaluators for the New gTLD Application Process. Retrieved from <https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>

<sup>403</sup>ICANN. (9 September 2009) Announcement: Status Update: IDN ccTLD Fast Track Process Implementation. Retrieved from <https://www.icann.org/news/announcement-2-2009-09-09-en>

<sup>404</sup>ICANN. Registry Services Technical Evaluation Panel. Retrieved from <https://www.icann.org/resources/pages/technical-evaluation-panel-2012-02-25-en>

<sup>405</sup>M. Salazar, ICANN. (22 November 2011) Preparing Evaluators for the New gTLD Application Process. Retrieved from <https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>

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## Geographic Names Panel

ICANN selected two service providers to conduct Geographic Names evaluations: the Economist Intelligence Unit (EIU) and Interconnect Communications. The EIU had more than six decades of experience and incorporated a solid understanding of global corporate and government processes. Additionally, the EIU had experience building evaluative frameworks and benchmarking models for its clients, including governments, corporations, academic institutions, and NGOs.<sup>406</sup> InterConnect Communications (partnered with the University College London) brought experience in working with governments in the telecommunications and wireless industry. InterConnect Communications had nearly 30 years of experience providing consulting services in communications sector strategy, policy and associated regulatory frameworks.<sup>407</sup> Both providers were able to convene globally diverse panels that could evaluate applications from all regions of the world. They were also able to quickly scale to meet the demands of the evaluation of an unknown application volume.

## Community Priority Evaluation Panel

ICANN initially selected two service providers to conduct CPE, the EIU and InterConnect Communications. The decision to have only one service provider performing CPE was primarily due to the low volume of community-based applications in contention (34 in total) where additional capacity was not required and in order to ensure consistency in evaluation over this low volume. Ultimately, ICANN selected EIU to perform CPE because of its experience, expertise, and global network.<sup>408</sup> Its network of more than 500 analysts and contributors in more than 200 countries helped executives, governments, and institutions by providing timely, reliable, and impartial analysis. Additionally, the EIU had more than six decades of experience building evaluative frameworks and benchmarking models for its clients, including governments, corporations, academic institutions, and NGOs. One of its core competencies was applying scoring systems to complex questions, which was a good fit for CPE due to the need to apply consistent analysis to a variety of applications during the CPE process.<sup>409</sup>

## Dispute Resolution Service Providers

Each of the DRSPs selected by ICANN was a globally recognized firm with notable experience in dispute resolution:

- The International Centre for Dispute Resolution (ICDR) for String Confusion Objections:

*Established in 1996 as the global component of the American Arbitration Association, the [ICDR] provide[d] conflict-management services in more than 80 countries with a staff fluent in 14 languages. Through a worldwide panel of hundreds of independent*

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<sup>406</sup>The Economist Intelligence Unit. Community Priority Evaluation Panel Process. Retrieved from <https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

<sup>407</sup>InterConnect Communications. About InterConnect. Retrieved from [http://www.icc-uk.com/index.php#tab\\_2](http://www.icc-uk.com/index.php#tab_2)

<sup>408</sup>M. Salazar, ICANN. (22 November 2011) Preparing Evaluators for the New gTLD Application Process. Retrieved from <https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>

<sup>409</sup>The Economist Intelligence Unit. Community Priority Evaluation Panel Process. Retrieved from <https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>

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*arbitrators and mediators and global cooperative agreements for hearing-room access, the ICDR provide[d] a flexible, party-centered process over a broad range of industries and geopolitical issues.*<sup>410</sup>

- The Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO) for Legal Rights Objections: “WIPO [was] the global forum for intellectual property services, policy, information and cooperation. [It was] a self-funding agency of the United Nations, with 188 member states.”<sup>411</sup> The WIPO Arbitration and Mediation Center provided time- and cost-efficient mechanisms to resolve internet domain name disputes, without the need for court litigation. This service included the WIPO-initiated Uniform Domain Name Dispute Resolution Policy (UDRP), under which the WIPO Center processed over 30,000 cases (as of 2015).<sup>412</sup> The WIPO Center described the Legal Rights Objection development, procedure, and substance in its End Report.<sup>413</sup>
- The International Centre for Expertise of the International Chamber of Commerce (ICC) for Limited Public Interest and Community Objections: “ICC [was] a leading provider of dispute resolution services for individuals, business, states, state entities, and international organizations seeking alternatives to court litigation.”<sup>414</sup>

### *Independent Objector*

On 14 May 2012, Professor Alain Pellet was announced as the Independent Objector.<sup>415</sup> Professor Pellet's credentials and experience were suitable for the role. He was a highly regarded professor and practitioner of law and has represented governments as Counsel and Advocate in the International Court of Justice in many significant and well-known cases. He was widely published and held several significant honors.<sup>416</sup> The Independent Objector's role and process were discussed in Section 3.2: Objections & Dispute Resolution of this report.

### *Auction Service Provider*

In June 2008 ICANN selected Power Auctions LLC to provide expertise as ICANN's auction design consultants as the ICANN community was considering if and how ICANN could use auctions to resolve contention sets.<sup>417</sup> This selection was based on an open Expression of Interest and

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<sup>410</sup> International Centre for Dispute Resolution. About the American Arbitration Association (AAA) and the International Centre for Dispute Resolution (ICDR). Retrieved from <https://www.icdr.org/icdr/faces/s/about>

<sup>411</sup> World Intellectual Property Organization. Inside WIPO. Retrieved from <http://www.wipo.int/about-wipo/en/index.html>

<sup>412</sup> World Intellectual Property Organization. Domain Name Dispute Resolution. Retrieved from <http://www.wipo.int/about-wipo/en/index.html>, and <http://www.wipo.int/amc/en/domains/>

<sup>413</sup> World Intellectual Property Organization. WIPO Arbitration and Mediation Center End Report on Legal Rights Objection Procedure 2013. Retrieved from <http://www.wipo.int/export/sites/www/amc/en/docs/lroreport.pdf>

<sup>414</sup> International Chamber of Commerce. ICC Dispute Resolution Services. Retrieved from <http://www.iccwbo.org/about-icc/organization/dispute-resolution-services/>

<sup>415</sup> ICANN. (14 May 2012) Announcement: Independent Objector for New gTLD Program Selected. Retrieved from <https://www.icann.org/news/announcement-2012-05-14-en>.

<sup>416</sup> More information about Professor Pellet, including his curriculum vitae, can be found at: <http://www.alainpellet.eu>

<sup>417</sup> ICANN. Single-Character Second-Level Domain Name (SC SLD) Allocation Framework. Retrieved from <https://www.icann.org/resources/pages/proposed-scsld-allocation-framework-2008-06-13-en>

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subsequent Request for Proposal process.<sup>418</sup> In support of this effort, Power Auctions LLC helped ICANN to define the Ascending Clock Auction process as the best choice for contention resolution auctions, and much of the text of Module 4.3.1 Auction Procedures is based on Power Auctions LLC’s work. Subsequently, in August 2009, Power Auctions LLC was selected to provide the implementation of auctions for the Program, based on an RFP issued earlier that year. In September 2013, ICANN updated the 2009 agreement with Power Auctions LLC to facilitate the auctions.<sup>419</sup> Power Auctions LLC was a leader on auction thought and design. It had an international team composed of noted experts in auction design and implementation with relevant experience in international high stakes auctions for public goods including telecommunications spectrum, natural resources, and public utility rights.<sup>420</sup> Power Auctions LLC was also pivotal in the development and design of both the direct and indirect auction processes, as well as the implementation rules governing both types of auction.

#### *Pre-Delegation Testing Service Provider*

ICANN selected Stiftelsen för Internetinfrastruktur (IIS) as the PDT service provider in December 2012.<sup>421</sup> This selection was based on an open request for proposals conducted earlier in 2012.<sup>422</sup> IIS was the registry operator for the .se ccTLD (Sweden) and was selected for its proven track record of technical capability, operations excellence, and significant experience in the industry.<sup>423</sup> IIS provided the expertise to help ICANN develop all PDT systems and requirements as well as perform testing. For example, IIS had demonstrated understanding of the critical registry functions (i.e., DNS, DNSSEC, EPP, Whois, Data Escrow), operational experience necessary to deliver the testing services, ability to scale up on request to meet the volume demand of the Program, and experience designing, building, and operating robust and secure systems. Furthermore, IIS’s pre-existing tools (e.g., DNS check) could be leveraged to meet the Program’s timelines. Over the course of the relationship, IIS provided invaluable assistance in continuous improvement of the PDT experience to the applicants.

#### **8.2.4.2 CONFLICT OF INTEREST GUIDELINES**

AGB Section 2.4.3.1 provided Conflict of Interest guidelines and procedures “to safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner.” ICANN required the panels to contractually comply with these guidelines.

The Conflict of Interest guidelines defined the minimum standards with which panels and panelists --individuals associated with the review of an application--had to comply. Prior to allocating any

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<sup>418</sup> ICANN. (18 January 2008) Announcement: ICANN Seeks Expressions of Interest from Auction Design Experts. Retrieved from <https://www.icann.org/news/announcement-2008-01-18-en>

<sup>419</sup> ICANN. Summary of New gTLD Auctions Vendor Selection. Retrieved from <http://newgtlds.icann.org/en/applicants/auctions/summary-vendor-selection-10mar14-en.pdf>

<sup>420</sup> Power Auctions LLC. About Power Auctions LLC. Retrieved from <https://www.powerauctions.com/company>

<sup>421</sup> ICANN. (21 December 2012) Announcement: Pre-Delegation Testing Services for the New gTLD Program - Selection of Provider. Retrieved from <https://www.icann.org/news/announcement-2012-12-21-en>

<sup>422</sup> ICANN. (30 October 2012) Announcement: Pre-Delegation Testing Provider for New gTLDs – Request for Proposals. Retrieved from <https://www.icann.org/news/announcement-2012-10-30-en>

<sup>423</sup> See more information on .SE at <https://www.icann.org/news/announcement-2012-12-21-en>

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applications to the service providers, ICANN required that service providers perform conflict of interest checks for the panelists in accordance with the requirements of the AGB, and to provide ICANN with the results. ICANN allocated applications taking these results into account.

#### **8.2.4.3 SERVICE PROVIDER COORDINATION**

Program service providers provided recommendations to ICANN under their firms' names. ICANN worked in close coordination with them to ensure understanding of the AGB requirements, ICANN processes as well as timelines for delivery of deliverables. The service providers were responsible for defining their own processes and procedures and for training their staff.

DRSPs, on the other hand, assigned experts that administered the individual proceedings, and these experts provided their determinations directly to the parties of the objections under their own names. Attachment to Module 3, Article 10, of the AGB called for ICANN to monitor the progress of all objections and proceedings, as some applications might have been subject to objections filed with more than one DRSP. ICANN managed the DRSPs in a manner consistent with the AGB.

### 8.2.5 Conclusion

The AGB called for independent service providers to perform activities for many aspects of the New gTLD Program, including evaluation, dispute resolution, and auction. ICANN also engaged service providers as strategic partners to execute other Program activities such as PDT and quality control. In almost all cases, ICANN selected the providers through a public procurement process. ICANN worked with the providers to develop processes and procedures, and managed their work to ensure consistency and quality of results delivered.

Over the course of the New gTLD Program, ICANN developed best practices for sharing information with the community regarding the procurement process. To support transparency, in future application rounds, ICANN should continue to follow its procurement guidelines, and it should provide timely procurement information to the community.

In summary:

**8.2.a** Provide transparency and predictability to the procurement process following ICANN's procurement guidelines. Publish selection criteria, providers' process documents, and other relevant and non-confidential material in a timely manner.

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## 8.3 Financial Management

### 8.3.1 Introduction

New gTLD Program financial management refers to the management of the USD 357 million Program fund. USD 357 million was the total amount collected from the 1,930 new gTLD applications submitted with an evaluation fee of USD 185,000 per application. This section of the Program Implementation Review Report discusses the following topics:

- Program budgeting and reporting
- Program fund segregation
- Program-related fees

### 8.3.2 Relevant Guidance

The following guidance is relevant to the topic of Financial Management and will be discussed in further detail in Sections 8.3.3 and 8.3.4 of this report:

- GNSO Implementation Guideline B: “Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants.”<sup>424</sup>
- Applicant Guidebook, Section 1.5: Fees and Payments<sup>425</sup>
- Applicant Guidebook, Section 1.2.7: Notice of Changes to Information
- ICANN Board Resolution 2011.06.20 (20 June 2011): Approval of the New gTLD Program<sup>426</sup>

### 8.3.3 Background

Following guidance from the GNSO, the evaluation fee of USD 185,000 was first proposed in version 1 of the AGB, and was “set to recover costs associated with the new gTLD program. The fee [was] set to ensure that the program [was] fully funded, and [didn’t] take resources from other ICANN funding sources.”<sup>427</sup> On 31 May 2010, ICANN published a draft New gTLD Budget for public

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<sup>424</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>425</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

<sup>426</sup> ICANN. (20 June 2011) Approved Board Resolutions | Singapore. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en#1>

<sup>427</sup> ICANN. (24 October 2008) New gTLD Program: Draft Applicant Guidebook (Draft RFP), Section 1.5.1. Retrieved from <http://archive.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf>

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comment.<sup>428</sup> The draft New gTLD Budget was an analysis of Program costs, including an assessment of the general risk and timing required to complete certain remaining activities necessary for operational readiness. The draft New gTLD Budget assumed 500 applications would be submitted for new gTLDs. To ensure costs are appropriately managed, tracked, and disclosed, the draft New gTLD Budget included categories of Program costs, which were defined based on information available at that time regarding the Program.

On 22 October 2010, an updated draft New gTLD Budget was published.<sup>429</sup> The update included an increase from USD 2.6 million to USD 4.0 million for the development phase, and an increase of USD 205,000 under the application processing phase for customer service and background screening. These updates were made based on updates to the procedures called for in public comments submitted on AGB version 4,<sup>430</sup> additional internal development work, and discussions with the ICANN Board.

On 17 May 2011, ICANN published for comment the draft FY12 Operating Plan and Budget, which included the New gTLD Program launch scenario.<sup>431</sup> The inclusion of the New gTLD Program budget into the FY12 Operating Plan and Budget represented the first time that the New gTLD Program budget formally became part of the ICANN budgeting process. The draft FY12 Operating Plan and Budget continued to assume a volume of 500 applications, and it included a forecast of the cost associated with activities that would be incurred in FY12 if the Program launched within FY12.

On 20 June 2011, the ICANN Board approved the New gTLD Program, and its related income and expenditures as detailed in the Draft FY12 Operating Plan and Budget.<sup>432</sup>

## 8.3.4 Assessment

### 8.3.4.1 PROGRAM BUDGETING AND REPORTING

The New gTLD Program launched when ICANN opened the application window on 12 January 2012 (see Section 1.1: Application Submission of this report). Application submission activities during the application window gave ICANN additional information that assisted with the development of the FY13 Operating Plan and Budget.

On 1 May 2012, a draft FY13 Operating Plan and Budget was published.<sup>433</sup> For the first time, the New gTLD Program budget forecasted revenues and costs based on three different scenarios of

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<sup>428</sup> ICANN. (31 May 2010) New gTLD Program Explanatory Memorandum New gTLD Budget. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/new-gtld-budget-28may10-en.pdf>

<sup>429</sup> ICANN. (21 October 2010) New gTLD Program Explanatory Memorandum New gTLD Budget. <https://archive.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf>

<sup>430</sup> ICANN. Draft Applicant Guidebook, Version 4 Public Comment Forum. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/comments-4-en.htm>

<sup>431</sup> ICANN. (17 May 2011) Draft FY12 Operating Plan and Budget. Retrieved from <https://www.icann.org/en/system/files/files/proposed-opplan-budget-v1-fy12-17may11-en.pdf>

<sup>432</sup> ICANN. (20 June 2011) Approved Board Resolutions | Singapore. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en#1>

application volume: 500 applications; 1,000 applications; and 2,000 applications. As more information about the Program was available by this time, ICANN was able to include a forecast of the life of the Program in the FY13 Operating Plan and Budget. The forecast anticipated that the Program would conclude in FY15 for the 2,000-application scenario, based on information available in the AGB version 9.<sup>434</sup>

On 24 June 2012, after the close of the application window, ICANN published the adopted FY13 Operating Plan and Budget, which included only the 2,000-application scenario.<sup>435</sup> Although there was a difference between the estimated number of applications in the budget and the actual number of applications received, the difference was small and caused no material impact to the budget; therefore no changes were made to the adopted budget.

As the Program progressed and more information about key factors became available (e.g., number of withdrawals, number of staff needed to support of the Program, allocation of indirect cost, and other projects not originally budgeted such as the TMCH and EBERO program), ICANN was able to report more information and make more accurate forecasts.

On 22 August 2013, the adopted FY14 Operating Plan and Budget was published with revised estimates reflecting actual costs incurred to date and updated forecast of Program costs for the entire life of the Program.<sup>436</sup> For the first time, the FY14 Operating Plan and Budget included a variance analysis of the actual cost incurred versus the budgeted amount, and it provided explanations for variances in the Program budget.

On 1 December 2014, ICANN published the adopted FY15 Operating Plan and Budget, which changed the anticipated completion date of the Program to FY17 based on information available at the time.<sup>437</sup>

Budgeting and reporting of the Program budget followed the standard ICANN budgeting and reporting process starting with the FY12 Operating Plan and Budget, and continued for all subsequent fiscal years. The ICANN budgeting and planning process included a formal ICANN public comment period of the draft FY Operating Plan and Budget and ICANN's Board Approval of the FY Operating Plan and Budget.<sup>438</sup> In addition, starting with the fiscal quarter ending 30 September 2013, ICANN published on its website quarterly financial statements in which the Program financial position was disclosed. Internally, ICANN revisited forecasts quarterly, reviewing actual spend versus the budgeted amount to identify any significant variances.

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<sup>433</sup> ICANN. (1 May 2012) Draft FY13 Operating Plan and Budget. Retrieved from <https://www.icann.org/en/system/files/files/proposed-opplan-budget-v1-fy13-01may12-en.pdf>

<sup>434</sup> ICANN. Applicant Guidebook Version 9. Retrieved from <http://newgtlds.icann.org/en/about/historical-documentation/matrix-agb-v9>

<sup>435</sup> ICANN. (24 June 2012) FY13 Operating Plan and Budget. Retrieved from <https://www.icann.org/en/system/files/files/adopted-opplan-budget-fy13-24jun12-en.pdf>

<sup>436</sup> ICANN. (22 August 2013) FY14 Budget Approval. Retrieved from <https://www.icann.org/en/system/files/files/adopted-opplan-budget-fy14-22aug13-en.pdf>

<sup>437</sup> ICANN. (1 December 2014) FY15 Adopted Operating Plan and Budget. Retrieved from <https://www.icann.org/en/system/files/files/adopted-opplan-budget-fy15-01dec14-en.pdf>

<sup>438</sup> ICANN. Annual Operating Plan & Budget. Retrieved from <https://www.icann.org/resources/pages/operating-plan-budget-2015-06-12-en>

### 8.3.4.2 FINANCIAL SEGREGATION

The New gTLD application fee structure was based on the principles of cost recovery. In order to ensure that Program costs were appropriately tracked and disclosed, all Program-related financial matters were segregated from ICANN's operations:

- (i) Operating funds for the Program were segregated in a separate bank account created for the New gTLD Program.
- (ii) A specific and separate investment policy was approved by the Board in December 2012 for the New gTLD Program funds<sup>439</sup> and separate investment accounts were created at three different investment management firms<sup>440</sup> selected via an RFP process.
- (iii) Systems, processes, and policies were developed in order to reinforce the separation of funds. This included an accounting ledger distinct from other ICANN operations activities, a separate procurement process, separate segments in all financial reporting, dedicated resources, and transaction accounting processes specifically developed for the New gTLD Program.

Per Section 4.3 of the AGB, "Any proceeds from auctions [would] be reserved and earmarked until the uses of funds are determined." To comply with this section of the AGB, Auction proceeds (see Section 4.2: Auction of this report) were further segregated into a separate bank account under the Program's bank account until the ICANN Board, through consultation with the community, determined a plan for the appropriate use of the funds.<sup>441</sup>

The funds pertaining to the New gTLD program, not including the funds from Auction proceeds, were managed by three investment firms selected via an RFP process. Investments for Program funds follow the New gTLD Funds Investment Policy<sup>442</sup> adopted by the ICANN Board on December 2011.<sup>443</sup> The distinct investment policy was developed because of this specific usage of the Program funds, as well as the specific timeframe associated with such usage.

### 8.3.4.3 PROGRAM-RELATED FEES

Section 1.5 of the AGB defined various Program-related fees:

- Evaluation fee: USD 185,000 fee associated with the evaluation of each application that had to be paid with a submitted application. Applicants may have qualified for partial refund of the evaluation in accordance with the refund schedule in Section 1.5.1 of the AGB if the application was withdrawn. A non-refundable USD 5,000 registration fee was required to create a TAS user account in order to submit an application (see Section 1.1: Application

<sup>439</sup> ICANN. (20 December 2012) Approved Board Resolutions | Special Meeting of the ICANN Board. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2012-12-20-en#2.e>

<sup>440</sup> Northern Trust Asset Management, U.S. Bank Asset Management, and Deutsche Bank Asset and Wealth Management

<sup>441</sup> ICANN. New gTLD Auction Proceeds. Retrieved from <http://newgtlds.icann.org/en/applicants/auctions/proceeds>

<sup>442</sup> ICANN. (20 December 2012) Investment Policy - New gTLD. Retrieved from <https://www.icann.org/resources/pages/investment-policy-new-gtld-2013-01-07-en>

<sup>443</sup> ICANN. (21 December 2012) Approved Board Resolutions | Special Meeting of the ICANN Board. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2012-12-20-en#2.e>

Submission of this report). This registration fee was applied toward the USD 185,000 evaluation fee if an application was submitted.

- Registry Services Review fee: This fee became applicable if the application was referred to the Registry Services Technical Evaluation Panel by the Registry Services Panel (see Section 2.8: Registry Services Evaluation of this report).
- Dispute Resolution fees: Fees that must be paid in association with any formal objections (see section 3.2: Objections and Dispute Resolution of this report). Fee and refund schedules were set by the DRSPs.
- Community Priority Evaluation fee: The AGB estimated a cost of USD 10,000 for Community Priority Evaluation if a community applicant participated in CPE. This fee was refunded if the applicant prevailed in CPE.

Fees were collected as per the AGB with the exception of the CPE fee. Based on scope of work, the selected service provider for CPE informed ICANN that the evaluation cost for CPE would be USD 22,000 per application. Consistent with Program's principle of cost recovery, ICANN transferred the CPE panel's fee to the applicant even though it was higher than the amount estimated in the AGB.<sup>444</sup>

During the application window, ICANN had a strict requirement that the entire USD 185,000 evaluation fee be submitted with the application. A large number of applicants did not anticipate that their banks would charge a fee to process the wire transfer. The applicants therefore had to make multiple payments to ensure that the full USD 185,000 was received by ICANN. Due to the inefficiencies that this created, all other fees collected by ICANN after the application window allowed for a variance of USD 25 to accommodate potential bank transaction fees being applied during the banking process of the applicants payments.

Section 1.2.7 of the AGB anticipated that certain application change requests (see Section 1.3: Application Change Requests of this report) might require re-evaluation of the application. However, the AGB did not specify the cost for re-evaluation. Consistent with the Program's principle of cost recovery, ICANN passed on the evaluation panel's fee to the applicant.

## 8.3.5 Conclusion

ICANN's management of the Program funds aligned with GNSO's Implementation Guideline B and Module 1 of the AGB. All financial matters were segregated in a separate bank account so that Program financial information could be appropriately tracked and disclosed. As per the AGB, proceeds from ICANN auctions are further segregated in a separate bank and investment account until the ICANN Board, through consultation with the community, determines a plan for the appropriate use of the funds.

The Program's budget is published with ICANN's annual fiscal year Operating Plan and Budget and follows ICANN's annual budgeting process, which includes a public comment period and approval

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<sup>444</sup> 10 September 2013 CPE Teleconference: <http://audio.icann.org/new-gtlds/cpe-10sep13-en.mp3>.

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of the final budget by the ICANN Board. ICANN's financial information, including historical and current financial data for the Program, is available on the ICANN website.<sup>445</sup>

Program-related fees were collected in accordance with the AGB and in-line with the principle of cost recovery. Before fees are defined for the next application round, a review of Program financials should be undertaken.

ICANN implemented one change in this round to the collection of Program-related fees based on lessons from an earlier phase of the Program. During the application window, ICANN's strict requirement that the full USD 185,000 evaluation fee be submitted with the application caused some delays and inefficiencies for applicants as many did not anticipate that a wire transfer fee would be deducted from their USD 185,000 payment by their banks, and they therefore had to make multiple payments. Due to the inefficiencies that this created, all other fees collected by ICANN post application window allowed for a variance of USD 25.

In summary:

**8.3.a** Perform full review of Program financials and application fee before fees are defined for the next application round

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<sup>445</sup> ICANN. Financial Information for ICANN. Retrieved from <https://www.icann.org/resources/pages/governance/financials-en>

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## 8.4 Communications

### 8.4.1 Introduction

New gTLD Program Communications refers to various communications activities executed prior to and throughout the life of the Program in support of the New gTLD Program Communications Plan. This section of the Program Implementation Review report discusses the implementation of this Plan.

### 8.4.2 Relevant Guidance

The following guidance is relevant to the topic of Communications and will be discussed in further detail in Sections 8.4.3 and 8.4.4 of this report:

- GNSO Implementation Guideline C: ICANN will provide frequent communications with applicants and the public including comment forums<sup>446</sup>
- GNSO Implementation Guideline M: “ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English.”
- GNSO Implementation Guideline O: “ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.”
- ICANN Board Resolution 2011.06.20: Approval of the New gTLD Program<sup>447</sup>
- ICANN Board Resolution 2011.10.28.23-24: Budget Request – New gTLD Communications Plan<sup>448</sup>

### 8.4.3 Background

On 20 June 2011, the ICANN Board approved the New gTLD Program, and along with it the Draft New gTLD Communications Plan.<sup>449,450</sup> The goal of the Plan was to “increase likelihood of success

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<sup>446</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>447</sup> ICANN. (20 June 2011) Approved Resolution | Meeting of the ICANN Board of Directors. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en>

<sup>448</sup> ICANN. (28 October 2011) Approved Resolution | Meeting of the ICANN Board of Directors. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-10-28-en#3>

<sup>449</sup> ICANN. (20 June 2011) Approved Resolution | Meeting of the ICANN Board of Directors. Retrieved from <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en>

<sup>450</sup> ICANN. (30 May 2011). New gTLD Communications Plan. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/new-gtlds-communications-plan-30may11-en.pdf>

for the new gTLD program and to ensure that new gTLDs are communicated as clearly and comprehensively as possible – both the opportunities they present and the risks involved in applying for and operating one.” To achieve this goal, the Plan envisioned a global awareness campaign to raise awareness of the who, what, when, where and why of new gTLDs. The Plan laid out important aspects of the campaign, including key messages, tone and vision, and theme and audiences, which served as the basis for the development of all Program-related information. The Plan also outlined various communications channels and tools that could be used to disseminate information.

The core component of the Communications Plan entailed four key communications areas to be executed across four phases of the Plan. The four key communications areas were:

1. Coordinated campaign incorporating TV, radio, print and online advertising elements, customized by region.
2. Top-tier international press coverage.
3. Five major regional launches/road shows.
4. Social and other online media.

Table 8.4.i below provides a summary of the four phases of the Communications Plan.

*Table 8.4.i: Summary of the Four Phases of the Communications Plan*

Phase 1	<b>Pre-launch</b> – Defined as the four-month campaign period leading up to the official launch of the program signaled by the opening of the application period.
Phase 2	<b>Launch</b> – Defined as the 60-day period when applications were accepted.
Phase 3	<b>Post-launch</b> – Defined as the time period between the close of the application period and the open of the next round.
Phase 4	<b>TLDs go live/in the root.</b>

The New gTLD Communications Plan further provided evaluation metrics to be collected such as website statistics, countries reached during regional launches, attendees at outreach events, applications received and social media monitoring.

## 8.4.4 Assessment

Though it included evaluation metrics, the communications plan did not define “success,” which makes it difficult to assess success of the Plan. As such, sections 8.4.4.1, 8.4.4.2, and 8.4.4.3 below provide an overview of activities performed during each phase and metrics collected during the execution of the Plan.

#### 8.4.4.1 PHASE 1: PRE-LAUNCH

The New gTLD Program launched when ICANN opened the application window on 11 January 2012 (see Section 1.1: Application Submission of this report).

During Phase 1 of the Plan, all four key communications areas were utilized. Regional launches/road shows and press coverage were the key activities during this Phase. There was significant growth in some social media activities with 1,300+ Twitter followers in October 2011 compared to approximately 400 one year prior. Some online advertising was also done to drive traffic to the New gTLD microsite, an ICANN website dedicated to the New gTLD Program. Although the Plan called for TV, radio, and print advertising, in order to gain synergy, efforts were directed toward getting media coverage for the road shows.

##### *Identity*

As called for in the Communications Plan, a New gTLD Program logo and style guide were developed and used on all online and offline New gTLD-related materials. The logo allowed for an effective way to brand the New gTLD Program.

##### *Content Development and Dissemination*

Prior to the opening of the application window (see Section 1.1: Application Submission of this report), key Program-related documents such as the Applicant Guidebook, the May 2010 New gTLD Program Budget,<sup>451</sup> and some public comment summaries and analyses were translated from English into the five other UN languages, in order to allow and encourage broad input into the Program. Knowledge base articles that educated interested parties about the Program requirements were also translated from English into the five other UN languages to better promote the Program.<sup>452</sup>

During this time, the content created focused on providing information about the business potential and risks of participating in the Program, the application process, and how to apply.<sup>453,454</sup> Content was available in the form of web page content,<sup>455</sup> videos,<sup>456</sup> PowerPoint presentations, fact sheets and FAQs,<sup>457</sup> and included messages consistent with the nine messages defined in the Communications Plan.

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<sup>451</sup> ICANN. (31 May 2010) New gTLD Program Explanatory Memorandum: New gTLD Budget. Retrieved from <https://archive.icann.org/en/topics/new-gtlds/new-gtld-budget-28may10-en.pdf>

<sup>452</sup> ICANN. New gTLD Knowledge Base. Retrieved from <https://crm-gtld.icann.org/portal-icann/index.php?action=index&module=Home>

<sup>453</sup> ICANN. Program Materials. Retrieved from <http://newgtlds.icann.org/en/about/program/materials>

<sup>454</sup> ICANN. Benefits and Risks of Operating a New gTLD. Retrieved from <http://newgtlds.icann.org/en/about/benefits-risks>

<sup>455</sup> ICANN. New Generic Top-Level Domains. Retrieved from <http://newgtlds.icann.org/>

<sup>456</sup> ICANN. Videos. Retrieved from <http://newgtlds.icann.org/en/about/historical-documentation/matrix-videos>

<sup>457</sup> ICANN. Program Materials. Retrieved from <http://newgtlds.icann.org/en/about/program/materials>

After the opening of the application window, the majority of new Program content, such as announcements,<sup>458</sup> website pages, videos, and public comment materials,<sup>459</sup> was in English, as focus shifted to assisting applicants through the Program, which required application materials to be submitted in English (per Section 1.4 of the AGB).

All New gTLD content was centralized and housed on the New gTLD microsite (newgtlds.icann.org), which was launched on 19 September 2011.<sup>460</sup> To drive traffic to the microsite, ICANN placed ads on Google’s ad network and launched a banner ad campaign targeted at senior-level marketing professionals between December 2011 and January 2012. The ad campaigns resulted in more than 5,500,000 impressions and drove more than 21,000 visitors from 136 countries in Africa, the Asia-Pacific region, Eastern Europe, the Middle East, and Latin America to the microsite. Ads in 10 of the 172 developing nations targeted with the Google online advertising campaign received click-through rates (rate of people who view the ad and click on it) above the industry average.

### Regional Events

Also in support of raising awareness of new gTLDs, ICANN did major launch events between August and December 2011 in each of the five ICANN regions as called for in the Communications Plan. The regional events allowed ICANN to connect with businesses, governments, and individuals in person in various countries to promote awareness of new gTLDs. Table 8.4.ii provides statistics of the regional events that occurred during this period.

Table 8.4.ii: Statistics of the Five Regional Events

ICANN Region	# Countries Visited	# Events per Region	Total Attendees per Region
<b>Africa</b>	3	4	725
<b>Asia/Australia/Pacific</b>	11	14	12,129
<b>Europe</b>	17	30	5,230
<b>Latin America/Caribbean</b>	3	3	5,700
<b>North America</b>	1	1	500
<b>Total</b>	35	52	24,284

The Communications Plan stated that “three countries [would] be visited per region, with major speeches, press conferences and outreach events held in each.” Except for the North America region, ICANN visited at least three countries in each region. During the regional events, the New gTLD Program received significant press coverage from major news outlets. For instance, the December 2011 Beijing Roadshow press conference attracted reporters from 46 media outlets over the Asia Pacific region. Another example was the January 2012 New York Roadshow when ICANN met with six United Nations correspondents of major wire services, followed by media interviews. Media outlets included Agence France Presse (AFP), Reuters, Associated Press (AP), The New York

<sup>458</sup> ICANN. Announcements. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/latest>

<sup>459</sup> ICANN. Comments and Feedback. Retrieved from <http://newgtlds.icann.org/en/program-status/comments>

<sup>460</sup> ICANN. (19 September 2011) Announcement: ICANN Launches New Online Information Center for New Generic Top-Level Domains. Retrieved from <https://www.icann.org/news/announcement-2-2011-09-19-en>

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Times, Wired, AdWeek, The Huffington Post, and South-South News. In addition to these regional events, the ICANN CEO visited 16 countries, and other staff and ICANN Board members visited 38 countries.<sup>461</sup>

#### **8.4.4.2 PHASE 2: LAUNCH**

The Communications Plan defined Phase 2 as the period of 60 days when the New gTLD applications were being accepted. The AGB in fact defined the application window as a 90-day period. As discussed in Section 1.1: Application Submission of this report, the 90-day application window was extended by approximately 45 days.

Phase 2 heavily relied on social media and the microsite to promote the Program. During this phase of the Communications Plan, ICANN continued to add content to the microsite including videos, blogs, announcements regarding the New gTLD Program, and information about the TLD Application System (see Section 8.1: Program Processes, Systems, Resources of this report). The content continued to focus on the business potential and risks of participating in the Program, on how to apply, and on the Program's requirements, consistent with the defined messages in the Communications Plan.

As regional events concluded, ICANN shifted its focus to social media to drive traffic to the microsite and to raise awareness. Between 1 January and 30 July 2012, ICANN spent approximately USD 42,000 on Twitter Ads to promote its Twitter account, @ICANN. As a result, ICANN tweets had over 4,000 clicks, 2,000 re-tweets, and the number of ICANN's Twitter followers increased from approximately 8,000 to nearly 65,000. The countries with the highest number of @ICANN followers were Indonesia, Brazil, the United States, the Philippines and India. In January 2011, ICANN conducted two Twitter chat sessions. Combined, the chats resulted in more than 200 questions and comments regarding new gTLDs.

Other mechanisms utilized during this Phase to promote the Program included posting on ICANN's Facebook page and on LinkedIn. Postings on ICANN's Facebook page generated more than 28,000 views from December 2011 to January 2012. Postings on LinkedIn targeted Chief Marketing Officers (CMOs) and brand marketers' groups, who would be affected by the New gTLD Program. Postings encouraged and spurred discussions about the benefits and risks associated with new gTLDs. Collectively, these groups had more than 160,000 members.

#### **8.4.4.3 PHASE 3: POST-LAUNCH**

Communications activities during Phase 3 continued to rely heavily on social media and road shows to promote the Program. In addition, ICANN increased media engagement and began reaching out to financial and industry analysts to raise awareness and educate them about the impending expansion of the DNS as well as the choice, competition, and innovation that expansion

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<sup>461</sup> R. Beckstrom (21 December 2011) New gTLD Roadshows [Blog]. Retrieved from <http://newgtlds.icann.org/en/blog/new-gtld-roadshows-21dec11-en>

will bring. Webinars as a communication channel used to support applicants were also introduced during Phase 3.

*Reveal Day*

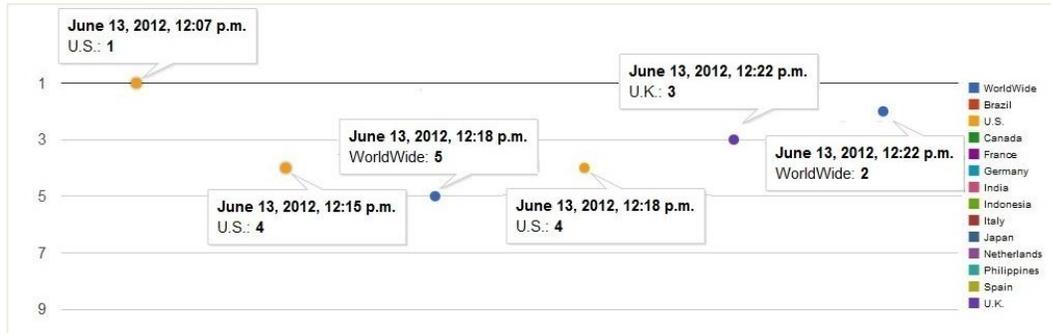
After the close of the application window on 30 May 2012, ICANN focused on promoting the next big milestone of the Program, Reveal Day.

To announce the applied-for new gTLDs, ICANN held a news conference in London on 13 June 2012, which had significant media coverage. There were over a dozen camera crews from major international broadcasts such as BBC, Al Jazeera, and CNN. The news conference was covered by worldwide news wires (e.g., Associated Press, AFP, Reuters), and was widely featured in the press, including in *The Economist*, *The New York Times*, *Washington Post*, and *Times of India*.

The event was live-streamed on the Internet and the live video webcast was accessible at [icann.org](http://icann.org). The recording of the news conference was made available after the event.<sup>462</sup> The live webcast was intended to provide global access to the event, however, its reach to certain countries where bandwidth was limited was unknown.

On social media, #RevealDay was included on Twitter’s list of top trending topics worldwide, in the United States, and in the United Kingdom (see Figure 8.4.i).

Figure 8.4.i: Twitter Trending Topics Database (#RevealDay)



**Search results for #revealday:**

Local	Date/Time	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10
WorldWide	June 13, 2012, 12:22 p.m.	#3Sonhos	#revealday	#PreguntasTontas	Oh Harry	Henry Hill	Rise & Grind	Horan Hump Day	Holland vs Germany	Andy Schleck	NSW
U.K.	June 13, 2012, 12:22 p.m.	#ExcusesToBreakUp	#MyFavoriteGagaPictures	#revealday	Wayne Rooney's	Holland vs Germany	Henry Hill	Hampstead Heath	Screw You	Rebekah Brooks	Giroud
U.S.	June 13, 2012, 12:18 p.m.	#ThatOneFollower	Henry Hill	#AintNothingWorseThan	#revealday	Rise & Grind	Horan Hump Day	Burger King	Bonanza	Syria	Casey Anthony
WorldWide	June 13, 2012, 12:18 p.m.	#3Sonhos	Lang Park	Robbie Farah	#origin3	#revealday	Oh Harry	Horan Hump Day	Henry Hill	NSW	Holland vs Germany
U.S.	June 13, 2012, 12:15 p.m.	#ThatOneFollower	Henry Hill	#ExcusesToBreakUp	#revealday	Rise & Grind	Happy Hump Day	Burger King	Bonanza	Casey Anthony	Syria
U.S.	June 13, 2012, 12:07 p.m.	#revealday	#ExcusesToBreakUp	#ThatOneFollower	Rise & Grind	Henry Hill	Horan Hump Day	Burger King	Bonanza	iOS 6	Syria

\* - UTC Time

<sup>462</sup> ICANN. (13 June 2012) ICANN Reveal Day: New gTLDs and What's Next. Retrieved from [http://library.fora.tv/2012/06/13/ICANN\\_Reveal\\_Day\\_New\\_gTLDs\\_and\\_Whats\\_Next](http://library.fora.tv/2012/06/13/ICANN_Reveal_Day_New_gTLDs_and_Whats_Next)

Traffic on the microsite also peaked on Reveal Day at approximately 160,000 sessions and remained at that level for about 10 days. After this period, traffic returned to the average level of fewer than 3,000 sessions/day with occasional peaks not exceeding 15,000 sessions.

Early New gTLD Program budgets (see Section 8.3: Financial Management of this report) estimated 500 new gTLD applications.<sup>463</sup> In actuality, ICANN received 1,930 applications from 60 countries and territories, representing all of ICANN’s geographic regions. Table 8.4.iii shows a breakdown of applications received by ICANN region, based on the applicant’s country (i.e., answer to Question 2 of the application).

*Table 8.4.iii Applications by ICANN Region on Reveal Day*

ICANN Region	New gTLD Applications
Africa	17
Asia/Australia/Pacific	303
Europe	675
Latin America/Caribbean	24
North America	911
<b>Total</b>	<b>1,930</b>

Twelve percent of the total applications received (241) were applications for IDNs, community and/or geographic gTLDs. Table 8.4.iv provides a breakdown of application types. The breakdown shows unique count by application type. An application may be all three application types, which would be counted on each row of the table.

*Table 8.4.iv: Breakdown of Application Types*

Type of New gTLD Applications	New gTLD Applications	% of Total Applications
IDN	116	6.0%
Community	84	4.4%
Geographic	66	3.4%

### *Post Reveal Day*

After Reveal Day, communications became more targeted for the two audiences, applicants and the general public, including governments, trademark holders, communities, businesses, and Internet users. The general public needed to be kept informed of Program progress so that they could participate at relevant Program steps such as submitting a comment on a particular application for the evaluation panel’s consideration, filing a formal objection on an application, or participating in the GAC Advice process.

<sup>463</sup> ICANN. (1 May 2012) Draft FY13 Operating Plan and Budget. Retrieved from <https://www.icann.org/en/system/files/files/proposed-opplan-budget-v1-fy13-01may12-en.pdf>

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Content that ICANN produced post-Reveal Day was more focused on the New gTLD Program's specific requirements and processes. Web pages on the microsite were created to provide detailed information regarding each Program process. Timelines, process documents, advisories, FAQs, and relevant forms were provided to applicants and those interested in the Program's transparency and predictability. ICANN also provided Program statistics such as application statuses, evaluation reports, and service metrics on the microsite. During this phase of the Program, all applicant-specific communications materials on the microsite were created in English, primarily to ensure timely dissemination of important Program information.

Beginning August 2012, ICANN began to hold applicant webinars to provide applicants with updates on various Program processes. By July 2015, ICANN had held 35 webinars on various topics. Webinars were recorded and posted to the New gTLD Program microsite.<sup>464</sup> Over the course of the 35 webinars, ICANN implemented some improvements based on applicants' feedback. For example, ICANN made an effort to accommodate different time zones by cycling webinar times to ensure no single region (APAC in particular) was excluded from live participation. Later, ICANN began holding two sessions for each webinar to accommodate multiple time zones. Additionally, ICANN provided 21-day advance notice on upcoming webinars, redesigned the webinars landing page, and used Twitter to provide updates to participants when technical issues arose during a webinar. Region-oriented webinars were also offered with information tailored to fit the needs of each region.

To continue raising awareness of New gTLDs with the general public, ICANN leveraged social media, engaged with the news media and analysts, and held road shows in all ICANN regions.

On social media, ICANN broadened its presence to include international platforms (e.g., Weibo) that allowed messages to be delivered in local languages. ICANN social media communications expanded to other languages, including Arabic, Chinese, Spanish, French, and Portuguese. Social media was an effective platform to raise awareness of new gTLDs. For example, many mainstream outlets (e.g., @TheNextWeb, @WSJ, @BBCWorld, @Mashable, @FayerWayer, and @ChannelNewsAsia) tweeted about the first new 'gTLD' delegations in October 2013. There were over 6,000 mentions of the first new gTLD delegations in October 2013 and nearly 30 million potential impressions.

While ICANN engaged with the news media throughout the Program, delegation of the first four new gTLDs on 25 October 2013 became one of the most widely covered ICANN news stories. There were over 400 news stories about the first delegations disseminated via online news outlets, print, radio, television and major blogs. A large number of mainstream news outlets from around the world covered the story, from the BBC, to The Moscow Times, to Japan Times, to The Times of India.<sup>465, 466, 467</sup> ICANN also conducted pre-briefings for international wire services Agence France

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<sup>464</sup> ICANN. Webinars. Retrieved from <http://newgtlds.icann.org/en/announcements-and-media/webinars>

<sup>465</sup> BBC. (23 October 2013) New top-level web domains announced by Icann. Retrieved from <http://www.bbc.com/news/technology-24637673>

<sup>466</sup> G. Moukine, The Moscow Times. (25 October 2013) Russia Leads With New Internet Domains. Retrieved from <http://www.themoscowtimes.com/business/article/russia-leads-with-new-internet-domains/488444.html>

<sup>467</sup> Japan Times. (24 October 2013). Retrieved from

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Presse (AFP) and Associated Press (AP) before the delegation. Their stories were posted very quickly after delegations were announced, which translated to broad global pickup.

In 2013 and 2014, ICANN conducted briefing events with technology and financial analysts and their clients. Firms including Gartner, IDC, Forrester, Altimeter Group Citigroup, JP Morgan, Baird and Cowen Group attended the briefings.

ICANN organized small-scale roadshows offering educational sessions about ICANN, including the New gTLD Program, to applicants, registrars, registries, businesses, and the media. In 2014, ICANN held roadshows in Latin America in Mexico, Brazil, and Bolivia, and in the Caribbean in Trinidad and Tobago. Each event had approximately 250 attendees and received press coverage from local media.<sup>468</sup>The event in Mexico was particularly successful; it garnered 87 pieces of coverage by national media. Following its success in 2014, ICANN held roadshows in 2015 in St. Lucia, Argentina, Kenya, the United Arab Emirates, and Thailand. For the remainder of 2015, ICANN is planning to hold similar events in Colombia and other nations and regions.

#### **8.4.4.4 PHASE 4: TLDS GO LIVE/IN THE ROOT**

The Communications Plan defined Phase 4 as separate and distinct from Phase 3. In reality, Phase 4 and Phase 3 are concurrent because applications are processed in batches (see Section 1.2: Prioritization of this report).

## 8.4.5 Conclusion

New gTLD Program communications were executed in accordance with the Communications Plan. ICANN performed outreach to global regions to provide information about the Program and increase awareness. ICANN also developed tools to share information with applicants and the community, most notably the New gTLD microsite.

Although the success of Program communications during this application round is difficult to assess because “success” was not defined within the Communications Plan, there are lessons learned that should be taken into consideration for future rounds. In the 2012 application round, the New gTLD microsite was developed to house all New gTLD Program information. To increase accessibility and usability for future rounds, Program information should be consolidated into a single site with other ICANN information. Another consideration for future rounds is that ICANN’s Global Stakeholder Engagement team is much larger than it was before the 2012 application round, and this team should be leveraged to help promote awareness of the New gTLD Program within their respective regions/constituencies.

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<http://www.japantimes.co.jp/news/2013/10/24/business/web-to-soon-see-addresses-in-chinese-russian-arabic/#.UmrVPSSROY>

<sup>468</sup> Articles from the Mexico and Bolivia editions can be found at <http://www.scoop.it/t/noticias-en-espanol-by-icann>. Articles from the Brazil edition can be found at <http://www.scoop.it/t/noticias-em-portugues>.

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In summary:

**8.4.a** Consolidate all next round program information into a single site and make information as accessible as possible

**8.4.b** Leverage ICANN's Global Stakeholder Engagement team to promote awareness of the New gTLD Program within their regions/constituencies

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## 8.5 Customer Service

### 8.5.1 Introduction

The Customer Service Center (“CSC”) was initially launched to provide support to potential applicants and applicants of the New gTLD Program. Overtime, the CSC evolved into a Global Support function, providing customer support not only to applicants of the Program, but also to contracted parties resulting from the New gTLD Program, and other members of the ICANN community. This section of the Program Implementation Review report discusses the following aspects of Customer Service:

- New gTLD Program’s Impact on Customer Service
- Ongoing Improvements

### 8.5.2 Relevant Guidance

The following guidance is relevant to the topic of Customer Service and will be discussed in further detail in Sections 8.5.3 and 8.5.4 of this report:

- GNSO Implementation Guideline O: “ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.”<sup>469</sup>
- Applicant Guidebook, Section 1.4.2: Customer Service during the Application Process<sup>470</sup>

### 8.5.3 Background

Per GNSO Implementation Guideline O, the AGB provided for a customer service function during the new gTLD application process. Prior to the ICANN Board’s approval of the New gTLD Program and along with it the AGB, ICANN made the email address [newgtld@icann.org](mailto:newgtld@icann.org) available to the general public for any inquiries relating to the New gTLD Program. This email box was monitored by ICANN staff and responses to inquiries were provided; however, as this was an email box, mechanisms for tracking and reporting of inquiries were lacking. Upon the ICANN’s Board approval of the New gTLD Program and the AGB on 20 June 2011, ICANN began work on launching an improved Customer Service Center (CSC) to provide additional support capabilities.

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<sup>469</sup> ICANN. (8 August 2007) ICANN Generic Names Supporting Organization Final Report Introduction of New Generic Top-Level Domains, Part A. Retrieved from <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

<sup>470</sup> ICANN. (4 June 2012) gTLD Applicant Guidebook Version 2012-06-04. Retrieved from <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>

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On 21 November 2011, the CSC was launched with a new customer service platform that allowed for submission of inquiries in the six UN languages and a knowledge base with 250 articles in six UN languages. The customer service platform also allowed better tracking and reporting of statistics such as the number and type of inquiries submitted and response time.

As the Program launched and progressed, the CSC continued to expand and improve its services. During the application window between January and May 2012, the CSC processed application change requests and refund requests. After the application window closed, the CSC supported the administrative completeness check of applications in preparation for Reveal Day (see Section 1.1: Application Submission of this report). In 2013, ICANN launched a new and improved Customer Portal and began supporting Registry Operators as applicants completed the Program and signed Registry Agreements. In 2014, the CSC began standardizing a set of customer service metrics, which it published in 2015. In 2015, in an effort to better support ICANN's global customers, the CSC began offering 24/5 support by staff located in ICANN hub offices. Language support also expanded through third-party phone translations for languages beyond the six UN languages. A customer satisfaction survey was also implemented in July 2015 to gather feedback and improve services.

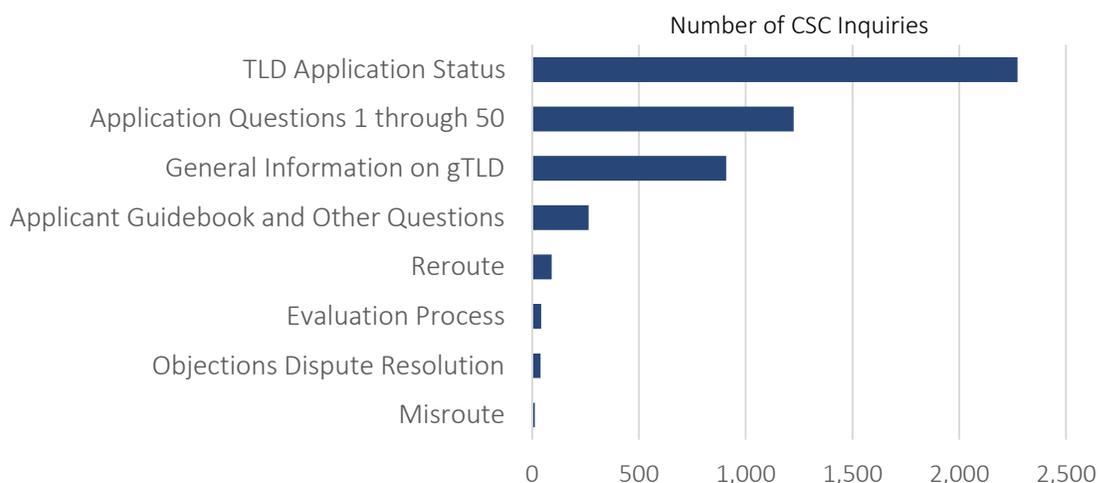
## 8.5.4 Assessment

### 8.5.4.1 EVOLUTION OF CUSTOMER SERVICE

The New gTLD Program has many phases, including the application window, the publication of applied-for strings, application evaluation, objections and GAC Advice, contention resolution, contracting, and delegation. Each phase of the Program has its own set of requirements that directly influenced applicants' customer support needs. To meet these needs, the CSC had to evolve throughout the life of the Program.

Leading up to and during the application window, the CSC received approximately 5,000 inquiries. Figure 8.5.i shows a breakdown of CSC inquiries during the application window by category.

Figure 8.5.i: Breakdown of CSC inquiries during the application window by category



Section 1.6 of the AGB stated: “To provide all applicants equitable access to information, ICANN [would] make all questions and answers publicly available.” The knowledge base that the CSC made available to applicants and potential applicants of the Program served the dual purpose of providing applicants and potential applicants with a self-service tool to get information regarding the Program and satisfying the criteria of Section 1.6 of the AGB.

To achieve the goal of equitable access to information, ICANN created knowledge base articles based on inquiries submitted. Responses to inquiries then pointed applicants and potential applicants to published knowledge base materials. Although this approach allowed for ICANN to publish the inquiries and the responses provided in a form that ensured confidentiality of the applicant and potential applicant, it created a longer response time because the knowledge base articles had to be created and translated before the responses could be provided.

Once the application window closed and applicants began moving into other phases of the Program, there were primarily two types of inquiries submitted, inquiries regarding status of specific applications and inquiries regarding upcoming Program processes. Because inquiries regarding application statuses were confidential and ICANN began to provide information regarding upcoming Program processes via webinars, FAQs, Advisories, and updates on the New gTLD microsite (see Section 8.4: Communications of this report), the knowledge base became less relevant after the close of the application window.

In August of 2013, as Initial Evaluation came to an end and Extended Evaluation began, ICANN began to offer applicants the ability to schedule phone calls with ICANN staff to discuss specific issues regarding their applications. Up until this time, all questions regarding specific applications and Program requirements and criteria were required to be submitted via the Customer Service Portal. This change allowed a more direct and effective channel for ICANN and applicants that had complex issues preventing them from moving forward in the Program to communicate. Phone communications were only used in cases where there were issues impacting a specific application. Information that would impact all applicants was disseminated via the New gTLD microsite or

webinars to continue to ensure equal access of information to all applicants. On 22 June 2015, ICANN began offering phone support to all applicants. To continue providing equal access of information to applicants, an internal knowledge base was created to support resolution of inquiries via phone. The internal knowledge base contained standardized answers to frequently asked questions, and all CSC resources had access to the knowledge base.

Not only did the nature of the inquiries change as the Program progressed, the volume of questions received by the CSC also increased over the life of the Program. Figure 8.5.ii shows the annual volume of cases received by the customer service team from the launch of the CSC in 2011 through the end of calendar year 2014.

*Figure 8.5.ii: Annual Volume of CSC Cases*

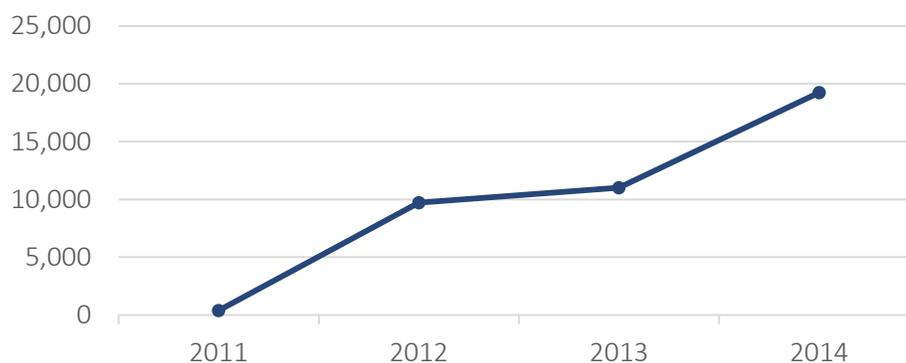


Figure 8.5.ii above shows a small increase in the number of CSC cases from 2012 to 2013. The majority of the CSC cases received in 2012 were during the application window. As evaluation began during the second half of 2012, the inquiries received were primarily regarding upcoming processes such as contention resolution and objections. In 2013, the volume of inquiries represented application change requests as applicants received CQs, and COIs as applicants started contracting.

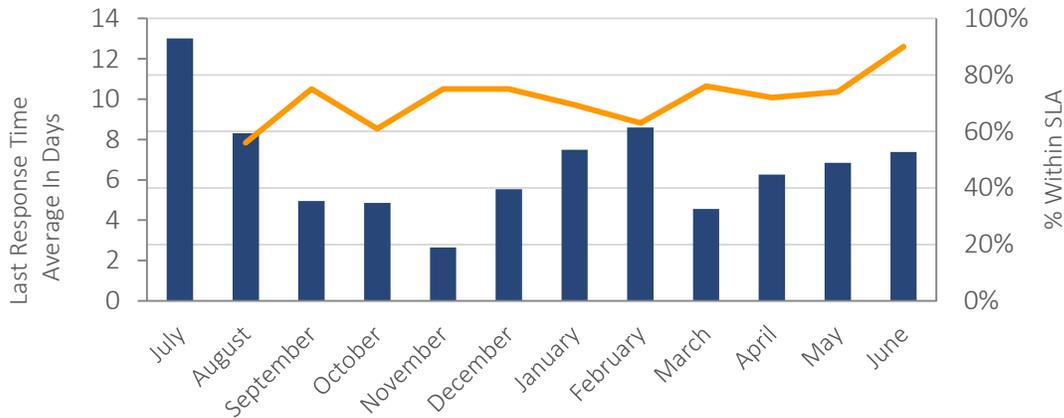
#### **8.5.4.2 ONGOING IMPROVEMENTS**

In the time after its launch in November 2011, the CSC implemented system upgrades and put in places new processes to increase its efficiency and effectiveness while improving the service that it delivered.

On 17 April 2013, ICANN launched a new and improved Customer Portal. The new Customer Portal continued to provide applicants with the ability to manage their customer service cases and provided the added benefit of allowing applicants to access their application information in the same Portal. Previously, applicants had to access their application information in a separate system, TAS (see Section 1.1: Application Submission of this report).

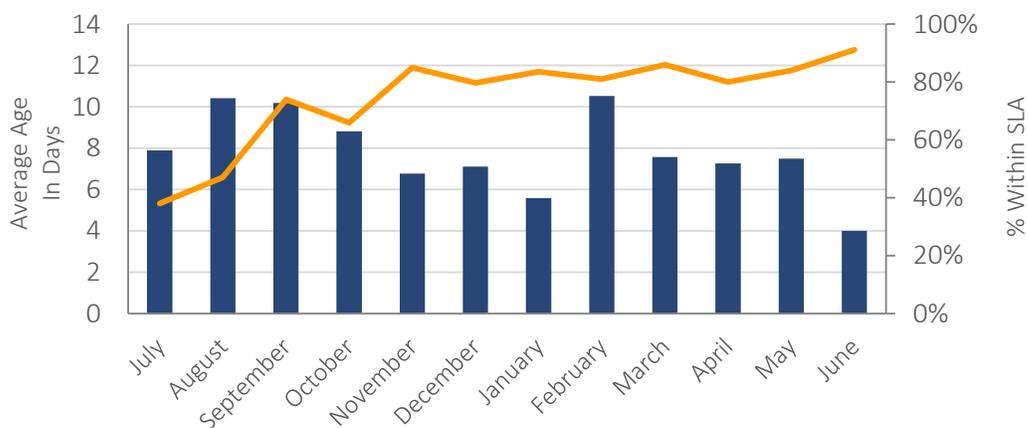
In mid-2014, ICANN began to work on standardizing metrics and service level targets for those metrics. To support transparency, in January 2015, ICANN began publishing the customer service metrics and service level targets. The metrics that ICANN reported on included number of days to last response, number of days to case closure, and percentage of cases resolved by Tier 1 customer service. Figures 8.5.iii, 8.5.iv, and 8.5.v show these metrics for the period between July 2014 and April 2015, respectively.

Figure 8.5.iii: Number of Days to Last Response



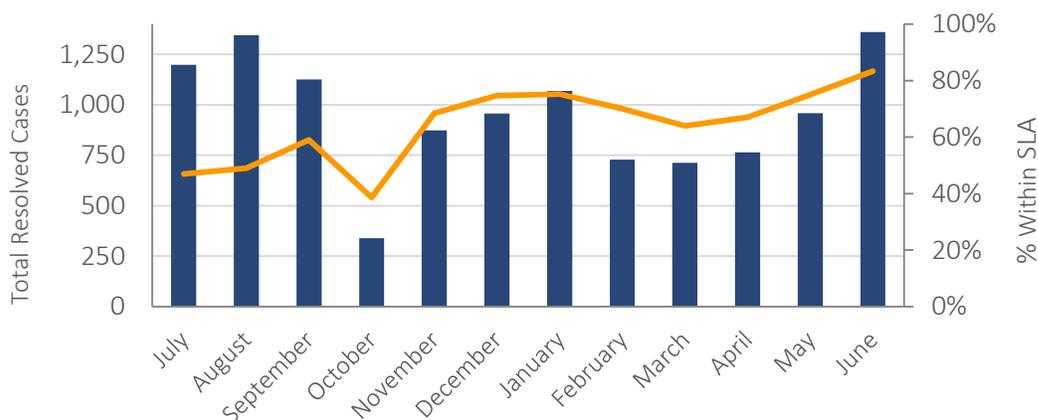
The Number of Days to Last Response metric measured the percentage of cases that received a communication from ICANN within the number of days specified by the service level target from the date of the last communication. The service level target for this metric was for Customer Service to provide a communication to applicants within seven days of the last communication. The team saw a positive trend in this area and regularly met or exceeded the service level target at least 70% of the time between November 2014 and July 2015.

Figure 8.5.iv: Number of Days to Case Closure



The Number of Days to Case Closure metric measured the percentage of cases resolved within the number of days specified by their service level targets. The service level target for this metric was for customer service to resolve cases within seven days of their submission. The team met this service level target at least 80 percent of time between November 2014 and July 2015.

Figure 8.5.v: Percentage of Cases Resolved by Tier 1 Customer Service



The Percentage of Cases Resolved by Tier 1 Customer Service metric measured the percentage of cases resolved without escalation outside of the customer service team. The service level target for this metric was for customer service to resolve 60% of the cases submitted. The team consistently met this service level target between November 2014 and July 2015.

In May 2015, the CSC began to offer voice support to incoming calls and expanded its support hours to 24/5. Additional staff was also added in 2015 in the ICANN Los Angeles and Singapore hub offices in order to provide adequate coverage for the expanded support provided. To support the growing global staff and to ensure consistent and quality of responses, an internal knowledge base was implemented in January 2015. This knowledge base is integrated into the Customer Portal’s case management functionality and provides the customer service team with trusted responses to ongoing customer inquiries as well as “how-to” documentation for case-related processes. It is anticipated that as new team members are added to ICANN hub offices, the knowledge base will expedite the onboarding process and provide them with clear, accurate, and consistent information to resolve cases.

Also implemented in 2015 was enhanced language support. Voice support for incoming calls included “real-time meaning-to-meaning” translation services for languages beyond the six UN languages. The addition of Customer Service staff in ICANN’s hub offices that can speak both English and the local language is also underway in 2015 to further enhance the breadth of languages supported.

Also launched in 2015 was the customer satisfaction survey to measure customer satisfaction with the resolution of their cases and to identify areas for improvement.

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## 8.5.5 Conclusion

The AGB called for a Customer Service Center to support potential applicants and applicants during the application process. The Customer Service Center was launched prior to the applicant window to support this guidance. To support fairness and transparency, during the application window, ICANN published inquiries and standard responses in a publicly available knowledge base. As the Program progressed through evaluation and other phases, ICANN continued to share information via webinars, Applicant Advisories, and the New gTLD microsite.

Over time, the Customer Service Center has evolved to support not only applicants at all phases of the New gTLD Program, but also registry operators, other contracted parties, and the public. As of 2015, the Customer Service Center provides 24/5 support, phone support, and support in the six UN languages. To further support continuous improvement, the Customer Service Center has also implemented public service level targets, an enhanced customer portal, an internal knowledge base, and a customer satisfaction survey. Based on the demand for support before, during, and after the application window, ICANN recognizes that customer service is a critical function of the organization, and should be planned for accordingly for future operations. As the systems, processes, and resources have been established to support ICANN's contracted parties and the wider community, in advance of the next application round, these resources should be leveraged to ensure that an appropriate team is in place to support the activities of the New gTLD Program.

In summary:

**8.5.a** Consider customer service to be a critical function of the organization, and ensure that the Customer Service Center has the appropriate resources to support the ongoing and future activities of the New gTLD Program

# Annex 1. Summary of Lessons Learned

Reference	Lesson Learned
1.1.a	Explore a more structured way of capturing application responses
1.1.b	Implement a system that would allow applicants the flexibility to associate as many applications as desired to a single user account
1.2.a	Assign priority numbers to applications prior to commencement of application processing
1.2.b	Consider grouping applications by common characteristics while establishing priority numbers, in order to increase processing efficiency
1.3.a	Explore implementing additional functionality that will improve the usability of the Application Comment Forum
1.3.b	Provide additional clarity around the intended use of the Application Comment Forum, including timelines and ways to indicate the type of comment being submitted
1.4.a	Design application change request processes and criteria prior to the start of application processing
1.4.b	Consider whether all types of application changes should be processed the same way
1.5.a	Consider defining a process to move applications that may not proceed in the Program to a final status and provide a refund if they are not withdrawn
1.5.b	Review Program financials at the conclusion of this application round to determine whether the refund schedule accurately mapped to the costs incurred at the specified Program phases
2.1.a	Work with evaluation panels to perform pre-evaluation training and develop detailed procedures to ensure consistent and quality evaluations are achieved
2.1.b	Program processes that allow for additional communication between the applicant and ICANN, such as the Applicant Outreach process used in evaluation, may be beneficial
2.2.a	Consider whether background screening should be performed during Initial Evaluation or at the time of contract execution
2.2.b	Consider whether the background screening procedures and criteria could be adjusted to account for a meaningful review in a variety of cases (e.g., newly formed entities, publicly traded companies, companies in jurisdictions that do not provide readily available information)
2.3.a	Review the relative timing of the String Similarity evaluation and the Objections process
2.3.b	Consider any additional policy guidance provided to ICANN on the topic of String Similarity
2.3.c	Leverage the Root Zone Label Generation Rules in the development of the String Similarity evaluation as it pertains to IDN variants

Reference	Lesson Learned
2.4.a	As directed in the NGPC's 30 July 2014 resolution, "work with the GNSO to consider whether policy work on developing a long-term plan to manage gTLD name collision issues should be undertaken."
2.4.b	Based on the outcome of the GNSO's work, consider inclusion of the Name Collision Management Framework in the next application round prior to accepting applications
2.4.c	Leverage the Root Zone Label Generation Rules for IDNs in the DNS Stability evaluation
2.5.a	Consider the purpose and the implications of the Geographic Names evaluation, particularly in terms of whether its purpose is limited to evaluation or if there are other implications to the Geographic Names designation
2.5.b	Consider ongoing work by various members of the community around geographic names in defining future procedures
2.6.a	Consider whether an alternate approach to the Technical and Operational Capability evaluation would be worthwhile
2.6.b	Review Technical and Operational Capability Clarifying Questions and responses to determine whether improvements to the application questions can be made
2.7.a	Consider whether an alternative approach to the Financial Capability evaluation would be worthwhile
2.7.b	Review Financial Capability Clarifying Questions and responses to determine whether improvements to the application questions can be made
2.8.a	Update the process for collection of registry services information to better support both evaluation and contracting activities
2.8.b	Consider whether an alternate approach to Technical and Operational Capability Evaluation would be worthwhile, and if so, how the evaluation of Registry Services could be incorporated into the approach
2.8.c	For future rounds, leverage the IDN tools currently under development
3.1.a	Continue engagement with the GAC during the review process and the development of future procedures to ensure that its input is incorporated into relevant processes as early as possible
3.2.a	Explore a potential review mechanism for the next round
3.2.b	Consider opportunities for improvement in administering the Independent Objector processes (e.g., withdrawal of Independent Objector's objection if another objection to the same application on the same ground was filed, how comments made in the public sphere were considered prior to the filing of an objection)
4.1.a	Consider all dimensions of the feedback received to revisit the Community Priority Evaluation scoring and framework before the next application round
5.1.a	Explore the feasibility of finalizing the base Registry Agreement before applications are submitted or establishing a process for updating the Registry Agreement
5.1.b	Explore whether different applicant types could be defined in a fair and objective manner, and if there are to be different applicant types, consider whether there should be different versions of the Registry Agreement
5.2.a	Consider which tests should be performed once per technical infrastructure implementation and which should be performed for each TLD

Reference	Lesson Learned
5.2.b	Consider which, if any, tests can be converted from self-certifying tests to operational tests
5.2.c	In considering an alternate approach to the Technical and Operational Capability Evaluation, if an RSP accreditation program is considered, explore how Pre-Delegation Testing would be impacted
5.2.d	Building on lesson learned 2.8.c, in the development of evaluation criteria and procedures for IDNs, consider whether review of IDN tables during Pre-Delegation Testing could be limited to confirmation of compliance with the TLD's stated IDN policy
6.1.a	Consider leveraging the same procedural practices used for other panels, including the publication of process documents and documentation of rationale
6.1.b	Consider researching globally recognized procedures that could be adapted for the implementation of the Applicant Support Program
7.1.a	Explore whether there other more effective and efficient ways to fund an emergency back-end registry operator in the event of a TLD failure
8.1.a	In developing timelines for future application rounds, provide an appropriate amount of time to allow for the use of best practices in system development
8.1.b	Explore beta testing programs for systems to allow for lessons learned, to increase effectiveness of such systems, and to provide further transparency, clarity, and opportunity for preparation to applicants
8.2.a	Provide transparency and predictability to the procurement process following ICANN's procurement guidelines. Publish selection criteria, providers' process documents, and other relevant and non-confidential material in a timely manner.
8.3.a	Perform full review of Program financials and application fee before fees are defined for the next application round
8.4.a	Consolidate all next round program information into a single site and make information as accessible as possible
8.4.b	Leverage ICANN's Global Stakeholder Engagement team to promote awareness of the New gTLD Program within their regions/constituencies
8.5.a	Consider customer service to be a critical function of the organization, and ensure that the Customer Service Center has the appropriate resources to support the ongoing and future activities of the New gTLD Program

## Annex 2. Glossary of Acronyms

Acronym	Description
<b>AGB</b>	<b>The gTLD Applicant Guidebook</b> The AGB is a document describing the requirements of the new gTLD application and evaluation processes.
<b>ALAC</b>	<b>At-Large Advisory Committee</b> The ALAC is responsible for considering and providing advice on the activities of the ICANN, as they relate to the interests of individual Internet users (the "At-Large" community). ICANN, as a private sector, non-profit corporation with technical management responsibilities for the Internet's domain name and address system, will rely on the ALAC and its supporting infrastructure to involve and represent in ICANN a broad set of individual user interests.
<b>ASCII</b>	<b>American Standard Code for Information Interchange</b> A character encoding based on the English alphabet.
<b>ccTLD</b>	<b>Country-Code Top-Level Domain</b> A class of top-level domain only assignable to represent countries and territories listed in the ISO 3166-1 standard. See <a href="http://iana.org/domains/root/db/">http://iana.org/domains/root/db/</a> .
<b>CEO</b>	<b>Chief Executive Officer</b>
<b>COI</b>	<b>Continued Operations Instrument</b> COI is a financial instrument in the form of an irrevocable standby Letter of Credit, or deposit into an irrevocable cash escrow account. The purpose of the COI is to fund the continued operations of the five critical registry functions of a new gTLD by an EBERO in the event of a TLD failure.
<b>CPE</b>	<b>Community Priority Evaluation</b> CPE is a New gTLD Program process to resolve string contention, which may be elected by a community-based applicant.
<b>CQ</b>	<b>Clarifying Question</b> Evaluators could issue Clarifying Questions to applicants to request clarification or additional information during Initial or Extended Evaluation. Clarifying Questions served to clarify or supplement the application.
<b>CSC</b>	<b>ICANN Customer Service Center</b> The CSC provides support to New gTLD Program applicants as they move through the New gTLD Program.
<b>DNS</b>	<b>Domain Name System</b> The global hierarchical system of domain names.

Acronym	Description
<b>DRSP</b>	<b>Dispute Resolution Service Provider</b> DRSP is an entity engaged by ICANN to adjudicate dispute resolution proceedings in response to formally filed objections.
<b>EBERO</b>	<b>Emergency Back-End Registry Operator</b> EBERO providers have entered into contracts with ICANN to provide the five critical registry functions in the event of a TLD registry operator failure. EBERO providers must have demonstrated years of experience in operating domain name services, registration data directory services and extensible provisioning protocol services.
<b>EE</b>	<b>Extended Evaluation</b> EE is the second stage of evaluation applicable for new gTLD applications that do not pass Initial Evaluation, but are eligible for further review.
<b>EIU</b>	<b>The Economist Intelligence Unit</b>
<b>FAQ</b>	<b>Frequently Asked Questions</b>
<b>FY</b>	<b>Fiscal Year</b> ICANN's fiscal year is the 12-month period ending on 30 June of that year. For example, "FY14" began on 1 July 2013 and ended on 30 June 2014.
<b>GAC</b>	<b>Governmental Advisory Committee</b> The GAC is an advisory committee comprising appointed representatives of national governments, multi-national governmental organizations and treaty organizations, and distinct economies. Its function is to advise the ICANN Board on matters of concern to governments. The GAC operates as a forum for the discussion of government interests and concerns, including consumer interests. As an advisory committee, the GAC has no legal authority to act for ICANN, but will report its findings and recommendations to the ICANN Board.
<b>GNSO</b>	<b>Generic Names Supporting Organization</b> The GNSO is ICANN's policy-development body for generic TLDs and the lead in developing the policy recommendations for the introduction of new gTLDs. The GNSO is the body of six constituencies, as follows: the Commercial and Business constituency, the gTLD Registry constituency, the ISP constituency, the non-commercial constituency, the registrar's constituency, and the IP constituency.
<b>gTLD</b>	<b>Generic Top-Level Domain</b> gTLD is a TLD that does not correspond to any country code.

Acronym	Description
<b>IANA</b>	<b>Internet Assigned Numbers Authority</b> IANA is the authority originally responsible for overseeing Internet Protocol (IP) address allocation, coordinating the assignment of protocol parameters provided for in Internet technical standards, and managing the DNS, including delegating top-level domains, and overseeing the root name server system. Under ICANN, the IANA distributes addresses to the Regional Internet Registries, coordinates with the IETF and other technical bodies to assign protocol parameters, and oversees DNS operation.
<b>ICANN</b>	<b>Internet Corporation for Assigned Names and Numbers</b>
<b>ICC</b>	<b>The International Centre for Expertise of the International Chamber of Commerce</b>
<b>ICDR</b>	<b>The International Centre for Dispute Resolution</b>
<b>IDN</b>	<b>Internationalized Domain Name</b> IDN is a domain name including characters used in the local representation of languages not written with the basic Latin alphabet (a - z), European-Arabic digits (0 - 9), and the hyphen (-).
<b>IE</b>	<b>Initial Evaluation</b> IE is the first stage of evaluation applicable for new gTLD applications.
<b>IGO</b>	<b>Inter-governmental organization</b>
<b>IIS</b>	<b>Stiftelsen för Internetinfrastruktur</b>
<b>IO</b>	<b>Independent Objector</b> As part of the New gTLD Program, the IO could lodge Community and Limited Public Interest objections in the best interests of global Internet users if there were comments in opposition to an application made in the public sphere.
<b>ISP 98</b>	<b>International Standby Practices</b>
<b>JAS WG</b>	<b>Joint SO/AC New gTLD Applicant Support Working Group</b> The main objective of the JAS WG was to develop a sustainable approach to providing support to entities requiring assistance in applying for and operating new gTLD Registries.
<b>LGR</b>	<b>Label Generation Rules</b> The label generation rules govern the way a zone is operated.
<b>LOC</b>	<b>Letter of Credit</b>
<b>NGO</b>	<b>Non-Governmental Organization</b>
<b>NGPC</b>	<b>ICANN Board New gTLD Program Committee</b> The NGPC is a group set up by the ICANN Board to make decisions regarding the New gTLD Program. Formed on 10 April 2012, the NGPC is composed of all ICANN Board members who do not have a conflict of interest relating to the New gTLDs, in addition to two non-voting liaisons.

Acronym	Description
<b>NTAG</b>	<p><b>New TLD Applicant Group</b></p> <p>The NTAG is an interest group formed under Article III.D. of the Charter of the gTLD Registries Stakeholder Group (RySG). The primary role of the NTAG is to represent the interests of entities that applied for a new gTLD(s) in ICANN's 2012 gTLD round.</p>
<b>PDT</b>	<p><b>Pre-Delegation Testing</b></p> <p>PDT is a technical test required of applicants before delegation of the applied-for gTLD string into the root zone.</p>
<b>PIC</b>	<p><b>Public Interest Commitment</b></p> <p>PICs are safeguards in Specification 11 of the Registry Agreement in order to hold their registry operations to certain standards. PICs are also a mechanism to allow registry operators to commit certain statements into binding contractual obligations that may be enforced by ICANN compliance and via the Public Interest Commitments Dispute Resolution Procedure (PICDRP).</p>
<b>PICDRP</b>	<p><b>Public Interest Commitments Dispute Resolution Procedure</b></p> <p>The PICDRP addresses complaints that a Registry Operator may not be complying with the Public Interest Commitment(s) in Specification 11 of their Registry Agreement.</p>
<b>PwC</b>	<p><b>PricewaterhouseCoopers</b></p>
<b>RA</b>	<p><b>Registry Agreement</b></p> <p>The RA is the agreement executed between ICANN and successful gTLD applicants.</p>
<b>RFP</b>	<p><b>Request for Proposal</b></p>
<b>RSEP</b>	<p><b>Registry Services Evaluation Policy</b> (also referred to as Registry Services Evaluation Process)</p> <p>RSEP is ICANN's process for evaluating proposed gTLD registry services or contractual modifications for security, stability or competition issues.</p>
<b>RSP</b>	<p><b>Registry Services Provider</b></p> <p>RSP is a company that runs the operations of a TLD on behalf of the TLD owner or licensee. The RSP keeps the master database and generates zone files to allow computers to route Internet traffic using the DNS.</p>
<b>RSTEP</b>	<p><b>Registry Service Technical Evaluation Panel</b></p> <p>The RSTEP, created based on Section 1.4 of the RSEP, is a technical team under the GNSO. The RSTEP primary responsibility is to assist in the evaluation of requests for new registry services.</p>
<b>RZM</b>	<p><b>Root Zone Management System</b></p> <p>The DSN RZM is the automated system used to process change requests for TLDs and to delegate new gTLDs once they have passed PDT.</p>

Acronym	Description
<b>SARP</b>	<b>Support Application Review Panel</b> The SARP is a selected, volunteer panel responsible for the evaluation and scoring of applications for the Applicant Support Program.
<b>SLT</b>	<b>Service Level Target</b> SLT is a target agreed as a means of measuring the performance of a particular service.
<b>SSAC</b>	<b>Security and Stability Advisory Committee</b> The SSAC is an advisory committee to the ICANN Board comprised of technical experts from industry and academia as well as operators of Internet root servers, registrars and TLD registries.
<b>TAS</b>	<b>TLD Application System</b> TAS was the online interface for submission of gTLD applications to ICANN. This interface is no longer active.
<b>TCP</b>	<b>Transmission Control Protocol</b> TCP is one of the main transport layers of the Internet Protocol Suite. It is an effective transport service connection wherein data is transferred with an end-to-end reliability from the source host to the destination host. TCP verifies the correct delivery of data and provides a support to check for errors and missing data, and re-sends it to complete the data transfer.
<b>TLD</b>	<b>Top-Level Domain</b> A TLD is a name at the top of the DNS naming hierarchy. It appears in domain names as the string of letters following the last dot, such as “NET” in www.example.net. The TLD administrator controls what second-level names are recognized in that TLD. The administrators of the root domain or root zone control what TLDs are recognized by the DNS.
<b>TMCH</b>	<b>Trademark Clearinghouse</b> The TMCH is a repository for trademark data supporting rights protection services offered by new gTLD registries.
<b>UCL</b>	<b>University College London</b>
<b>UCP</b>	<b>Uniform Customs and Practice for Documentary Credits</b>
<b>UDRP</b>	<b>Uniform Domain Name Dispute Resolution Policy</b> All ICANN-accredited registrars follow a uniform dispute resolution policy. Under that policy, disputes over entitlement to a domain name registration are ordinarily resolved by court litigation between the parties claiming rights to the registration.
<b>UN</b>	<b>United Nations</b>

Acronym	Description
<b>URL</b>	<p><b>Uniform Resource Locator</b></p> <p>The URL is a string that describes the address of documents and other resources on the Internet. Defined by the IETF in RFC 2396, a URL is composed of two parts separated by a colon (":"). The first part of the address indicates what protocol to use, e.g., http, ftp, etc., and the second part specifies the IP address or the domain name where the resource is located.</p>
<b>URS</b>	<p><b>Uniform Rapid Suspension</b></p> <p>The URS provides trademark holders with a rapid and efficient mechanism to "take down" undeniably infringing domain names. A successful proceeding will result in suspension of the domain name. Compliance with results mandatory for all new gTLD operators.</p>
<b>WIPO</b>	<b>World Intellectual Property Organization</b>



One World, One Internet

**ICANN.ORG**

**EXHIBIT JJN-64**



## New Generic Top-Level Domains

ICANN [APPLICANT GUIDEBOOK](#) [NAMING SERVICES PORTAL](#) [GLOBAL SUPPORT](#)

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### NEW GTLD APPLICATION CHANGE REQUEST PROCESS AND CRITERIA

[Overview](#)

[Determination Criteria](#)

[How to Submit a Change Request](#)

[Change Request Process](#)

[Change Requests That Do Not Require A 30-day Comment Window](#)

[How Change Requests Impact Other New gTLD Program Processes](#)

[Statistics](#)

[Resources](#)

#### News & Views

Announcement: 30 September 2014 – [ICANN Updates Application Change Request Process](#)

Announcement: 30 September 2014 – [Change Request Advisory](#)

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#### Change Request Overview

Per section 1.2.7 of the Applicant Guidebook:

*If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.*

This section of the Applicant Guidebook further states:

*ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.*

*Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.*

The Application Change Request ("ACR") process was created during the application window in order to allow applicants to notify ICANN of changes to application materials.

## Change Request Determination Criteria

Determination of whether changes will be approved will balance the following factors:

1. **Explanation** – Is a reasonable explanation provided?
2. **Evidence that original submission was in error** – Are there indicia to support an assertion that the change merely corrects an error?
3. **Other third parties affected** – Does the change affect other third parties materially?
4. **Precedents** – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. **Fairness to applicants** – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. **Materiality** – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. **Timing** – Does the timing interfere with the evaluation process in some way? ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. (AGB §1.2.7.)

These criteria were carefully developed to enable applicants to make necessary changes to their applications while ensuring a fair and equitable process for all applicants.

In evaluating each change request, all available information is considered against the seven criteria above. The weight of each criterion may vary on a case-by-case basis, depending on the facts and circumstances surrounding the change request, the application, and the string.

**Explanation** – This criterion requires that the applicant provide an explanation for the requested changes. If an explanation is not provided, the applicant is given an opportunity to remediate. As such, this criterion is always met and does not bear as much weight as the other criteria.

**Evidence that original submission was in error** – This criterion is applicable in cases where the applicant requests a change to correct an error. In this case, the criterion requires that the applicant provide adequate information to support the request. There are few cases of change requests to correct an error. However, when such a case is submitted, this criterion is heavily weighted.

**Other third parties affected** – This criterion evaluates whether the change request materially impacts other third parties, particularly other applicants. In cases where a change to application material has the potential to materially impact the status of another applicant's application, this criterion is heavily weighted.

**Precedents** – This criterion assesses whether approval of the change request would create a new precedent, or if it would be in-line with other similar requests that have been approved. At this stage of the New gTLD Program, it is unlikely that a change request that would create a new precedent would be approved.

**Fairness to applicants** – This criterion evaluates whether approving a change request would put the applicant in a position of advantage or disadvantage compared to other applicants. This criterion is related

to the "Other third parties affected" criterion, and if a change request is found to materially impact other third parties, it will likely be found to cause issues of unfairness.

**Materiality** – This criterion assesses how the change request will impact the status of the application and its competing applications, the string, the contention set, and any additional Program processes that it or its competing applications must complete such as Community Priority Evaluation ("CPE"). A change that is determined to be material in and of itself will not cause a change request to be rejected. However, it will cause other criteria to weigh more when considered in conjunction with each other.

**Timing** – This criterion determines whether the timing of the change request impacts the materiality, fairness to applicants, and other third parties affected criteria. In cases where timing of the change request is found to impact these criteria, it will be heavily weighted.

### How to Submit a Change Request

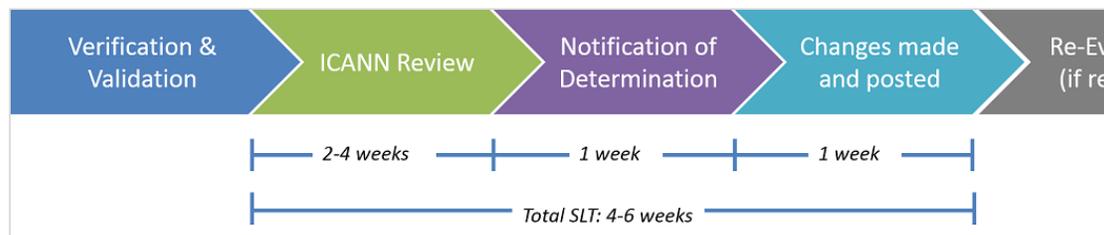
Requests for changes to application materials may be submitted to the [Naming Services Portal \(NSp\)](#) by following these 2 steps:

1. Download and complete a [gTLD Application Change Request Form](#) [DOCX, 564 KB].
2. Log into the NSp with the primary contact's credentials and submit the Form, along with redlines of the changes being requested. An example of a redline document can be viewed [here](#).

The standard change request process requires that any change to the application, including changes to the Primary Contact, be initiated by the Primary Contact and submitted via the appropriate login in the NSp. If the Primary Contact is no longer available to initiate the change, then the Secondary Contact may contact the GSC at [newgtld@icann.org](mailto:newgtld@icann.org) to submit the change request.

### Change Request Process

Below is a graphic depicting the change request process.



**Verification & Validation** – In this step, ICANN verifies the applicant's credentials in order to ensure that only those authorized to make changes to the application are able to do so. Additionally, ICANN reviews the change request materials submitted by the applicant to ensure that a completed Change Request Form, appropriate redline documents, as well as all relevant supporting documentations are provided. This step is not counted in the 4-6 week Service Level Target ("SLT") for change requests, because the amount of time to complete this step is highly dependent upon the applicant providing the required information. ICANN's work during this step is minimal. ICANN typically performs its work within 2 business days of receiving the requests or information from the applicant. Submission of incomplete information, and non-response to ICANN's request for required information are typical causes of delay in this step. ICANN will inform the applicant once this step is completed.

**ICANN Review** – Once verification and validation of the change request is completed, ICANN reviews the change request materials against the seven criteria above. In the event that additional information is required before a determination can be made, ICANN will reach out to the applicant to request the information. The SLT for this step of the process is 2-4 weeks, depending on the complexity of the change request and whether additional information is required.

**Notification of Determination** – Once ICANN completes its review of the change request, the applicant will be informed of the determination. Possible determinations include approval of the change request, denial of the change request, or deferral of the change request to a later time. The SLT for this step is one week to account for the drafting of denial or deferral letters if the change request is denied or deferred.

**Changes Made and Posted** – In this step, ICANN makes the requested and approved changes to the application. Changes that require a 30-day comment window will be posted on the [Application Status page](#) of the New gTLD Microsite. Changes that do not require a 30-day comment window will not be posted. Refer to the "Change Requests Requiring 30-day Comment Window" section below for information on which changes will be posted for comments and which ones will not. Applicants will be notified once the changes are made. The notification will also inform applicants whether the changes are posted for comments, and whether application re-evaluation will be required.

**Re-evaluation** – This step is applicable to those change requests that require re-evaluation of the application. Once ICANN notifies the applicant that the changes are made and that re-evaluation is required, the change request case will be closed and a new re-evaluation case will be opened to assist the applicant through the re-evaluation process. Under the re-evaluation step, the applicant will be sent an invoice for the re-evaluation fee. Once payment is made, ICANN will proceed with the re-evaluation of the application. The re-evaluation will follow the same process and timelines as Extended Evaluation:

- 3 weeks: evaluators review the updated application, and issue Clarifying Questions if required.
- 6 weeks: applicants respond to Clarifying Questions.
- 2 weeks: evaluators review response to Clarifying Questions and deliver results to ICANN.
- 1 week: ICANN reviews and processes the results for publication. Note that if the re-evaluation results in any scoring changes, ICANN will update either the Initial or Extended Evaluation report and post it on the [Application Status page](#) of the New gTLD Microsite. If the re-evaluation does not result in any scoring changes, no updates will be made.

## Change Requests That Do Not Require A 30-day Comment Window

In the interest of allowing applicants to expeditiously move forward in the New gTLD Program, effective 1 October 2014, the following types of change requests will generally not be posted for comments for 30 days:

- Changes to confidential portions of the application
- Changes to primary and secondary contacts of the application
- Changes to the applicant's contact information (address, phone, fax, web address)
- Changes to applicant's stock symbol
- Changes to applicant's business/tax ID
- Changes to applicant's officers/directors
- Changes to name of applying entity\*
- Changes to parent entity

Although these types of change requests generally will not be posted for comments, ICANN reserves the right to make exceptions in ICANN's discretion.

\* This item refers to a simple name change of the applying entity only. It does not apply to changes in the applying entity itself such as the case of the application being assigned from a parent entity to a wholly-owned subsidiary.

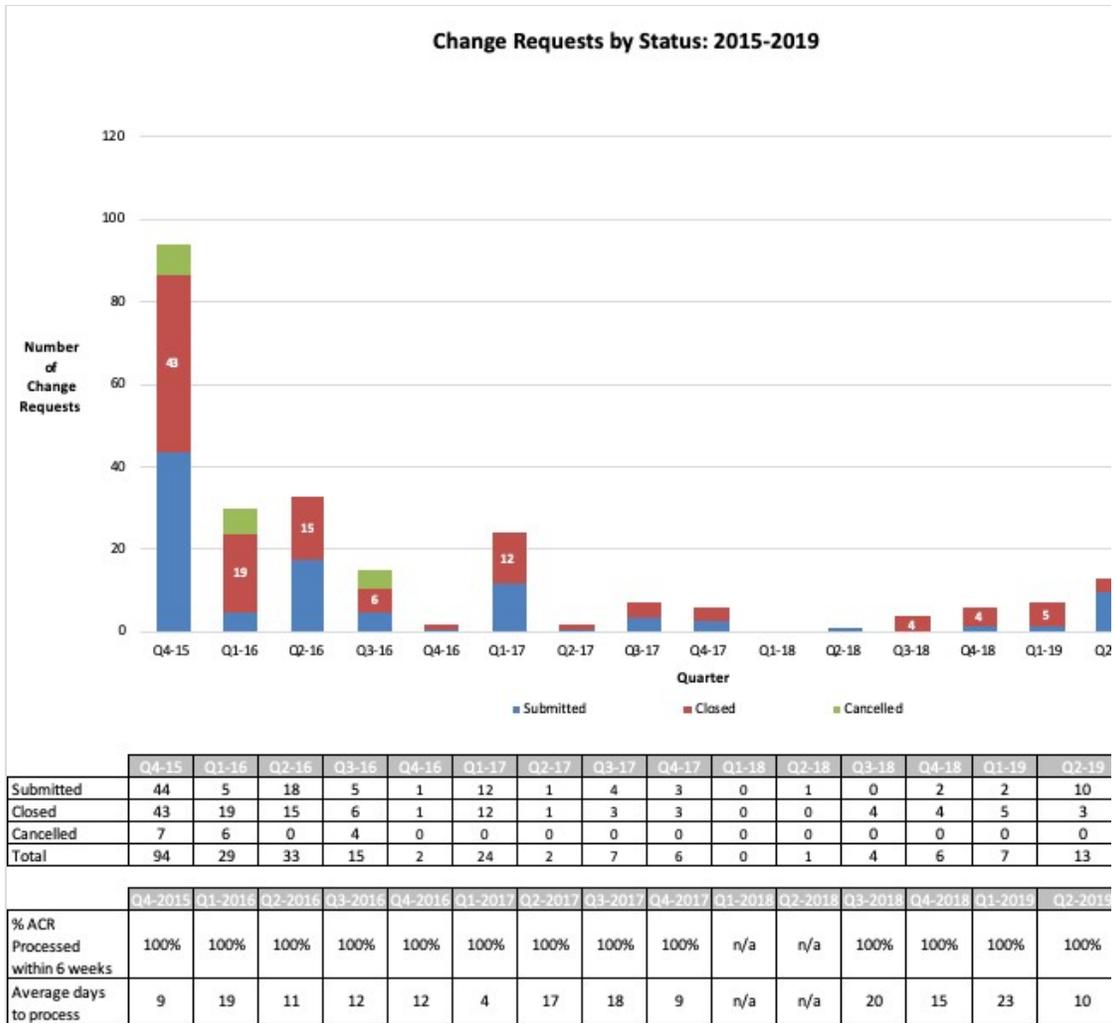
## How Change Requests Impact Other New gTLD Program Processes

**Contracting** – If an applicant is eligible to be invited to Contracting, but there is a pending change request on the application, the applicant will not be invited until the change request completes processing. If the applicant has been invited to contracting and is progressing through the contracting process, a pending change request will cause delays and may impact the applicant's ability to execute the Registry Agreement in a timely manner. If the applicant anticipates not being able to execute the Registry Agreement by the Registry Agreement execution deadline, ICANN recommends that the applicant [submit an extension request](#) [DOCX, 565 KB] in order to avoid missing the Registry Agreement execution deadline. Applicants will not receive a Registry Agreement until the change request completes processing, and the 30-comment window (if required) has concluded.

**Contention Resolution** – For Community Priority Evaluation, the applicant will only be invited once the change request completes processing and the 30-day comment window (if required) has concluded. For Auction, a pending change request will not prevent an Auction from being scheduled, but in some circumstances, the Auction may be delayed.

## Statistics

Below are quarterly change request statistics (as of December 2019).



## Resources

- [Change Request Form \[DOCX, 564 KB\]](#)
- [Naming Services Portal \(NSp\)](#)
- [Example Redline Document \[PDF, 50 KB\]](#)
- [Change Request Advisory](#)

**EXHIBIT JJN-65**

# New gTLD Subsequent Procedures

Operational Design Phase (ODP)



PREP WEEK ICANN74  
31 May 2022

# Agenda

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1

Operational Design  
Phase (ODP) and  
Subsequent  
Procedures

2

ODP Project Update

3

Review Methodology  
and Sample Topic

4

Upcoming Items  
and  
Questions

# Presenters



**Karen Lentz**

VP Policy Research & Stakeholder  
Programs



**Chris Bare**

Director, Strategic Initiatives

# Operational Design Phase (ODP) and Subsequent Procedures (SubPro)

Agenda Item 1

# Objective of the Operational Design Phase (ODP)

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To perform an assessment of GNSO Council policy recommendations in order to **provide the Board with relevant information** to facilitate the Board's determination in accordance with the Bylaws and in consideration of the public interest, **on the operational impact of the implementation of the recommendations**, including whether the recommendations are in the best interests of the ICANN community or ICANN ([Annex A, Section 9 \(a\)](#)).

The ODP supports the **Board's ability to request a focused assessment** of the operational impact of GNSO Council-approved recommendations.

The ODP will also **support ICANN org's consultation with the community to solicit feedback on the assumptions, facts, and figures** that underpin ICANN org's ODP assessment.

# Subsequent Procedures Policy Development Process (PDP)

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On 18 February 2021, the Generic Name Support Organization (GNSO) Council voted to approve the [New Generic Top-Level Domain \(gTLD\) Subsequent Procedures Policy Development Process Final Report](#) (the “Final Report”).

On 24 March 2021, the GNSO Council transmitted its [Recommendations Report](#) to the ICANN Board, following the GNSO Council’s approval of the Final Recommendations, and the Board is now considering the Outputs contained in the Final Report.

# ODP Board Resolution and Scoping

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## Sub Pro ODP Board Resolutions:

- Resolved (2021.09.12.01) The Board directs the President and CEO, to take the steps needed to **organize the resources required to begin work on the ODP, and to advise the Board when the work of the ODP is initiated** within the organization. The Board requests **regular updates on the progress of the work and delivery of the Operational Design Assessment (ODA)**, the expected output of the ODP, **within ten months from the date of initiation.**
- Resolved (2021.09.12.02) The Board authorizes the President and CEO of **up to US\$9M to fund the internal project needed for initiation of the ODP, the execution of the ODP including community engagement, formation and delivery of an ODA to the Board, and any additional related work that may be required** to support the ICANN Board's consideration of the New Generic Top Level Domain (gTLD) Subsequent Procedures Policy Development Process Final Report.

## Sub Pro ODP Scoping Document:

- Board worked with the org to create a structure and outline of the Sub Pro ODP Scoping document

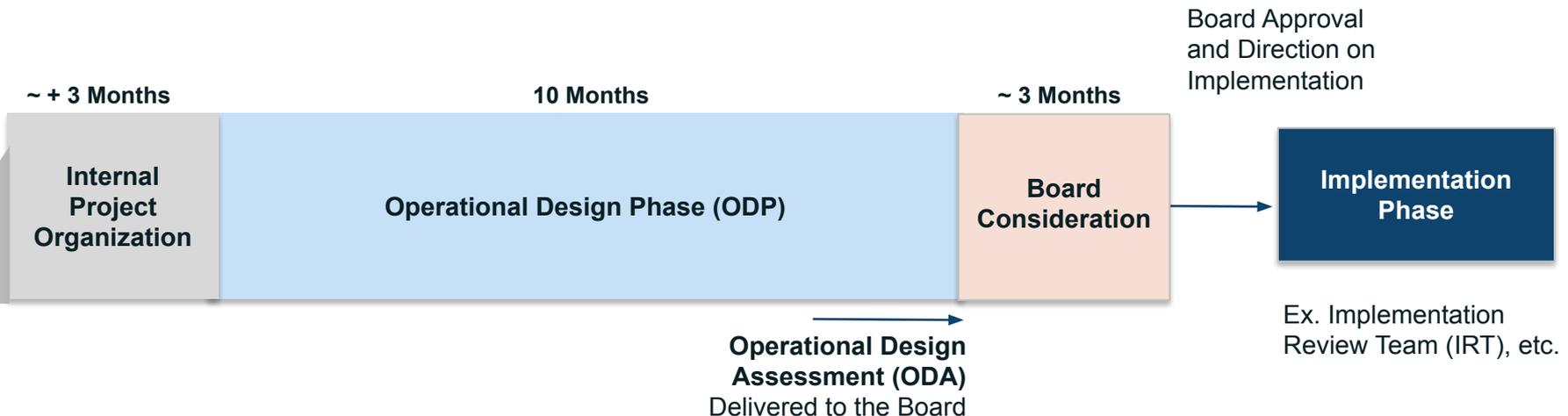
# ODP Overview of Work

The ODP is a significant undertaking for which the Board provided approval of up to US\$9 million outside of ICANN's operational budget.

**Internal Project Organization:** Org internal infrastructure ramp-up to support this effort

**Operational Design Phase (ODP):** ODP execution stage to deliver the *Operational Design Assessment (ODA)*, based on the Board-determined scope

**Board Consideration:** Board's determination on the Final Report Outputs



# What comes after ODP?

Once the Board considers the Operational Design Assessment (ODA), there are a number of things that need to occur before the launch of the next round application window.

## New gTLD Program Subsequent Procedures Milestones

		Stage 1: Policy Development	Stage 2: Implementation & Design and	Stage 3: Operation
ICANN	Community	<ul style="list-style-type: none"> <li>• Launch Working Group</li> <li>• WG finalizes report</li> <li>• GNSO approves report</li> </ul>	<ul style="list-style-type: none"> <li>• Form IRT</li> </ul>	<ul style="list-style-type: none"> <li>• Application System Beta Testing</li> <li>• Form SPIRT</li> </ul>
	Board	<ul style="list-style-type: none"> <li>• Request ODP from org</li> </ul>	<ul style="list-style-type: none"> <li>• Consider ODA, Approve Final Report</li> <li>• Approve Readiness Operations</li> <li>• Approve Final AGB</li> </ul>	<ul style="list-style-type: none"> <li>• Approve Opening of the next round</li> </ul>
	Organization	<ul style="list-style-type: none"> <li>• Launch Steering Committee</li> <li>• ODP Preparation</li> <li>• Start ODP</li> </ul>	<ul style="list-style-type: none"> <li>• AGB Development</li> <li>• Finalize AGB</li> <li>• Deliver ODA to Board</li> <li>• Comms SubPro Outreach</li> <li>• Process Design</li> </ul>	<ul style="list-style-type: none"> <li>• Open App Window</li> <li>• Begin Application Processing</li> <li>• Begin ongoing operation</li> <li>• Operational review(s)</li> <li>• Build Capacity &amp; Operationalize</li> <li>• Next Round Outreach</li> <li>• Launch RSP Pre-approval</li> </ul>

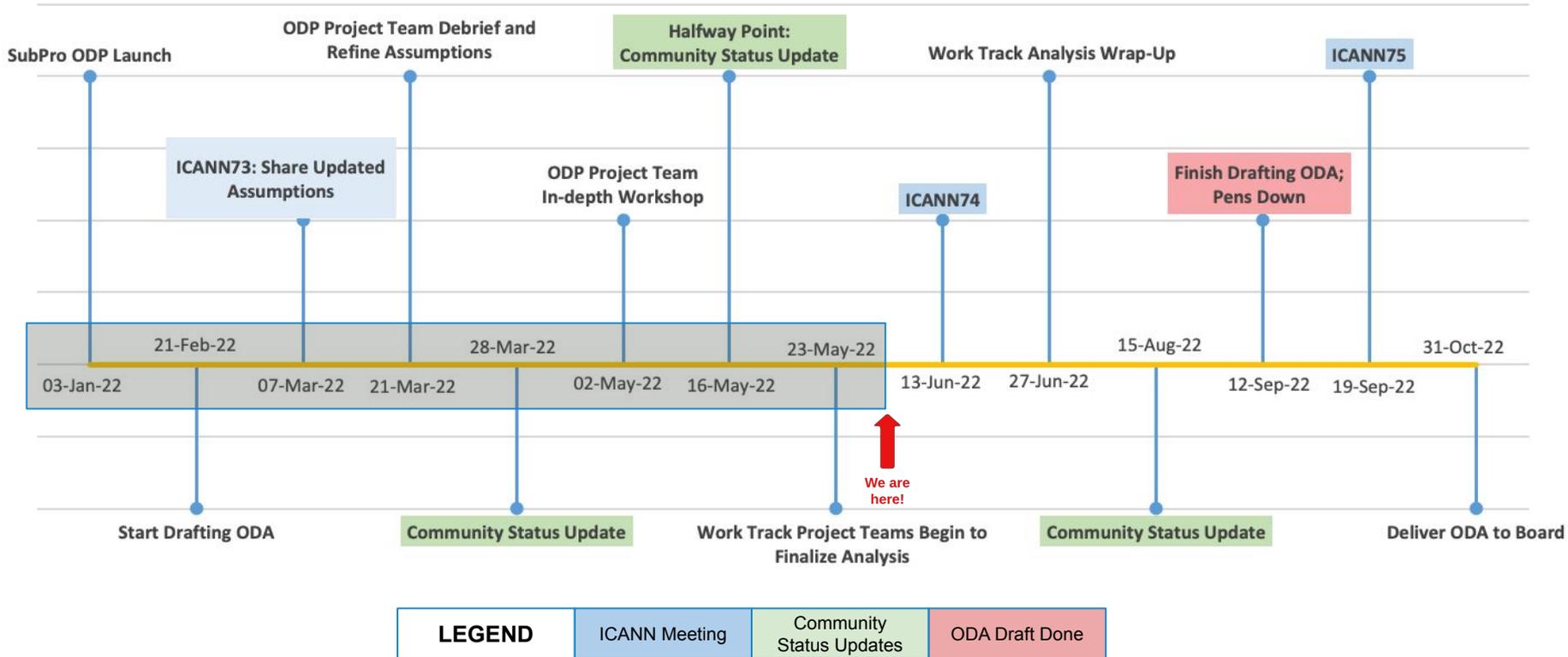
↑  
We are here!

# ODP Project Update

## Agenda Item 2

# SubPro ODP High-Level Timeline

## Subsequent Procedures ODP High-Level Timeline



Resolved (2021.09.12.01), ... The Board requests regular updates on the progress of the work and delivery of the Operational Design Assessment (ODA), the expected output of the ODP, within ten months from the date of initiation, provided that there are no unforeseen matters that could affect the timeline, of which any such matters are to be communicated to the Board immediately upon identification.

### Ongoing Activities:

Work Track + Project Team Analysis, Meeting with liaison, Monthly status report, Legal Review, Comms.

# SubPro ODP Activity Since ICANN73

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- 23 March 2022: [Initial & Overarching Assumptions](#) posted
  - ICANN org posted a list of assumptions that the ICANN org SubPro ODP team developed. The list included overarching and topic-specific assumptions. Development of assumptions is ongoing and additional lists are posted as they become available.
- 28 March 2022: [Community Status Report](#) posted
  - This report is the first [Community Status Report](#) for the SubPro ODP.
- 11 April 2022: Published a [blog](#) introducing the Policy Development and Implementation Materials Work Track
- 19 April 2022: Supported Board's publication of [blog](#) on Supporting ICANN Community Progress: The Issue of Closed Generics
- 2 May 2022: Published [Assumptions Subsequent Procedures ODP v3](#)
- 16 May 2022: 2nd [Community Status Report](#) posted
- 26 May 2022: Published [Assumptions Subsequent Procedures ODP v4](#)

# SubPro ODP Stakeholder Activities

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Since ICANN73 the org has provided ongoing support to project stakeholders.

- Board & Board Caucus
  - Supported SubPro ODP discussions during Board workshops and Board Caucus meetings
- GNSO Council Liaison
  - Met with GNSO Council Liaison and shared policy-related questions developed by the SubPro ODP team
- ICANN SubPro Project Steering Committee
  - Supported project steering committee discussions
- Work Track Leads
  - Held several half-day workshops with SubPro Work Track leads to discuss final report topics, outputs, and overall methodology

# Sub Pro ODP Finances: Jan-Apr 2022

## Resource and Costs Overview by Work Track (WT)

SubPro ODP Work Track (WT)	Project-to-Date (January to April 2022)		
	FTE (avg)	Total Hours	Total Expenses*
WT 1: Project Governance	2.4	1,410	\$183
WT 2: Policy Development and Implementation Materials	2.1	1,245	\$137
WT 3: Operational Readiness	0.6	368	\$40
WT 4: Systems and Tools	0.9	548	\$69
WT 5: Vendors	0.1	48	\$5
WT 6: Communications and Outreach	0.9	518	\$57
WT 7: Resources, Staffing, and Logistics	1.0	585	\$60
WT 8: Finance	0.5	315	\$35
WT 9: Overarching	0.7	443	\$49
Shared Services Support**	NA	NA	\$338
<b>Total</b>	<b>9.1</b>	<b>5,478</b>	<b>\$972</b>

*\*Expenses presented in \$US thousands*

*\*\*Shared Services Support is not a work track and represents allocated costs from ICANN org for general administrative costs. Any arithmetic inconsistencies are due to rounding.*

# Review Methodology and Sample Topic

## Agenda Item 3

# SubPro ODP Methodology

SubPro ODP Stages	Description
Policy Analysis	Review and analysis of the 300+ policy outputs in the Final Report. The assumptions and policy questions come out of this work.
Process Development	Development of a high-level business process design using the 2012 processes as a baseline for developing the application processes for the next round.
Operational Assessment	An assessment of the impact to ICANN to implement the proposed business process design. This includes timelines and costs for systems, staffing and outsourcing. It also includes an explanation of the risks associated with implementation.
ODA Drafting	The development, drafting, and submission of the ODA.

# Sample Topic: Application Change Request (ACR)

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## Background

- After the 2012 New gTLD Program application window closed, the Application Change Request (ACR) process was developed to allow applicants to request changes to application materials in a standardized way.
- These changes included business/administrative changes (Application Questions 1-12) and application changes (Application Questions 13-50).
- Evaluation criteria were developed to provide predictability and allowed for objective and consistent review of change requests.
- To date, 2772 change requests have been processed for applications from the 2012 round.

# Final Report: Application Change Request (ACR)

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## Topic 20 Output Summary

- Affirmation 20.1: The Working Group supports maintaining a high-level, criteria-based change request process, as was employed in the 2012 application round
- Implementation Guidance 20.2: Provide guidance on what changes would likely be approved or rejected
- Implementation Guidance 20.3: Identify which change requests will require a re-evaluation
- Recommendation 20.4: List the types of changes that will require an operational comment period
- Implementation Guidance 20.5: Provide ability for community members to be notified of an application change request requiring an operational comment period
- Recommendation 20.6: Allow joint venture change requests to resolve contention
- Implementation Guidance 20.7: Allow for 60-90 day delay for joint venture change request
- Recommendation 20.8: Allow .BRAND TLD to change their string to resolve contention within certain conditions

# ACR: ODP Considerations

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- Application Change Request is a simple concept
- Final Report outputs introduce some new aspects but do not appear particularly difficult
- The change request process is inherently complex because:
  - Changes can occur at any time until contracting
  - Changes touch nearly every process
    - each change needs to be reviewed against where it is the overall process
    - criteria are viewed differently at different points in the process
  - Changes may impact other processes
    - require re-evaluation or re-initiating a process
  - Changes may impact other applicants or community
    - possible gaming (e.g. delay in contention resolution)
    - miss out on processes (e.g. objections)

# ACR: ODP Methodology

SubPro ODP Stages	Description
Policy Analysis	<ul style="list-style-type: none"><li>● Review and analyze the GNSO Final Report outputs</li><li>● Consider prior process &amp; ICANN org recommendations.</li><li>● Identify any issues or concerns that need to be addressed.</li></ul>
Process Development	<ul style="list-style-type: none"><li>● Identify processes and activities potentially impacted by the inclusion of an application change request. Adjust processes as needed.</li></ul>
Operational Assessment	<ul style="list-style-type: none"><li>● Assess the impact of application change requests across all program processes.</li></ul>
ODA Drafting	<ul style="list-style-type: none"><li>● Write analysis and assessment of the topic. Include:<ul style="list-style-type: none"><li>○ High level business process</li><li>○ Impact to org</li><li>○ Note issues, concerns, and associated risks.</li></ul></li></ul>

# Upcoming Items & Questions

Agenda Item 4

# Upcoming Items

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- ICANN74 session: [New gTLD Subsequent Procedures - Working Together](#)
  - 13 June, 2022 (0700 UTC)
    - ICANN org's New gTLD Subsequent Procedures (SubPro) ODP team will facilitate a multistakeholder session to describe work in progress and gather feedback on one or more subject areas.
  
- Third 'Community Status Report' will be published Mid-August 2022

## Questions and Discussion

### Follow Our Work

- SubPro ODP web page at [icann.org/subpro-odp](https://icann.org/subpro-odp)
- Mail List
  - Email: [subpro-odp@icann.org](mailto:subpro-odp@icann.org)
  - Archive: <https://mm.icann.org/pipermail/subpro-odp/>
- Communication and Meetings:
  - Board
  - GNSO Council Liaison
  - Community groups, upon request
- Regional engagement activities

# Appendix

**EXHIBIT JJN-66**



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#### APPLICATION DETAILS

[View Application Update History](#)

[\(/applicationstatus/applicationdetails:viewapplicationchangehistory/1053?t:ac=1053\)]((/applicationstatus/applicationdetails:viewapplicationchangehistory/1053?t:ac=1053))

Please Note: The information on this page relating to the applicant, including contact information, reflects the information provided during the application phase of the New gTLD Program. Contact information is not maintained for withdrawn applications. Additionally, the information for TLDs that have contracted with ICANN may no longer be current as this information is not maintained on this page post delegation and does not necessarily reflect the current Registry information. For a current list of Registries and Registry contact information, please visit <https://www.icann.org/resources/pages/registries/registries-agreements-en> (<https://www.icann.org/resources/pages/registries/registries-agreements-en>) and <https://www.icann.org/resources/pages/listing-2012-02-25-en> (<https://www.icann.org/resources/pages/listing-2012-02-25-en>), respectively.

**Application ID:** 1-1296-36138

**String:** WEB ([download public portion of application](#)  
[\(/applicationstatus/applicationdetails:downloadapplication/1053?t:ac=1053\)\)]((/applicationstatus/applicationdetails:downloadapplication/1053?t:ac=1053)))

**Applicant:** NU DOT CO LLC

**Prioritization Number:** 632

**Address:** Contact Information Redacted

**Web Site:**

**Primary Contact:** Jose Ignacio Rasco

**Phone Number:** Contact Information Redacted

**Email:** Contact Information Redacted

**Attachments (6):**

*Caution: these files were prepared and submitted by a party other than ICANN, and ICANN is not responsible for the content. The files could contain scripts or embedded links that might execute or open automatically. You should make sure your operating system and applications (including antivirus definitions if applicable) are fully updated. Proceed at your own risk.*

- [24 \(Q24 Tables and Graphics.pdf\)](#)  
(</applicationstatus/applicationdetails:downloadattachment/73438?t:ac=1053>)
- [25 \(Q25 EPP Schema.pdf\)](#) (</applicationstatus/applicationdetails:downloadattachment/73443?t:ac=1053>)
- [25 \(Q25 Tables and Graphics.pdf\)](#)  
(</applicationstatus/applicationdetails:downloadattachment/73442?t:ac=1053>)
- [26 \(Q26 Tables and Graphics.pdf\)](#)  
(</applicationstatus/applicationdetails:downloadattachment/73444?t:ac=1053>)
- [27 \(Q27 Tables and Graphics.pdf\)](#)  
(</applicationstatus/applicationdetails:downloadattachment/73445?t:ac=1053>)
- [30a \(Q30 Tables and Graphics.pdf\)](#)  
(</applicationstatus/applicationdetails:downloadattachment/73447?t:ac=1053>)

**Application Status:** In Contracting

**Evaluation Result:** Pass IE (IE Report (<http://newgtlds.icann.org/en/program-status/application-results/ie-1-1296-36138-en.pdf>))

**Contention Resolution Status:** On Hold (</applicationstatus/applicationdetails:viewcontentionsetimage?t:ac=1053>)

**Contention Resolution Result:** Prevailed Contention ([Auction Report](#)  
(</applicationstatus/applicationdetails:downloadauctionreport/18?t:ac=1053>))

**EXHIBIT JJN-67**

## ICANN New gTLD Auction Schedule dated 27 April 2016

This Auction schedule has been developed based on an anticipated volume of 20 contention sets per event. However, several factors, including self-resolution of contention sets, Auction eligibility, and postponement requests, will affect the actual number of contention sets participating in each Auction Event. Because of these and other factors, the Auction event for a contention set is subject to change, and the schedule will be updated periodically to reflect these changes. Auction Dates will be confirmed to the application primary contact via the customer portal at least 21 days prior to the Auction.

The latest contention set statuses, including Auction Dates for any contention set, are available on the contention set status page: <https://gtldresult.icann.org/application-result/applicationstatus/stringcontentionstatus>.

The table below contains Auction Dates and Times as well as Deposit Due Dates and Times. The subsequent pages show the list of the contention sets planned for each Auction, which, as mentioned above, is subject to change.

Planned Auction Dates				
Auction #	Auction Date*	Auction Time*	Deposit Due Date	Deposit Due Time
1	4-Jun-2014	13:00 UTC	28-May-2014	16:00 UTC
2	9-Jul-2014	16:00 UTC	2-Jul-2014	16:00 UTC
3	6-Aug-2014	20:00 UTC	30-Jul-2014	16:00 UTC
4	17-Sep-2014	13:00 UTC	10-Sep-2014	16:00 UTC
5	22-Oct-2014	16:00 U TC	15-Oct-2014	16:00 UTC
6	19-Nov-2014	20:00 UTC	12-Nov-2014	16:00 UTC
7	17-Dec-2014	13:00 UTC	10-Dec-2014	16:00 UTC
8	21-Jan-2015	16:00 UTC	14-Jan-2015	16:00 UTC
9	25-Feb-2015	20:00 UTC	18-Feb-2015	16:00 UTC
10	25-Mar-2015	13:00 UTC	18-Mar-2015	16:00 UTC
11	29-Apr-2015	16:00 UTC	22-Apr-2015	16:00 UTC
12	27-May-2015	20:00 UTC	20-May-2015	16:00 UTC
13	29-Jul-2015	13:00 UTC	22-Jul-2015	16:00 UTC
14	16-Sep-2015	16:00 UTC	9-Sep-2015	16:00 UTC
15	14-Oct-2015	20:00 UTC	7-Oct-2015	16:00 UTC
16	18-Nov-2015	13:00 UTC	11-Nov-2015	16:00 UTC
17	20-Jan-2016	16:00 UTC	13-Jan-2016	16:00 UTC
18	25-May-2016	20:00 UTC	18-May-2016	16:00 UTC
19	27-Jul-2016	13:00 UTC	20-Jul-2016	16:00 UTC
Planned Auction Dates: Indirect Contention				
A	20-May-2015	13:00 UTC	13-May-2015	16:00 UTC
B**	27-Jan-2016	16:00 UTC	20-Jan-2016	16:00 UTC
C	27-Jul-2016	13:00 UTC	20-Jul-2016	16:00 UTC

\*Auction Date and Time refer to the Auction Commencement Date and may not reflect Auction Manager's intention to provide Early Bidding-- a time period prior to the standard 30 minutes of bidding for Round 1.

\*\*This indirect set changed to a direct set due to resolution of one of the strings contained in the set. See [Announcement](#).

### Updates to the Auction Schedule as of 27 April 2016.

This version is updated to reflect eligible contention sets. Additional Auctions may be scheduled based on eligibility.

Original Schedule as of 19 March 2014	Contention Set Number	Contention Set Name	Contention Set Status	Eligibility
<b>Auction #1 - Commencement Date on 4 June 2014 at 13:00 UTC</b>				
1	6	信息 (xn--vuq861b)	Resolved	Resolved
<b>Auction #2 - Commencement Date on 9 July 2014 at 16:00 UTC</b>				
No Contention Sets				
<b>Auction #3 - Commencement Date on 6 August 2014 at 20:00 UTC</b>				
No Contention Sets				
<b>Auction #4 - Commencement Date on 17 September 2014 at 13:00 UTC</b>				
1 *	16	BUY	Resolved	Resolved
1 *	20	TECH	Resolved	Resolved
2 *	41	VIP	Resolved	Resolved
<b>Auction #5 - Commencement Date on 22 October 2014 16:00 UTC</b>				
2 * †	28	SALON	Resolved	Resolved
5	109	SPOT	Resolved	Resolved
5	112	REALTY	Resolved	Resolved
<b>Auction #6 - Commencement Date on 19 November 2014 at 20:00 UTC</b>				
3 * †	52	DOT	Resolved	Resolved
<b>Auction #7 - Commencement Date on 17 December 2014 at 13:00 UTC</b>				
3 * †	67	BABY	Resolved	Resolved
7	144	MLS	Resolved	Resolved
<b>Auction #8 - Commencement Date on 21 January 2015 at 16:00 UTC</b>				
No Contention Sets				
<b>Auction #9 - Commencement Date on 25 February 2015 at 20:00 UTC</b>				
2 †	39	APP	Resolved	Resolved
<b>Auction #10 - Commencement Date on 25 March 2015 at 13:00 UTC</b>				
10	214	PING	Resolved	Resolved
10	226	SRL	Resolved	Resolved
<b>Auction #11 - Commencement Date on 29 April 2015 at 16:00 UTC</b>				
No Contention Sets				
<b>Auction #A^ - Commencement Date on 20 May 2015 at 13:00 UTC</b>				
No Contention Sets				
<b>Auction #12 - Commencement Date on 27 May 2015 at 20:00 UTC</b>				
No Contention Sets				
<b>Auction #13 - Commencement Date on 29 July 2015 at 13:00 UTC</b>				
No Contention Sets				
<b>Auction #14 - Commencement Date on 16 September 2015 at 16:00 UTC</b>				
No Contention Sets				
<b>Auction #15 - Commencement Date on 14 October 2015 at 20:00 UTC</b>				
No Contention Sets				
<b>Auction #16 - Commencement Date on 18 November 2015 at 13:00 UTC</b>				
4	82	HOTELS/HOTEIS	Resolved	Resolved
<b>Auction #17 - Commencement Date on 20 January 2016 at 16:00 UTC</b>				
No Contention Sets				
<b>Auction #B - Commencement Date on 27 January 2016 at 16:00 UTC</b>				
N/A	229	SHOP	Resolved	Resolved
<b>Auction #18 - Commencement Date on 25 May 2016 at 20:00 UTC</b>				
9 †	187	DOCTOR	Active	Eligible
<b>Auction #19 - Commencement Date on 27 July 2016 at 13:00 UTC</b>				
10	215	KID/KIDS	Active	Eligible
<b>Auction #C - Commencement Date on 27 July 2016 at 13:00 UTC</b>				
N/A	233	WEB/WEBS	Active	Eligible

^ Letters denote Indirect Auctions. For Auction #B (SHOP), this set changed from indirect to direct due to resolution of SHOPPING

Original Schedule as of 19 March 2014	Contention Set Number	Contention Set Name	Contention Set Status	Eligibility
<b>Contention Sets: Not Yet Eligible <sup>‡</sup></b>				
1	22	ECO	On Hold	Ineligible
2	29	GAY	On Hold	Ineligible
2	33	RADIO	On Hold	Ineligible
2	42	HOME	On Hold	Ineligible
2	44	CPA	On Hold	Ineligible
2	45	LLP	On Hold	On Hold
3	51	HOTEL	On Hold	Ineligible
3	55	MAIL	On Hold	Ineligible
3	59	MERCK	Active	Ineligible
3	65	RUGBY	On Hold	Ineligible
4	81	LLC	On Hold	On Hold
4	86	CORP	On Hold	Ineligible
5	102	INC	On Hold	On Hold
5	106	MUSIC	On Hold	Ineligible
6	121	SPA	On Hold	Ineligible
9	201	CHARITY	On Hold	Ineligible
N/A	231	SPORT / SPORTS	On Hold	Ineligible

Original Schedule as of 19 March 2014	Contention Set Number	Contention Set Name	Contention Set Status	Eligibility
<b>Contention Sets: Resolved</b>				
Resolved	1	网址 (xn--ses554g)	Resolved	N/A: Resolved
1	2	网店 (xn--hxt814e)	Resolved	N/A: Resolved
1	3	點看 (xn--c1yn36f) / 点看 (xn--3pxu8k)	Resolved	N/A: Resolved
Resolved	4	盛貿飯店 (xn--hxt035cmppuel) / 盛贸饭店 (xn--hxt035czzpffl)	Resolved	N/A: Resolved
1	5	微博 (xn--9krt00a)	Resolved	N/A: Resolved
1 †	7	娱乐 (xn--fjq720a)	Resolved	N/A: Resolved
Resolved	8	广东 (xn--xhq521b)	Resolved	N/A: Resolved
1	9	网站 (xn--5tzm5g)	Resolved	N/A: Resolved
1	10	PLAY	Resolved	N/A: Resolved
1 * †	11	DOG	Resolved	N/A: Resolved
1	12	PARTY	Resolved	N/A: Resolved
1	13	ENERGY	Resolved	N/A: Resolved
1	14	FOOD	Resolved	N/A: Resolved
Resolved	15	FISHING	Resolved	N/A: Resolved
Resolved	17	WEDDING	Resolved	N/A: Resolved
1 †	18	CITY	Resolved	N/A: Resolved
Resolved	19	CHURCH	Resolved	N/A: Resolved
Resolved	21	FURNITURE	Resolved	N/A: Resolved
Resolved	23	GREEN	Resolved	N/A: Resolved
1	24	CAM	Resolved	N/A: Resolved
1 †	25	DOCS	Resolved	N/A: Resolved
2	26	COUPON	Resolved	N/A: Resolved
Resolved	27	CASA	Resolved	N/A: Resolved
2 †	30	GMBH	Resolved	N/A: Resolved
2 †	31	HELP	Resolved	N/A: Resolved
2 †	32	BLOG	Resolved	N/A: Resolved
2	34	INSURANCE	Resolved	N/A: Resolved
Resolved	35	DESI	Resolved	N/A: Resolved
2 * †	36	ONLINE	Resolved	N/A: Resolved
2 †	37	BROADWAY	Resolved	N/A: Resolved
2 †	38	COACH	Resolved	N/A: Resolved
2 †	40	TRADING	Resolved	N/A: Resolved
2 * †	43	LIVE	Resolved	N/A: Resolved
Resolved	46	AUCTION	Resolved	N/A: Resolved
2 * †	47	SITE	Resolved	N/A: Resolved
2	48	POKER	Resolved	N/A: Resolved
Resolved	49	BAR	Resolved	N/A: Resolved
3	50	FLOWERS	Resolved	N/A: Resolved
3	53	TALK	Resolved	N/A: Resolved
3	54	DIET	Resolved	N/A: Resolved
3 * †	56	SCHOOL	Resolved	N/A: Resolved
3 *	57	TICKETS	Resolved	N/A: Resolved
3 * †	58	LOVE	Resolved	N/A: Resolved
Resolved	60	GDN	Resolved	N/A: Resolved
3 †	61	LEGAL	Resolved	N/A: Resolved
3	62	PLACE	Resolved	N/A: Resolved
3 * †	63	BASKETBALL	Resolved	N/A: Resolved
3 †	64	CLOUD	Resolved	N/A: Resolved
3 * †	66	NOW	Resolved	N/A: Resolved
3	68	NEWS	Resolved	N/A: Resolved
3 †	69	AUTO	Resolved	N/A: Resolved
3 †	70	BOOK	Resolved	N/A: Resolved

Original Schedule as of 19 March 2014	Contention Set Number	Contention Set Name	Contention Set Status	Eligibility
<b>Contention Sets: Resolved</b>				
3 *	71	DEAL	Resolved	N/A: Resolved
4	72	ART	Resolved	N/A: Resolved
4	73	LTD	Resolved	N/A: Resolved
4	74	HOSTING	Resolved	N/A: Resolved
Resolved	75	AFRICA	Resolved	N/A: Resolved
4	76	PROPERTY	Resolved	N/A: Resolved
4	77	MOBILE	Resolved	N/A: Resolved
4	78	FASHION	Resolved	N/A: Resolved
4 †	79	FILM	Resolved	N/A: Resolved
Resolved	80	RED	Resolved	N/A: Resolved
Resolved	83	GUIDE	Resolved	N/A: Resolved
4	84	WEIBO	Resolved	N/A: Resolved
Resolved	85	GOO	Resolved	N/A: Resolved
4	87	YOGA	Resolved	N/A: Resolved
4	88	GROCERY	Resolved	N/A: Resolved
Resolved	89	CONSTRUCTION	Resolved	N/A: Resolved
4 †	90	THEATER	Resolved	N/A: Resolved
4	91	DATA	Resolved	N/A: Resolved
4	92	HEALTH	Resolved	N/A: Resolved
Resolved	93	GRATIS	Resolved	N/A: Resolved
4 †	94	EARTH	Resolved	N/A: Resolved
4	95	DELIVERY	Resolved	N/A: Resolved
Resolved	96	MEDIA	Resolved	N/A: Resolved
5	97	SKI	Resolved	N/A: Resolved
5 †	98	MONSTER	Resolved	N/A: Resolved
5	99	IMMO	Resolved	N/A: Resolved
5	100	SAVE	Resolved	N/A: Resolved
5	101	DESIGN	Resolved	N/A: Resolved
5 †	103	PET / PETS	Resolved	N/A: Resolved
5	104	DEALS	Resolved	N/A: Resolved
5	105	PIZZA	Resolved	N/A: Resolved
5	107	MEMORIAL	Resolved	N/A: Resolved
5	108	LAW	Resolved	N/A: Resolved
Resolved	110	LAWYER	Resolved	N/A: Resolved
5	111	REALESTATE	Resolved	N/A: Resolved
5	113	GIFTS	Resolved	N/A: Resolved
5	114	MED	Resolved	N/A: Resolved
5	115	BAND	Resolved	N/A: Resolved
5	116	RESTAURANT	Resolved	N/A: Resolved
Resolved	117	REVIEW	Resolved	N/A: Resolved
5	118	SARL	Resolved	N/A: Resolved
6	119	FORSALE	Resolved	N/A: Resolved
6 †	120	TOUR / TOURS	Resolved	N/A: Resolved
6	122	DEV	Resolved	N/A: Resolved
Resolved	123	PHOTOGRAPHY	Resolved	N/A: Resolved
6	124	PAY	Resolved	N/A: Resolved
6 †	125	PLUS	Resolved	N/A: Resolved
6	126	APARTMENTS	Resolved	N/A: Resolved
6 †	127	WOW	Resolved	N/A: Resolved
6	128	MONEY	Resolved	N/A: Resolved

Original Schedule as of 19 March 2014	Contention Set Number	Contention Set Name	Contention Set Status	Eligibility
<b>Contention Sets: Resolved</b>				
6	129	CHAT	Resolved	N/A: Resolved
6	130	OSAKA	Resolved	N/A: Resolved
6 †	131	MOVIE	Resolved	N/A: Resolved
6	132	LATINO	Resolved	N/A: Resolved
Resolved	133	WEBSITE	Resolved	N/A: Resolved
6	134	SUCKS	Resolved	N/A: Resolved
6 †	135	SAS	Resolved	N/A: Resolved
6	136	TENNIS	Resolved	N/A: Resolved
Resolved	137	VOTE	Resolved	N/A: Resolved
6	138	HOT	Resolved	N/A: Resolved
6	139	VIDEO	Resolved	N/A: Resolved
7	140	BINGO	Resolved	N/A: Resolved
7	141	DRIVE	Resolved	N/A: Resolved
Resolved	142	COUNTRY	Resolved	N/A: Resolved
7	143	STYLE	Resolved	N/A: Resolved
7 †	145	STORE	Resolved	N/A: Resolved
7 †	146	TEAM	Resolved	N/A: Resolved
7	147	BOATS	Resolved	N/A: Resolved
7	148	YOU	Resolved	N/A: Resolved
7 †	149	CRUISE	Resolved	N/A: Resolved
Resolved	150	GIFT	Resolved	N/A: Resolved
7	151	GROUP	Resolved	N/A: Resolved
7	152	SALE	Resolved	N/A: Resolved
7	153	SECURITY	Resolved	N/A: Resolved
Resolved	154	STORAGE	Resolved	N/A: Resolved
7	155	CRICKET	Resolved	N/A: Resolved
7 †	156	SHOW	Resolved	N/A: Resolved
7	157	FOOTBALL	Resolved	N/A: Resolved
Resolved	158	DIRECT	Resolved	N/A: Resolved
Resolved	159	LIFE	Resolved	N/A: Resolved
7 †	160	DDS	Resolved	N/A: Resolved
7	161	CASINO	Resolved	N/A: Resolved
7 †	162	MOTO	Resolved	N/A: Resolved
Resolved	163	COLLEGE	Resolved	N/A: Resolved
Resolved	164	MARKETING	Resolved	N/A: Resolved
8 †	165	MOM	Resolved	N/A: Resolved
8 †	166	FREE	Resolved	N/A: Resolved
8 †	167	TUBE	Resolved	N/A: Resolved
8	168	GOLF	Resolved	N/A: Resolved
Resolved	169	ONE	Resolved	N/A: Resolved
8	170	SECURE	Resolved	N/A: Resolved
8	171	RACING	Resolved	N/A: Resolved
8	172	BANK	Resolved	N/A: Resolved
8 †	173	JEWELRY	Resolved	N/A: Resolved
Resolved	174	LUXURY	Resolved	N/A: Resolved
8	175	TIRES	Resolved	N/A: Resolved
8 †	176	LOL	Resolved	N/A: Resolved
8 †	177	FAMILY	Resolved	N/A: Resolved
8 †	178	FYI	Resolved	N/A: Resolved
8	179	WINE	Resolved	N/A: Resolved
8 †	180	DIY	Resolved	N/A: Resolved

Original Schedule as of 19 March 2014	Contention Set Number	Contention Set Name	Contention Set Status	Eligibility
<b>Contention Sets: Resolved</b>				
Resolved	181	SCIENCE	Resolved	N/A: Resolved
Resolved	182	FIT	Resolved	N/A: Resolved
8	183	GOLD	Resolved	N/A: Resolved
8 †	184	SOCCER	Resolved	N/A: Resolved
9 †	185	MAP	Resolved	N/A: Resolved
9 †	186	UNICOM / UNICORN	Resolved	N/A: Resolved
9	188	BET	Resolved	N/A: Resolved
9	189	GARDEN	Resolved	N/A: Resolved
9 †	190	CLICK	Resolved	N/A: Resolved
9	191	HAIR	Resolved	N/A: Resolved
9	192	BEAUTY	Resolved	N/A: Resolved
9 †	193	LIVING	Resolved	N/A: Resolved
Resolved	194	DISCOUNT	Resolved	N/A: Resolved
Resolved	195	CLUB	Resolved	N/A: Resolved
Resolved	196	YUN	Resolved	N/A: Resolved
9	197	BOX	Resolved	N/A: Resolved
9	198	RENT	Resolved	N/A: Resolved
Resolved	199	AUDIO	Resolved	N/A: Resolved
9	200	CAFE	Resolved	N/A: Resolved
Resolved	202	GLOBAL	Resolved	N/A: Resolved
Resolved	203	FISH	Resolved	N/A: Resolved
9	204	BROKER	Resolved	N/A: Resolved
9 †	205	SEARCH	Resolved	N/A: Resolved
9	206	EXPRESS	Resolved	N/A: Resolved
9 †	207	FUN	Resolved	N/A: Resolved
9	208	FORUM	Resolved	N/A: Resolved
10	209	MBA	Resolved	N/A: Resolved
10	210	RIP	Resolved	N/A: Resolved
10	211	HOCKEY	Resolved	N/A: Resolved
Resolved	212	EXPERT	Resolved	N/A: Resolved
10	213	RUN	Resolved	N/A: Resolved
Resolved	216	JUEGOS	Resolved	N/A: Resolved
Resolved	217	GUARDIAN	Resolved	N/A: Resolved
10	218	BASEBALL	Resolved	N/A: Resolved
Resolved	219	LOANS	Resolved	N/A: Resolved
10 †	220	STREAM	Resolved	N/A: Resolved
10	221	WORLD	Resolved	N/A: Resolved
10	222	COUPONS	Resolved	N/A: Resolved
10	223	STUDIO	Resolved	N/A: Resolved
10	224	PHONE	Resolved	N/A: Resolved
10	225	TAXI	Resolved	N/A: Resolved
10	227	SEX	Resolved	N/A: Resolved
10	228	PHD	Resolved	N/A: Resolved
N/A	230	CARS / CAR	Resolved	N/A: Resolved
N/A	232	GAME / GAMES	Resolved	N/A: Resolved
N/A	234	SHOPPING	Resolved	N/A: Resolved

Legend:

- \* Postponement accommodated per pending finalization of Name Collision Occurrence Management Framework
- † Postponement accommodated per request by all members in the Contention Set
- ‡ Pending Auction Eligibility. Once a Contention Set is Eligible, ICANN will attempt to schedule the Contention Sets based on the original Auction Date as stated 19 March 2014. If the Auction Date has passed or does not meet a minimum amount of lead time, the Contention Set will be scheduled for the next available Auction Date.

**EXHIBIT JJN-68**



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### Results Available for 27 July 2016 New gTLD Program Auction

28 July 2016

In addition to the U.N. six languages, this content is also available in:

[Português \(/en/announcements/details/results-available-for-27-july-2016-new-gtld-program-auction-28-7-2016-pt\)](#)

#### Recent Announcements

[ICANN Request for Proposal: Middle East Domain Name Industry Study 2023](#)

On 27 July 2016, [Power Auctions LLC](http://www.powerauctions.com/) (<http://www.powerauctions.com/>), ICANN's authorized auction service provider, conducted a New Generic Top-Level Domain (gTLD) Program auction to resolve contention for [.WEB](https://gtldresult.icann.org/application-result/applicationstatus/contentionsetdiagram/233) and [.WEBS](https://gtldresult.icann.org/application-result/applicationstatus/contentionsetdiagram/233) (<https://gtldresult.icann.org/application-result/applicationstatus/contentionsetdiagram/233>). Auction serves as the method of last resort for determining which applicant may operate a gTLD when several entities have applied for the same or confusingly similar gTLDs. This method was defined through ICANN's bottom-up, multistakeholder process.

Eight applicants completed the requirements for participating in the .WEB/.WEBS auction. NU DOT CO LLC prevailed in the auction for the price of \$135 million to operate the .WEB gTLD, and Vistaprint Ltd prevailed with a price of \$1 for the .WEBS gTLD.

### Auction Proceeds

The proceeds from New gTLD Program auctions, which will total more than \$230 million, are being reserved. The multistakeholder community will develop proposals for how these proceeds could be distributed. A community-based drafting team is currently working on a charter for a Cross-Community Working Group that will create recommendations for Board consideration. [Learn more](https://community.icann.org/display/NGAPDT/New+gTLD+Auction+Proceeds+Drafting+Team+Home) (<https://community.icann.org/display/NGAPDT/New+gTLD+Auction+Proceeds+Drafting+Team+Home>) about this work.

"New gTLD Program auctions are the community-established, last resort method to help determine which applicant will have the opportunity to operate a particular new generic top-level domain, when multiple entities vied for the same or confusingly similar domains." said Akram Atallah, president of ICANN's Global Domains Division. "We look forward to seeing the community's recommendations for the use of these proceeds."

### Auctions and the New gTLD Applicant Guidebook

The Internet community spent nearly three years developing a playbook for rolling out new gTLDs under the New gTLD Program, known as the New gTLD Applicant Guidebook. The guidebook outlines measures for addressing a variety of circumstances that could occur throughout the gTLD application and evaluation processes, including instances where multiple applicants applied for the same or confusingly similar new gTLDs. Only one entity can operate a given new gTLD, so contention must be resolved. Applicants can resolve contention among themselves, and ICANN encourages them to do so. However, this isn't always possible. The ICANN stakeholder community helped develop methods for resolving contention, and it decided that auction should serve as the method of last resort. ICANN is responsible for implementing auctions in accordance with the rules defined in the New gTLD Applicant Guidebook.

There are two different types of contention sets: direct and indirect. Direct contention occurs when multiple applicants are vying for the same or confusingly similar gTLDs. Indirect contention exists when two or more applications are in direct contention with a third application, but not with

[\(/en/announcements/details/request-for-proposal-middle-east-domain-name-industry-study-2023-08-06-2023-en\)](#)

[ICANN Releases Full Schedule for Asia Pacific DNS Forum 2023](#)

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[ICANN Request for Proposal: The Grant Program](#)

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one another. .WEB/.WEBS was an indirect contention set consisting of one application for .WEBS and seven applications for .WEB. In this case, the application for .WEBS prevailed along with one application for .WEB. For a more detailed description of auction and indirect contention, see Module 4 of [New gTLD Program Applicant Guidebook](#) (<http://newgtlds.icann.org/en/applicants/agb>).

## More Information

- [Contention Set Status](https://gtdresult.icann.org/application-result/applicationstatus/stringcontentionstatus) (<https://gtdresult.icann.org/application-result/applicationstatus/stringcontentionstatus>): 218 of 234 contention sets are now resolved. The majority have self-resolved, but 16 sets resolved via ICANN auction.
- [Auction Results](https://gtdresult.icann.org/application-result/applicationstatus/auctionresults) (<https://gtdresult.icann.org/application-result/applicationstatus/auctionresults>): Reports on this page of the New gTLD Microsite provide additional information on each auction outcome.
- [Auction Proceeds and Costs](http://newgtlds.icann.org/en/applicants/auctions/proceeds) (<http://newgtlds.icann.org/en/applicants/auctions/proceeds>): A detailed summary of the proceeds and costs of each auction through July 2016. This information will be updated within seven days of each auction.
- [Auction Schedule](https://newgtlds.icann.org/en/applicants/auctions/schedule-28jul16-en.pdf) (<https://newgtlds.icann.org/en/applicants/auctions/schedule-28jul16-en.pdf>) [PDF, 263 KB]: Updated as of 28 July 2016.
- General [New gTLD Program Auctions](http://newgtlds.icann.org/en/applicants/auctions) (<http://newgtlds.icann.org/en/applicants/auctions>) information.

## About ICANN

*ICANN's mission is to help ensure a stable, secure and unified global Internet. To reach another person on the Internet, you have to type an address into your computer - a name or a number. That address has to be unique so computers know where to find each other. ICANN helps coordinate and support these unique identifiers across the world. ICANN was formed in 1998 as a not-for-profit public-benefit corporation and a community with participants from all over the world. ICANN and its community help keep the Internet secure, stable and interoperable. It also promotes competition and develops policy for the top-level of the Internet's naming system and facilitates the use of other unique Internet identifiers. For more information please visit: [www.icann.org/\(\)](http://www.icann.org/).*

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**EXHIBIT JJN-69**

## REGISTRY AGREEMENT

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## REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and \_\_\_\_\_, a \_\_\_\_\_ (“Registry Operator”).

### ARTICLE 1.

#### DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

**1.1 Domain and Designation.** The Top-Level Domain to which this Agreement applies is \_\_\_\_\_ (the “TLD”). Upon the Effective Date and until the earlier of the expiration of the Term (as defined in Section 4.1) or the termination of this Agreement pursuant to Article 4, ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

**1.2 Technical Feasibility of String.** While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

#### **1.3 Representations and Warranties.**

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and has obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and has obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

### ARTICLE 2.

Registry Operator covenants and agrees with ICANN as follows:

**2.1 Approved Services; Additional Services.** Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the Specification 6 attached hereto (“Specification 6”) and such other Registry Services set forth on Exhibit (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a material modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

**2.2 Compliance with Consensus Policies and Temporary Policies.** Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth in Specification 1 attached hereto (“Specification 1”).

**2.3 Data Escrow.** Registry Operator shall comply with the registry data escrow procedures set forth in Specification 2 attached hereto (“Specification 2”) within fourteen (14) calendar days after delegation.

**2.4 Monthly Reporting.** Within twenty (20) calendar days following the end of each calendar month, commencing with the first calendar month in which the TLD is delegated in the root zone, Registry Operator shall deliver to ICANN reports in the format set forth in Specification 3 attached hereto (“Specification 3”); provided, however, that if the TLD is delegated in the root zone after the fifteenth (15<sup>th</sup>) calendar day of the calendar month, Registry Operator may defer the delivery of the reports for such first calendar month and instead deliver to ICANN such month’s reports no later than the time that Registry Operator is required to deliver the reports for the immediately following calendar month. Registry Operator must include in the Per-Registrar Transactions Report any domain name created during pre-delegation testing that has not been deleted as of the time of delegation (notably but not limited to domains registered by Registrar IDs 9995 and/or 9996).

**2.5 Publication of Registration Data.** Registry Operator shall provide public access to registration data in accordance with Specification 4 attached hereto (“Specification 4”).

**2.6 Reserved Names.** Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the requirements set forth in Specification 5 attached hereto (“Specification 5”). Registry Operator may at any time establish or modify policies concerning Registry Operator’s ability to reserve (i.e., withhold from registration or allocate to Registry Operator, but not register to third parties, delegate, use, activate in the DNS or otherwise make available) or block additional character strings within the TLD at its discretion. Except as specified in Specification 5, if Registry Operator is the registrant for any domain names in the registry TLD, such registrations must be through an ICANN accredited registrar and will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-level transaction fee to be paid to ICANN by Registry Operator

**2.7 Registry Interoperability and Continuity.** Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6 attached hereto (“Specification 6”).

**2.8 Protection of Legal Rights of Third Parties.** Registry Operator must specify, and comply with, the processes and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth Specification 7 attached hereto (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

## **2.9 Registrars.**

(a) All domain name registrations in the TLD must be registered through an ICANN accredited registrar; provided, that Registry Operator need not use a registrar if it registers names in its own name in order to withhold such names from delegation or use in accordance with Section 2.6. Subject to the requirements of Specification 11, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD (the “Registry-Registrar Agreement”). Registry Operator may amend the Registry-Registrar Agreement from time to time; provided, however, that any material revisions thereto must be approved by ICANN before any such revisions become effective and binding on any registrar. Registry Operator will provide ICANN and all registrars authorized to register names in the TLD at least fifteen (15) calendar days written notice of any revision to the Registry-Registrar Agreement before any such revisions become effective and binding on any registrar. During such period, ICANN will determine whether such proposed revisions are immaterial, potentially material or material in nature. If ICANN has not provided Registry Operator with notice of its determination within such fifteen (15) calendar-day period, ICANN shall be deemed to have determined that such proposed revisions are immaterial in nature. If ICANN determines, or is deemed to have determined under this Section 2.9(a), that such revisions are immaterial, then Registry Operator may adopt and implement such revisions. If ICANN determines such revisions are either material or potentially material, ICANN will thereafter follow its procedure regarding review and approval of changes to Registry-Registrar Agreements at <<http://www.icann.org/en/resources/registries/rra-amendment-procedure>>, and such revisions may not be adopted and implemented until approved by ICANN. Notwithstanding the foregoing provisions of this Section 2.9(a), any change to the Registry-Registrar Agreement that relates exclusively to the fee charged by Registry Operator to register domain names in the TLD will not be subject to the notice and approval process specified in this Section 2.9(a), but will be subject to the requirements in Section 2.10 below.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted

copies of any contract relating thereto; provided, that ICANN will treat such contract or related documents that are appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15 (except that ICANN may disclose such contract and related documents to relevant competition authorities). ICANN reserves the right, but not the obligation, to refer any such contract, related documents, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, related documents, transaction or other arrangement might raise significant competition issues under applicable law. If feasible and appropriate under the circumstances, ICANN will give Registry Operator advance notice prior to making any such referral to a competition authority.

(c) For the purposes of this Agreement: (i) "Affiliate" means a person or entity that, directly or indirectly, through one or more intermediaries, or in combination with one or more other persons or entities, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

## 2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the Registry-Registrar Agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide each ICANN accredited registrar that has executed the Registry-Registrar Agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e., the price in place prior to any noticed increase) for periods of one (1) to ten (10) years at the discretion of the registrar, but no greater than ten (10) years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations ("Renewal Pricing"). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals for the same TLD and registration period.

application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a "Qualified Marketing Program" is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g. registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator's obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

## **2.11 Contractual and Operational Compliance Audits.**

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit during regular business hours and in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information reasonably necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than ten (10) calendar days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. ICANN will treat any information obtained in connection with such audits that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of Registry Operator in accordance with Section 7.15.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's

Operator hereunder in excess of 5% in a given quarter to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry- Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of Registry Operator's knowledge of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

**2.12 Continued Operations Instrument.** Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in Specification 8 attached hereto ("Specification 8").

**2.13 Emergency Transition.** Registry Operator agrees that, in the event that any of the emergency thresholds for registry functions set forth in Section 6 of Specification 10 is reached, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at <http://www.icann.org/en/resources/registries/transition-processes>) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process, provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument.

**2.14 Registry Code of Conduct.** In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in Specification 9 attached hereto ("Specification 9").

**2.15 Cooperation with Economic Studies.** If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data related to the operation of the TLD reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold (a) any internal analyses or evaluations prepared by Registry Operator with respect to such data and (b) any data to the extent that the delivery of such data would be in violation of applicable

law. Any data delivered to ICANN or its designee pursuant to this Section 2.15 that is appropriately marked as confidential (as required by Section 7.15) shall be treated as Confidential Information of Registry Operator in accordance with Section 7.15, provided that, if ICANN aggregates and makes anonymous such data, ICANN or its designee may disclose such data to any third party. Following completion of an economic study for which Registry Operator has provided data, ICANN will destroy all data provided by Registry Operator that has not been aggregated and made anonymous.

**2.16 Registry Performance Specifications.** Registry Performance Specifications for operation of the TLD will be as set forth in Specification 10 attached hereto (“Specification 10”). Registry Operator shall comply with such Performance Specifications and, for a period of at least one (1) year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

**2.17 Additional Public Interest Commitments.** Registry Operator shall comply with the public interest commitments set forth in Specification 11 attached hereto (“Specification 11”).

**2.18 Personal Data.** Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the Registry-Registrar Agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

**2.19 [Note: For Community-Based TLDs Only] Obligations of Registry Operator to TLD Community.** Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at <http://www.icann.org/en/resources/registries/rrdrp> with respect to disputes arising pursuant to this Section 2.19. Registry Operator shall implement and comply with the community registration policies set forth on Specification 12 attached hereto.]

### ARTICLE 3.

#### COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

**3.1 Open and Transparent.** Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.

**3.2 Equitable Treatment.** ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

**3.3 TLD Nameservers.** ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

**3.4 Root-zone Information Publication.** ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

**3.5 Authoritative Root Database.** To the extent that ICANN is authorized to set policy with regard to an authoritative root server system (the "Authoritative Root Server System"), ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

## ARTICLE 4.

### TERM AND TERMINATION

**4.1 Term.** The term of this Agreement will be ten (10) years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

**4.2 Renewal.**

(a) This Agreement will be renewed for successive periods of ten (10) years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court of competent jurisdiction has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) or a court of competent jurisdiction on at least three (3) separate occasions to have been in (A) fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or (B) breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the

### 4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court of competent jurisdiction has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court of competent jurisdiction has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction.

(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) calendar days of their commencement, (iii) a trustee, receiver, liquidator or equivalent appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any material property of Registry Operator that, if levied, would reasonably be expected to materially and adversely affect Registry Operator's ability to operate the registry for the TLD, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within sixty (60) calendar days of their commencement (if such proceedings are instituted by Registry Operator or its Affiliates) or one hundred and eighty (180) calendar days of their commencement (if such proceedings are instituted by a third party against Registry Operator), or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to a determination by any PDDRP panel or RRDRP panel under Section 2 of Specification 7 or a determination by any PICDRP panel under Section 2, Section 3 or any other applicable Section of Specification 11, subject to Registry Operator's right to challenge such termination

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer who is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement as specified in Section 7.5.

(h) *[Applicable to intergovernmental organizations or governmental entities only.]* ICANN may terminate this Agreement pursuant to Section 7.16.

#### **4.4 Termination by Registry Operator.**

(a) Registry Operator may terminate this Agreement upon notice to ICANN if (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court of competent jurisdiction has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court of competent jurisdiction.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

**4.5 Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that (i) ICANN will take into consideration any intellectual property rights of Registry Operator (as communicated to ICANN by Registry Operator) in determining whether to transition operation of the TLD to a successor registry operator and (ii) if Registry Operator demonstrates to ICANN's reasonable satisfaction that (A) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator or its Affiliates for their exclusive use, (B) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (C) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN

from delegating the TLD pursuant to a future application process for the delegation of top-level domain subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument for the maintenance and operation of the TLD, regardless of the reason for termination or expiration of this Agreement.

*[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:*

**“Transition of Registry upon Termination of Agreement.** Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN’s designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator’s consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument, regardless of the reason for termination or expiration of this Agreement.”]

**4.6 Effect of Termination.** Upon any expiration of the Term or termination of this Agreement the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

## ARTICLE 5.

### DISPUTE RESOLUTION

**5.1 Mediation.** In the event of any dispute arising under or in connection with this Agreement before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator must attempt to resolve the dispute through mediation in accordance with the following terms and conditions:

a mediator within fifteen (15) calendar days of delivery of written notice pursuant to this Section 5.1, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity's selection, designate a mediator, who is a licensed attorney with general knowledge of contract law, has no ongoing business relationship with either party and, to the extent necessary to mediate the particular dispute, general knowledge of the domain name system. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN or Registry Operator. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 5.1(a).

(b) The mediator shall conduct the mediation in accordance with the rules and procedures that he or she determines following consultation with the parties. The parties shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential and may not be used against either party in any later proceeding relating to the dispute, including any arbitration pursuant to Section 5.2. The mediator may not testify for either party in any later proceeding relating to the dispute.

(c) Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator. Each party shall treat information received from the other party pursuant to the mediation that is appropriately marked as confidential (as required by Section 7.15) as Confidential Information of such other party in accordance with Section 7.15.

(d) If the parties have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, either party or the mediator may terminate the mediation at any time and the dispute can then proceed to arbitration pursuant to Section 5.2 below. If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following the date of the notice delivered pursuant to Section 5.1(a), the mediation shall automatically terminate (unless extended by agreement of the parties) and the dispute can then proceed to arbitration pursuant to Section 5.2 below.

**5.2 Arbitration.** Disputes arising under or in connection with this Agreement that are not resolved pursuant to Section 5.1, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce (the "ICC"). The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, (ii) the parties agree in writing to a greater number of arbitrators, or (iii) the dispute arises under Section 7.6 or 7.7. In the case of clauses (i), (ii) or (iii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party nominating one arbitrator for confirmation by the ICC and the two selected arbitrators nominating the third arbitrator for confirmation by the ICC. For an arbitration in front of a sole arbitrator, Registry Operator and ICANN may, by mutual agreement, nominate the sole arbitrator for confirmation by the ICC. If the parties fail to nominate a sole arbitrator or, in the case of an arbitration in front of three arbitrators, either party fails to nominate an arbitrator, in each case within thirty (30) calendar days from the date when a party's request for arbitration has been received by the other party, or within such additional time as may be allowed by the Secretariat of the Court of the ICC, the arbitrator(s) shall be appointed by the ICC. If any nominated arbitrator is not confirmed by the ICC, the party or persons that appointed such arbitrator shall promptly nominate a replacement arbitrator for confirmation by the ICC. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1)



venue for such litigation will be in a court located in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.”]

**5.3 Limitation of Liability.** ICANN’s aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator’s aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2, except with respect to Registry Operator’s indemnification obligations pursuant to Section 7.1 and Section 7.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

**5.4 Specific Performance.** Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator or court of competent jurisdiction specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

## ARTICLE 6.

### FEES

#### 6.1 Registry-Level Fees.

(a) Registry Operator shall pay ICANN a registry-level fee equal to (i) the registry fixed fee of US\$6,250 per calendar quarter and (ii) the registry-level transaction fee (collectively, the “Registry Level Fees”). The registry-level transaction fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a “Transaction”), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the registry-level transaction fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any consecutive four calendar quarter period in the aggregate (the “Transaction Threshold”) and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator’s obligation to pay the quarterly registry-level fixed fee will begin on the date on which the TLD is delegated in the DNS to Registry Operator. The first quarterly payment of the registry-level fixed fee will be prorated based on the number of calendar days between the delegation date and the end of the calendar quarter in which the delegation date falls.

(b) Subject to Section 6.1(a), Registry Operator shall pay the Registry-Level Fees on a quarterly basis to an account designated by ICANN within thirty (30) calendar days following the date of the invoice provided by ICANN.

Panel (“RSTEP”) pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within fourteen (14) calendar days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

### 6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (accounting, in the aggregate, for payment of two thirds of all registrar-level fees (or such portion of ICANN accredited registrars necessary to approve variable accreditation fees under the then-current registrar accreditation agreement), do not approve, pursuant to the terms of their registrar accreditation agreements with ICANN, the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a variable registry-level fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year (the “Variable Registry-Level Fee”). The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars that are party to a Registry-Registrar Agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator’s ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve, pursuant to the terms of their registrar accreditation agreements with ICANN, the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN accredited registrar to another) per year.

**6.4 Pass Through Fees.** Registry Operator shall pay to ICANN (i) a one-time fee equal to US\$5,000 for access to and use of the Trademark Clearinghouse as described in Specification 7 (the “RPM Access Fee”) and (ii) US\$0.25 per Sunrise Registration and Claims Registration (as such terms are used in Trademark Clearinghouse RPMs incorporated herein pursuant to Specification 7) (the “RPM Registration Fee”). The RPM Access Fee will be invoiced as of the Effective Date of this Agreement, and Registry Operator shall pay such fee to an account specified by ICANN within thirty (30) calendar days following the date of the invoice. ICANN will invoice Registry Operator quarterly for the RPM Registration Fee, which shall be due in accordance with the invoicing and payment procedure specified

**6.5 Adjustments to Fees.** Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then-current fees set forth in Section 6.1 and Section 6.3 may be adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.5 shall be effective as of the first day of the first calendar quarter following at least thirty (30) days after ICANN's delivery to Registry Operator of such fee adjustment notice.

**6.6 Additional Fee on Late Payments.** For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

**6.7 Fee Reduction Waiver.** In ICANN's sole discretion, ICANN may reduce the amount of registry fees payable hereunder by Registry Operator for any period of time ("Fee Reduction Waiver"). Any such Fee Reduction Waiver may, as determined by ICANN in its sole discretion, be (a) limited in duration and (b) conditioned upon Registry Operator's acceptance of the terms and conditions set forth in such waiver. A Fee Reduction Waiver shall not be effective unless executed in writing by ICANN as contemplated by Section 7.6(i). ICANN will provide notice of any Fee Reduction Waiver to Registry Operator in accordance with Section 7.9.

## ARTICLE 7.

### MISCELLANEOUS

#### 7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court of competent jurisdiction or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:



amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator’s delegated information or provisioning of services.

**7.4 No Offset.** All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

**7.5 Change of Control; Assignment and Subcontracting.** Except as set forth in this Section 7.5, neither party may assign any of its rights and obligations under this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any subcontracting arrangement that relates to any Critical Function (as identified in Section 6 of Specification 10) for the TLD (a “Material Subcontracting Arrangement”) shall be deemed an assignment.

(a) Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any assignment or Material Subcontracting Arrangement, and any agreement to assign or subcontract any portion of the operations of the TLD (whether or not a Material Subcontracting Arrangement) must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator.

(b) Within thirty (30) calendar days of either such notification pursuant to Section 7.5(a), ICANN may request additional information from Registry Operator establishing (i) compliance with this Agreement and (ii) that the party acquiring such control or entering into such assignment or Material Subcontracting Arrangement (in any case, the “Contracting Party”) and the ultimate parent entity of the Contracting Party meets the ICANN-adopted specification or policy on registry operator criteria then in effect (including with respect to financial resources and operational and technical capabilities), in which case Registry Operator must supply the requested information within fifteen (15) calendar days.

(c) Registry Operator agrees that ICANN’s consent to any assignment, change of control or Material Subcontracting Arrangement will also be subject to background checks on any proposed Contracting Party (and such Contracting Party’s Affiliates).

(d) If ICANN fails to expressly provide or withhold its consent to any assignment, direct or indirect change of control of Registry Operator or any Material Subcontracting Arrangement within thirty (30) calendar days of ICANN's receipt of notice of such transaction (or, if ICANN has requested additional information from Registry Operator as set forth above, thirty (30) calendar days of the receipt of all requested written information regarding such transaction) from Registry Operator, ICANN shall be deemed to have consented to such transaction.

(e) In connection with any such assignment, change of control or Material Subcontracting Arrangement, Registry Operator shall comply with the Registry Transition Process.

(f) Notwithstanding the foregoing, (i) any consummated change of control shall not be avoidable by ICANN; provided, however, that, if ICANN reasonably determines to withhold its consent to such transaction, ICANN may terminate this Agreement pursuant to Section 4.3(g), (ii) ICANN may assign this Agreement without the consent of Registry Operator upon approval of the ICANN Board of Directors in conjunction with a reorganization, reconstitution or re-incorporation of ICANN upon such assignee's express assumption of the terms and conditions of this Agreement, (iii) Registry Operator may assign this Agreement without the consent of ICANN directly to an Affiliated Assignee, as that term is defined herein below, upon such Affiliated Assignee's express written assumption of the terms and conditions of this Agreement, and (iv) ICANN shall be deemed to have consented to any assignment, Material Subcontracting Arrangement or change of control transaction in which the Contracting Party is an existing operator of a generic top-level domain pursuant to a registry agreement between such Contracting Party and ICANN (provided that such Contracting Party is then in compliance with the terms and conditions of such registry agreement in all material respects), unless ICANN provides to Registry Operator a written objection to such transaction within ten (10) calendar days of ICANN's receipt of notice of such transaction pursuant to this Section 7.5. Notwithstanding Section 7.5(a), in the event an assignment is made pursuant to clauses (ii) or (iii) of this Section 7.5(f), the assigning party will provide the other party with prompt notice following any such assignment. For the purposes of this Section 7.5(f), (A) "Affiliated Assignee" means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (B) "control" (including the terms "controlled by" and "under common control with") shall have the same meaning specified in Section 2.9(c) of this Agreement.

## **7.6 Amendments and Waivers.**

(a) If the ICANN Board of Directors determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable Registry Operators (the "Applicable Registry Agreements") is desirable (each, a "Special Amendment"), ICANN may adopt a Special Amendment pursuant to the requirements of and process set forth in this Section 7.6; provided that a Special Amendment may not be a Restricted Amendment.

(b) Prior to submitting a Special Amendment for Registry Operator Approval, ICANN shall first consult in good faith with the Working Group regarding the form and substance of such Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the "Posting Period") and providing notice of such proposed amendment to the Applicable Registry Operators in accordance with Section 7.9. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(which may be in a form different than submitted for public comment, but must address the subject matter of the Special Amendment posted for public comment, as modified to reflect and/or address input from the Working Group and public comments), ICANN shall provide notice of, and submit, such Special Amendment for approval or disapproval by the Applicable Registry Operators. If, during the sixty (60) calendar day period following the date ICANN provides such notice to the Applicable Registry Operators, such Special Amendment receives Registry Operator Approval, such Special Amendment shall be deemed approved (an "Approved Amendment") by the Applicable Registry Operators, and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Approved Amendment to Registry Operator (the "Amendment Effective Date"). In the event that a Special Amendment does not receive Registry Operator Approval, the Special Amendment shall be deemed not approved by the Applicable Registry Operators (a "Rejected Amendment"). A Rejected Amendment will have no effect on the terms and conditions of this Agreement, except as set forth below.

(d) If the ICANN Board of Directors reasonably determines that a Rejected Amendment falls within the subject matter categories set forth in Section 1.2 of Specification 1, the ICANN Board of Directors may adopt a resolution (the date such resolution is adopted is referred to herein as the "Resolution Adoption Date") requesting an Issue Report (as such term is defined in ICANN's Bylaws) by the Generic Names Supporting Organization (the "GNSO") regarding the substance of such Rejected Amendment. The policy development process undertaken by the GNSO pursuant to such requested Issue Report is referred to herein as a "PDP." If such PDP results in a Final Report supported by a GNSO Supermajority (as defined in ICANN's Bylaws) that either (i) recommends adoption of the Rejected Amendment as Consensus Policy or (ii) recommends against adoption of the Rejected Amendment as Consensus Policy, and, in the case of (i) above, the Board adopts such Consensus Policy, Registry Operator shall comply with its obligations pursuant to Section 2.2 of this Agreement. In either case, ICANN will abandon the Rejected Amendment and it will have no effect on the terms and conditions of this Agreement. Notwithstanding the foregoing provisions of this Section 7.6(d), the ICANN Board of Directors shall not be required to initiate a PDP with respect to a Rejected Amendment if, at any time in the twelve (12) month period preceding the submission of such Rejected Amendment for Registry Operator Approval pursuant to Section 7.6(c), the subject matter of such Rejected Amendment was the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation.

(e) If (a) a Rejected Amendment does not fall within the subject matter categories set forth in Section 1.2 of Specification 1, (b) the subject matter of a Rejected Amendment was, at any time in the twelve (12) month period preceding the submission of such Rejected Amendment for Registry Operator Approval pursuant to Section 7.6(c), the subject of a concluded or otherwise abandoned or terminated PDP that did not result in a GNSO Supermajority recommendation, or (c) a PDP does not result in a Final Report supported by a GNSO Supermajority that either (A) recommends adoption of the Rejected Amendment as Consensus Policy or (B) recommends against adoption of the Rejected Amendment as Consensus Policy (or such PDP has otherwise been abandoned or terminated for any reason), then, in any such case, such Rejected Amendment may still be adopted and become effective in the manner described below. In order for the Rejected Amendment to be adopted, the following requirements must be satisfied:

(i) the subject matter of the Rejected Amendment must be within the scope of ICANN's mission and consistent with a balanced application of its core values (as described in ICANN's Bylaws);

(ii) the Rejected Amendment must be justified by a Substantial and Compelling Reason in the Public Interest, must be likely to promote such interest, taking into account

Amendment, and must be narrowly tailored and no broader than reasonably necessary to address such Substantial and Compelling Reason in the Public Interest;

(iii) to the extent the Rejected Amendment prohibits or requires conduct or activities, imposes material costs on the Applicable Registry Operators, and/or materially reduces public access to domain name services, the Rejected Amendment must be the least restrictive means reasonably available to address the Substantial and Compelling Reason in the Public Interest;

(iv) the ICANN Board of Directors must submit the Rejected Amendment, along with a written explanation of the reasoning related to its determination that the Rejected Amendment meets the requirements set out in subclauses (i) through (iii) above, for public comment for a period of no less than thirty (30) calendar days; and

(v) following such public comment period, the ICANN Board of Directors must (a) engage in consultation (or direct ICANN management to engage in consultation) with the Working Group, subject matter experts, members of the GNSO, relevant advisory committees and other interested stakeholders with respect to such Rejected Amendment for a period of no less than sixty (60) calendar days; and (b) following such consultation, reapprove the Rejected Amendment (which may be in a form different than submitted for Registry Operator Approval, but must address the subject matter of the Rejected Amendment, as modified to reflect and/or address input from the Working Group and public comments) by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN's Conflict of Interest Policy (a "Board Amendment").

Such Board Amendment shall, subject to Section 7.6(f), be deemed an Approved Amendment, and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Board Amendment to Registry Operator (which effective date shall be deemed the Amendment Effective Date hereunder). Notwithstanding the foregoing, a Board Amendment may not amend the registry fees charged by ICANN hereunder, or amend this Section 7.6.

(f) Notwithstanding the provisions of Section 7.6(e), a Board Amendment shall not be deemed an Approved Amendment if, during the thirty (30) calendar day period following the approval by the ICANN Board of Directors of the Board Amendment, the Working Group, on the behalf of the Applicable Registry Operators, submits to the ICANN Board of Directors an alternative to the Board Amendment (an "Alternative Amendment") that meets the following requirements:

(i) sets forth the precise text proposed by the Working Group to amend this Agreement in lieu of the Board Amendment;

(ii) addresses the Substantial and Compelling Reason in the Public Interest identified by the ICANN Board of Directors as the justification for the Board Amendment; and

(iii) compared to the Board Amendment is: (a) more narrowly tailored to address such Substantial and Compelling Reason in the Public Interest, and (b) to the extent the Alternative Amendment prohibits or requires conduct or activities, imposes material costs on Affected Registry Operators, or materially reduces access to domain

name services, is a less restrictive means to address the Substantial and Compelling Reason in the Public Interest.

Any proposed amendment that does not meet the requirements of subclauses (i) through (iii) in the immediately preceding sentence shall not be considered an Alternative Amendment hereunder and therefore shall not supersede or delay the effectiveness of the Board Amendment. If, following the submission of the Alternative Amendment to the ICANN Board of Directors, the Alternative Amendment receives Registry Operator Approval, the Alternative Amendment shall supersede the Board Amendment and shall be deemed an Approved Amendment hereunder (and shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice of the approval of such Alternative Amendment to Registry Operator, which effective date shall be deemed the Amendment Effective Date hereunder), unless, within a period of sixty (60) calendar days following the date that the Working Group notifies the ICANN Board of Directors of Registry Operator Approval of such Alternative Amendment (during which time ICANN shall engage with the Working Group with respect to the Alternative Amendment), the ICANN Board of Directors by the affirmative vote of at least two-thirds of the members of the ICANN Board of Directors eligible to vote on such matter, taking into account any ICANN policy affecting such eligibility, including ICANN's Conflict of Interest Policy, rejects the Alternative Amendment. If (A) the Alternative Amendment does not receive Registry Operator Approval within thirty (30) calendar days of submission of such Alternative Amendment to the Applicable Registry Operators (and the Working Group shall notify ICANN of the date of such submission), or (B) the ICANN Board of Directors rejects the Alternative Amendment by such two-thirds vote, the Board Amendment (and not the Alternative Amendment) shall be effective and deemed an amendment to this Agreement on the date that is sixty (60) calendar days following the date ICANN provided notice to Registry Operator (which effective date shall be deemed the Amendment Effective Date hereunder). If the ICANN Board of Directors rejects an Alternative Amendment, the board shall publish a written rationale setting forth its analysis of the criteria set forth in Sections 7.6(f)(i) through 7.6(f)(iii). The ability of the ICANN Board of Directors to reject an Alternative Amendment hereunder does not relieve the Board of the obligation to ensure that any Board Amendment meets the criteria set forth in Section 7.6(e)(i) through 7.6(e)(v).

(g) In the event that Registry Operator believes an Approved Amendment does not meet the substantive requirements set out in this Section 7.6 or has been adopted in contravention of any of the procedural provisions of this Section 7.6, Registry Operator may challenge the adoption of such Special Amendment pursuant to the dispute resolution provisions set forth in Article 5, except that such arbitration shall be conducted by a three-person arbitration panel. Any such challenge must be brought within sixty (60) calendar days following the date ICANN provided notice to Registry Operator of the Approved Amendment, and ICANN may consolidate all challenges brought by registry operators (including Registry Operator) into a single proceeding. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process.

(h) Registry Operator may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an "Exemption Request") during the thirty (30) calendar day period following the date ICANN provided notice to Registry Operator of such Approved Amendment. Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would

(90) calendar days of ICANN's receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement; provided, that any conditions, alternatives or variations of the Approved Amendment required by ICANN shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN's determination, appeal ICANN's decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(j), agreed to by ICANN following mediation pursuant to Section 5.1 or through an arbitration decision pursuant to Section 5.2 shall exempt Registry Operator from any Approved Amendment, and no Exemption Request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(i) Except as set forth in this Section 7.6, Section 7.7 and as otherwise set forth in this Agreement and the Specifications hereto, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 or Section 7.7 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Sections 7.6 or 7.7 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(j) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable at the prevailing exchange rate published the prior day in the U.S. Edition of the Wall Street Journal for the date such calculation is made by ICANN) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For the avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable

Registry Agreement.

(iii) “Restricted Amendment” means the following: (A) an amendment of Specification 1, (B) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (C) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (D) an amendment to the length of the Term.

(iv) “Substantial and Compelling Reason in the Public Interest” means a reason that is justified by an important, specific, and articulated public interest goal that is within ICANN's mission and consistent with a balanced application of ICANN's core values as defined in ICANN's Bylaws.

(v) “Working Group” means representatives of the Applicable Registry Operator and other members of the community that the Registry Stakeholders Group appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(i)).

(k) Notwithstanding anything in this Section 7.6 to the contrary, (i) if Registry Operator provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing Registry Services, then ICANN will allow up to one-hundred eighty (180) calendar days for Approved Amendment to become effective with respect to Registry Operator, and (ii) no Approved Amendment adopted pursuant to Section 7.6 shall become effective with respect to Registry Operator if Registry Operator provides ICANN with an irrevocable notice of termination pursuant to Section 4.4(b).

## 7.7 Negotiation Process.

(a) If either the Chief Executive Officer of ICANN (“CEO”) or the Chairperson of the Registry Stakeholder Group (“Chair”) desires to discuss any revision(s) to this Agreement, the CEO or Chair, as applicable, shall provide written notice to the other person, which shall set forth in reasonable detail the proposed revisions to this Agreement (a “Negotiation Notice”). Notwithstanding the foregoing, neither the CEO nor the Chair may (i) propose revisions to this Agreement that modify any Consensus Policy then existing, (ii) propose revisions to this Agreement pursuant to this Section 7.7 on or before June 30, 2014, or (iii) propose revisions or submit a Negotiation Notice more than once during any twelve (12) month period beginning on July 1, 2014.

(b) Following receipt of the Negotiation Notice by either the CEO or the Chair, ICANN and the Working Group (as defined in Section 7.6) shall consult in good faith negotiations regarding the form and substance of the proposed revisions to this Agreement, which shall be in the form of a proposed amendment to this Agreement (the “Proposed Revisions”), for a period of at least ninety (90) calendar days (unless a resolution is earlier reached) and attempt to reach a mutually acceptable agreement relating to the Proposed Revisions (the “Discussion Period”).

(c) If, following the conclusion of the Discussion Period, an agreement is reached on the Proposed Revisions, ICANN shall post the mutually agreed Proposed Revisions on its website for public comment for no less than thirty (30) calendar days (the “Posting Period”) and provide notice of such revisions to all Applicable Registry Operators in accordance with Section 7.9. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Registry Operator Approval (as defined in Section 7.6) and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment (as defined in Section 7.6) by the

Applicable Registry Operators and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator.

(d) If, following the conclusion of the Discussion Period, an agreement is not reached between ICANN and the Working Group on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (the “Mediation Notice”) requiring each party to attempt to resolve the disagreements related to the Proposed Revisions through impartial, facilitative (non-evaluative) mediation in accordance with the terms and conditions set forth below. In the event that a Mediation Notice is provided, ICANN and the Working Group shall, within fifteen (15) calendar days thereof, simultaneously post the text of their desired version of the Proposed Revisions and a position paper with respect thereto on ICANN’s website.

(i) The mediation shall be conducted by a single mediator selected by the parties. If the parties cannot agree on a mediator within fifteen (15) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the parties will promptly select a mutually acceptable mediation provider entity, which entity shall, as soon as practicable following such entity’s selection, designate a mediator, who is a licensed attorney with general knowledge of contract law, who has no ongoing business relationship with either party and, to the extent necessary to mediate the particular dispute, general knowledge of the domain name system. Any mediator must confirm in writing that he or she is not, and will not become during the term of the mediation, an employee, partner, executive officer, director, or security holder of ICANN or an Applicable Registry Operator. If such confirmation is not provided by the appointed mediator, then a replacement mediator shall be appointed pursuant to this Section 7.7(d)(i).

(ii) The mediator shall conduct the mediation in accordance with the rules and procedures for facilitative mediation that he or she determines following consultation with the parties. The parties shall discuss the dispute in good faith and attempt, with the mediator’s assistance, to reach an amicable resolution of the dispute.

(iii) Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator.

(iv) If an agreement is reached during the mediation, ICANN shall post the mutually agreed Proposed Revisions on its website for the Posting Period and provide notice to all Applicable Registry Operators in accordance with Section 7.9. ICANN and the Working Group will consider the public comments submitted on the agreed Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators). Following the conclusion of the Posting Period, the Proposed Revisions shall be submitted for Registry Operator Approval and approval by the ICANN Board of Directors. If such approvals are obtained, the Proposed Revisions shall be deemed an Approved Amendment (as defined in Section 7.6) by the Applicable Registry Operators and ICANN, and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator.

(v) If the parties have not resolved the dispute for any reason by the date that is ninety (90) calendar days following receipt by the CEO or Chair, as applicable, of the Mediation Notice, the mediation shall automatically terminate (unless extended by agreement of the parties). The mediator shall deliver to the parties a definition of the issues that could be considered in future arbitration, if invoked. Those issues are subject to the limitations set forth in Section 7.7(e)(ii) below.

(e) If, following mediation, ICANN and the Working Group have not reached an agreement on the Proposed Revisions, either the CEO or the Chair may provide the other person written notice (an "Arbitration Notice") requiring ICANN and the Applicable Registry Operators to resolve the dispute through binding arbitration in accordance with the arbitration provisions of Section 5.2, subject to the requirements and limitations of this Section 7.7(e).

(i) If an Arbitration Notice is sent, the mediator's definition of issues, along with the Proposed Revisions (be those from ICANN, the Working Group or both) shall be posted for public comment on ICANN's website for a period of no less than thirty (30) calendar days. ICANN and the Working Group will consider the public comments submitted on the Proposed Revisions during the Posting Period (including comments submitted by the Applicable Registry Operators), and information regarding such comments and consideration shall be provided to a three (3) person arbitrator panel. Each party may modify its Proposed Revisions before and after the Posting Period. The arbitration proceeding may not commence prior to the closing of such public comment period, and ICANN may consolidate all challenges brought by registry operators (including Registry Operator) into a single proceeding. Except as set forth in this Section 7.7, the arbitration shall be conducted pursuant to Section 5.2.

(ii) No dispute regarding the Proposed Revisions may be submitted for arbitration to the extent the subject matter of the Proposed Revisions (i) relates to Consensus Policy, (ii) falls within the subject matter categories set forth in Section 1.2 of Specification 1, or (iii) seeks to amend any of the following provisions or Specifications of this Agreement: Articles 1, 3 and 6; Sections 2.1, 2.2, 2.5, 2.7, 2.9, 2.10, 2.16, 2.17, 2.19, 4.1, 4.2, 7.3, 7.6, 7.7, 7.8, 7.10, 7.11, 7.12, 7.13, 7.14, 7.16; Section 2.8 and Specification 7 (but only to the extent such Proposed Revisions seek to implement an RPM not contemplated by Sections 2.8 and Specification 7); Exhibit A; and Specifications 1, 4, 6, 10 and 11.

(iii) The mediator will brief the arbitrator panel regarding ICANN and the Working Group's respective proposals relating to the Proposed Revisions.

(iv) No amendment to this Agreement relating to the Proposed Revisions may be submitted for arbitration by either the Working Group or ICANN, unless, in the case of the Working Group, the proposed amendment has received Registry Operator Approval and, in the case of ICANN, the proposed amendment has been approved by the ICANN Board of Directors.

(v) In order for the arbitrator panel to approve either ICANN or the Working Group's proposed amendment relating to the Proposed Revisions, the arbitrator panel must conclude that such proposed amendment is consistent with a balanced application of ICANN's core values (as described in ICANN's Bylaws) and reasonable in light of the balancing of the costs and benefits to the business interests of the Applicable Registry Operators and ICANN (as applicable), and the public benefit sought to be achieved by the Proposed Revisions as set forth in such amendment. If the arbitrator panel concludes that either ICANN or the Working Group's proposed amendment relating to the Proposed Revisions meets the foregoing standard, such amendment shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator and deemed an Approved Amendment hereunder.

(f) With respect to an Approved Amendment relating to an amendment proposed by ICANN, Registry may apply in writing to ICANN for an exemption from such amendment pursuant to the provisions of Section 7.6

(g) Notwithstanding anything in this Section 7.7 to the contrary, (a) if Registry Operator provides evidence to ICANN's reasonable satisfaction that the Approved Amendment would materially increase the cost of providing Registry Services, then ICANN will allow up to one-hundred eighty (180) calendar days for the Approved Amendment to become effective with respect to Registry Operator, and (b) no Approved Amendment adopted pursuant to Section 7.7 shall become effective with respect to Registry Operator if Registry Operator provides ICANN with an irrevocable notice of termination pursuant to Section 4.4(b).

**7.8 No Third-Party Beneficiaries.** This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

**7.9 General Notices.** Except for notices pursuant to Sections 7.6 and 7.7, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this Agreement. All notices under Sections 7.6 and 7.7 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Other than notices under Sections 7.6 or 7.7, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within three (3) calendar days. Any notice required by Sections 7.6 or 7.7 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:  
Internet Corporation for Assigned Names and Numbers  
12025 Waterfront Drive, Suite 300  
Los Angeles, CA 90094-2536  
USA  
Telephone: +1-310-301-5800  
Facsimile: +1-310-823-8649  
Attention: President and CEO

With a Required Copy to: General Counsel  
Email: (As specified from time to time.)

If to Registry Operator, addressed to:  
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

Telephone:  
With a Required Copy to:  
Email: (As specified from time to time.)

the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

**7.11 English Language Controls.** Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

**7.12 Ownership Rights.** Nothing contained in this Agreement shall be construed as (a) establishing or granting to Registry Operator any property ownership rights or interests of Registry Operator in the TLD or the letters, words, symbols or other characters making up the TLD string, or (b) affecting any existing intellectual property or ownership rights of Registry Operator.

**7.13 Severability; Conflicts with Laws.** This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible. ICANN and the Working Group will mutually cooperate to develop an ICANN procedure for ICANN's review and consideration of alleged conflicts between applicable laws and non-WHOIS related provisions of this Agreement. Until such procedure is developed and implemented by ICANN, ICANN will review and consider alleged conflicts between applicable laws and non-WHOIS related provisions of this Agreement in a manner similar to ICANN's Procedure For Handling WHOIS Conflicts with Privacy Law.

**7.14 Court Orders.** ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement

### **7.15 Confidentiality**

(a) Subject to Section 7.15(c), during the Term and for a period of three (3) years thereafter, each party shall, and shall cause its and its Affiliates' officers, directors, employees and agents to, keep confidential and not publish or otherwise disclose to any third party, directly or indirectly, any information that is, and the disclosing party has marked as, or has otherwise designated in writing to the receiving party as, "confidential trade secret," "confidential commercial information" or "confidential financial information" (collectively, "Confidential Information"), except to the extent such disclosure is permitted by the terms of this Agreement.

(b) The confidentiality obligations under Section 7.15(a) shall not apply to any Confidential Information that (i) is or hereafter becomes part of the public domain by public use, publication, general knowledge or the like through no fault of the receiving party in breach of this Agreement, (ii) can be demonstrated by documentation or other competent proof to have been in the receiving party's possession prior to disclosure by the disclosing party without any obligation of confidentiality with respect to such information, (iii) is subsequently received by the receiving party from a third party who is not bound by any obligation of confidentiality with respect to such information, (iv) has been published by a third party or otherwise enters the public domain through no fault of the receiving party or (v) can be demonstrated by documentation or other competent evidence to have been

independently developed by or for the receiving party without reference to the disclosing party's Confidential Information.

(c) Each party shall have the right to disclose Confidential Information to the extent that such disclosure is (i) made in response to a valid order of a court of competent jurisdiction or, if in the reasonable opinion of the receiving party's legal counsel, such disclosure is otherwise required by applicable law; provided, however, that the receiving party shall first have given notice to the disclosing party and given the disclosing party a reasonable opportunity to quash such order or to obtain a protective order or confidential treatment order requiring that the Confidential Information that is the subject of such order or other applicable law be held in confidence by such court or other third party recipient, unless the receiving party is not permitted to provide such notice under such order or applicable law, or (ii) made by the receiving party or any of its Affiliates to its or their attorneys, auditor advisors, consultants, contractors or other third parties for use by such person or entity as may be necessary or useful in connection with the performance of the activities under this Agreement, provided that such third party is bound by confidentiality obligations at least as stringent as those set forth herein either by written agreement or through professional responsibility standards.

***[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]***

#### **7.16 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.**

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the "Applicable Laws"). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator's compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, "ICANN Requirements"), may conflict with or violate Applicable Law (hereinafter, a "Potential Conflict"), Registry Operator shall provide detailed notice (a "Notice") of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by mediation pursuant to the procedures set forth in Section 5.1. In addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such mediation, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such noncompliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such

ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an "ICANN Determination"). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN's complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator's compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.16, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.16(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.16(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

\* \* \* \* \*



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS**

By: \_\_\_\_\_  
[\_\_\_\_\_] President and CEO  
Date:

-

**[Registry Operator]**

-

By: \_\_\_\_\_  
[\_\_\_\_\_] \_\_\_\_\_  
[\_\_\_\_\_] \_\_\_\_\_  
Date:



## EXHIBIT A

### Approved Services

The ICANN gTLD Applicant Guidebook (located at <http://newgtlds.icann.org/en/applicants/agb>) and the RSEP specify processes for consideration of proposed registry services. Registry Operator may provide any service that is required by the terms of this Agreement. In addition, the following services (if any) are specifically identified as having been approved by ICANN prior to the effective date of the Agreement and Registry Operator may provide such services:

#### 1. DNS Service – TLD Zone Contents

Notwithstanding anything else in this Agreement, as indicated in section 2.2.3.3 of the gTLD Applicant Guidebook, permissible contents for the TLD's DNS service are:

##### 1.1. For the "Internet" (IN) Class:

1.1.1. Apex SOA record

1.1.2. Apex NS records and in-bailiwick glue for the TLD's DNS servers

1.1.3. NS records and in-bailiwick glue for DNS servers of registered names in the TLD

1.1.4. DS records for registered names in the TLD

1.1.5. Records associated with signing the TLD zone (e.g., RRSIG, DNSKEY, NSEC, NSEC3PARAM and NSEC3)

1.1.6. Apex TXT record for zone versioning purposes

1.1.7. Apex TYPE65534 record for automatic dnssec signing signaling

##### 1.2. For the "Chaos" (CH) Class:

1.2.1. TXT records for server version/identification (e.g., TXT records for "version.bind.", "id.server.", "authors.bind" and/or "hostname.bind.")

(Note: The above language effectively does not allow, among other things, the inclusion of DNS resource records that would enable a dotless domain name (e.g., apex A, AAAA, MX records) in the TLD zone.)

If Registry Operator wishes to place any DNS resource record type or class into its TLD DNS service (other than those listed in Sections 1.1 or 1.2 above), it must describe in detail its proposal and submit a Registry Services Evaluation Process (RSEP) request. This will be evaluated per RSEP to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Registry Operator recognizes and acknowledges that a service based on the use of less-common DNS resource records and/or classes in the TLD zone, even if approved, might not work as intended for all users due to lack of software support.

## SPECIFICATION 1

### CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

#### 1. Consensus Policies.

- 1.1. “**Consensus Policies**” are those policies established (1) pursuant to the procedure set forth in ICANN’s Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this Specification. The Consensus Policy development process and procedure set forth in ICANN’s Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
  - 1.2.1 issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
  - 1.2.2 functional and performance specifications for the provision of Registry Services;
  - 1.2.3 Security and Stability of the registry database for the TLD;
  - 1.2.4 registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
  - 1.2.5 resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
  - 1.2.6 restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 of this Specification shall include, without limitation:
  - 1.3.1 principles for allocation of registered names in the TLD (e.g., first-come/first-serve timely renewal, holding period after expiration);
  - 1.3.2 prohibitions on warehousing of or speculation in domain names by registries or registrars;
  - 1.3.3 reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
  - 1.3.4 maintenance of and access to accurate and up-to-date information concerning domain name registrations, and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator

or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

- 1.4. In addition to the other limitations on Consensus Policies, they shall not:
  - 1.4.1 prescribe or limit the price of Registry Services;
  - 1.4.2 modify the terms or conditions for the renewal or termination of the Registry Agreement;
  - 1.4.3 modify the limitations on Temporary Policies (defined below) or Consensus Policies;
  - 1.4.4 modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
  - 1.4.5 modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
  
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("**Temporary Policies**").
  - 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
    - 2.1.1 ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
    - 2.1.2 If the period of time for which the Temporary Policy is adopted exceeds ninety (90) calendar days, the Board shall reaffirm its temporary adoption every ninety (90) calendar days for a total period not to exceed one (1) year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one (1) year period expires or, if during such one (1) year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
  
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policy or Temporary Policy shall control, but only with respect to subject matter in conflict.



## SPECIFICATION 2

### DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent ("**Escrow Agent**") for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

#### PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
  - 1.1. "**Full Deposit**" will consist of data that reflects the state of the registry as of 00:00:00 UTC (Coordinated Universal Time) on the day that such Full Deposit is submitted to Escrow Agent.
  - 1.2. "**Differential Deposit**" means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., all additions, modifications or removals of data).
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
  - 2.1. Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
  - 2.2. The other six (6) days of the week, a Full Deposit or the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
3. **Escrow Format Specification.**
  - 3.1. **Deposit's Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see Part A, Section 9, reference 1 of this Specification and draft-arias-noguchi-dnrd-objects-mapping, see Part A, Section 9, reference 2 of this Specification (collectively, the "DNDE Specification"). The DNDE Specification describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. If not already an RFC, Registry Operator will use the most recent draft version of the DNDE Specification available at the Effective Date. Registry Operator may at its election use newer versions of the DNDE Specification after the Effective Date. Once the DNDE Specification is published as an RFC, Registry Operator will implement that version of the DNDE Specification, no later than one hundred eighty (180) calendar days after. UTF-8 character encoding will be used.



- 5.1. {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
- 5.2. {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be “2009-08-02”;
- 5.3. {type} is replaced by:
- (1) “full”, if the data represents a Full Deposit;
  - (2) “diff”, if the data represents a Differential Deposit;
  - (3) “thin”, if the data represents a Bulk Registration Data Access file, as specified in Section 3 of Specification 4;
  - (4) “thick-{gurid}”, if the data represent Thick Registration Data from a specific registrar as defined in Section 3.2 of Specification 4. The {gurid} element must be replaced with the IANA Registrar ID associated with the data.
- 5.4. {#} is replaced by the position of the file in a series of files, beginning with “1”; in case of a lone file, this must be replaced by “1”.
- 5.5. {rev} is replaced by the number of revision (or resend) of the file beginning with “0”:
- 5.6. {ext} is replaced by “sig” if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by “ryde”.
6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party’s public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry Operator and ICANN will exchange public keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification (the “Interface Specification”)) a written statement from Registry Operator (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. The preparation and submission of this statement must be performed by the Registry Operator or its designee, provided that such designee may not be the Escrow Agent or any of Escrow Agent’s Affiliates. Registry Operator will include the Deposit’s “id” and “resend” attributes in its statement. The attributes are explained in Part A, Section 9, reference 1 of this Specification.

If not already an RFC, Registry Operator will use the most recent draft version of the Interface Specification at the Effective Date. Registry Operator may at its election use newer versions of the Interface Specification after the Effective Date. Once the Interface Specification is published as an RFC, Registry Operator will implement that version of the Interface Specification, no later than one hundred eighty (180) calendar days after such publishing.

## 8. **Verification Procedure.**

- (1) The signature file of each processed file is validated.
- (2) If processed files are pieces of a bigger file, the latter is put together.
- (3) Each file obtained in the previous step is then decrypted and uncompressed.
- (4) Each data file contained in the previous step is then validated against the format defined in Part A, Section 9, reference 1 of this Specification.
- (5) The data escrow agent extended verification process, as defined below in reference 2 of Part A of this Specification 2, as well as any other data escrow verification process contained in such reference.

If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.

## 9. **References.**

- (1) Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
- (2) Domain Name Registration Data (DNRD) Objects Mapping, <http://tools.ietf.org/html/draft-arias-noguchi-dnrd-objects-mapping>
- (3) OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
- (4) OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>
- (5) ICANN interfaces for registries and data escrow agents, <http://tools.ietf.org/html/draft-lozano-icann-registry-interfaces>



## PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendments thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated as a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within fifteen (15) calendar days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees to ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed to ICANN or to a party designated in writing by ICANN on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis, for any use related to the operation, maintenance or transition of the TLD.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one (1) year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of the Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.

6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four (24) hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
- 6.1. the Registry Agreement has expired without renewal, or been terminated; or
  - 6.2. ICANN has not received a notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent within five (5) calendar days after the Deposit's scheduled delivery date; (a) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (b) ICANN has not, within seven (7) calendar days after such notice, received the notification from Escrow Agent; or
  - 6.3. ICANN has received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of failed verification of the latest escrow deposit for a specific date or a notification of a missing deposit, and the notification is for a deposit that should have been made on Sunday (i.e., a Full Deposit); (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven (7) calendar days after such notice, received notification as described in Part B, Sections 7.1 and 7.2 of this Specification from Escrow Agent of verification of a remediated version of such Full Deposit; or
  - 6.4. ICANN has received five notifications from Escrow Agent within the last thirty (30) calendar days notifying ICANN of either missing or failed escrow deposits that should have been made Monday through Saturday (i.e., a Differential Deposit), and (x) ICANN provided notice to Registry Operator of the receipt of such notifications; and (y) ICANN has not, within seven (7) calendar days after delivery of such notice to Registry Operator, received notification from Escrow Agent of verification of a remediated version of such Differential Deposit; or
  - 6.5. Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
  - 6.6. Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Agreement; or
  - 6.7. a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN; or
  - 6.8. pursuant to Contractual and Operational Compliance Audits as specified under Section 2.1 of the Agreement.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon expiration or termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**

- 7.1. Within twenty-four (24) hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a notification generated for each Deposit. Reports will be delivered electronically using the

API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification.

- 7.2. If Escrow Agent discovers that any Deposit fails the verification procedures or if Escrow Agent does not receive any scheduled Deposit, Escrow Agent must notify Registry Operator either by email, fax or phone and ICANN (using the API described in draft-lozano-icann-registry-interfaces, see Part A, Section 9, reference 5 of this Specification) of such nonconformity or non-receipt within twenty-four (24) hours after receiving the non-conformant Deposit or the deadline for such Deposit, as applicable. Upon notification of such verification or delivery failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to be delivered and pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders (“Indemnitees”) absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys’ fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent or its directors, officers, agents, employees and contractors.



## SPECIFICATION 3

### FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD, using the API described in draft-lozano-icann-registry-interfaces, see Specification 2, Part A, Section 9, reference 5, with the following content.

ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three (3) months after the end of the month to which the reports relate. Unless set forth in this Specification 3, any reference to a specific time refers to Coordinated Universal Time (UTC). Monthly reports shall consist of data that reflects the state of the registry at the end of the month (UTC).

1. **Per-Registrar Transactions Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv” where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field name	Description
01	registrar-name	Registrar’s full corporate name as registered with IANA
02	iana-id	For cases where the registry operator acts as registrar (i.e., without the use of an ICANN accredited registrar) either 9998 or 9999 should be used depending on registration type (as described in Specification 5), otherwise the sponsoring Registrar IANA id should be used as specified in <a href="http://www.iana.org/assignments/registrar-ids">http://www.iana.org/assignments/registrar-ids</a>
03	total-domains	total domain names under sponsorship in any EPP status but pendingCreate that have not been purged
04	total-nameservers	total name servers (either host objects or name server hosts as domain name attributes) associated with domain names registered for the TLD in any EPP status but pendingCreate that have not been purged
05	net-adds-1-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with an initial term of one (1) year (and not deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
06	net-adds-2-yr	number of domains successfully registered (i.e., not in EPP pendingCreate status) with



		deleted within the add grace period). A transaction must be reported in the month the add grace period ends.
15	net-renews-1-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of one (1) year (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
16	net-renews-2-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of two (2) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
17	net-renews-3-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of three (3) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
18	net-renews-4-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of four (4) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
19	net-renews-5-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of five (5) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
20	net-renews-6-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of six (6) years (and not deleted within the renew or auto-renew grace period). A transaction must be

		reported in the month the renew or auto-renew grace period ends.
21	net-renews-7-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of seven (7) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
22	net-renews-8-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of eight (8) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
23	net-renews-9-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of nine (9) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
24	net-renews-10-yr	number of domains successfully renewed (i.e., not in EPP pendingRenew status) either automatically or by command with a new renewal period of ten (10) years (and not deleted within the renew or auto-renew grace period). A transaction must be reported in the month the renew or auto-renew grace period ends.
25	transfer-gaining-successful	number of domain transfers initiated by this registrar that were successfully completed (either explicitly or automatically approved) and not deleted within the transfer grace period. A transaction must be reported in the month the transfer grace period ends.
26	transfer-gaining-nacked	number of domain transfers initiated by this registrar that were rejected (e.g., EPP transfer op="reject") by the other registrar
27	transfer-losing-successful	number of domain transfers initiated by another registrar that were successfully completed (either explicitly or automatically approved)

28	transfer-losing-nacked	number of domain transfers initiated by another registrar that this registrar rejected (e.g., EPP transfer op="reject")
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed (reported in the month where the determination happened)
30	transfer-disputed-lost	number of transfer disputes this registrar lost (reported in the month where the determination happened)
31	transfer-disputed-nodecision	number of transfer disputes involving this registrar with a split or no decision (reported in the month where the determination happened)
32	deleted-domains-grace	domains deleted within the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
33	deleted-domains-nograce	domains deleted outside the add grace period (does not include names deleted while in EPP pendingCreate status). A deletion must be reported in the month the name is purged.
34	restored-domains	domain names restored during reporting period
35	restored-noreport	total number of restored names for which a restore report is required by the registry, but the registrar failed to submit it
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (both successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a "header line" as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read "Totals" while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. **Registry Functions Activity Report.** This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars in the production system at the end of the reporting period
02	zfa-passwords	number of active zone file access passwords at the end of the reporting period; "CZDS" may be used instead of the number of active zone file access passwords, if the Centralized Zone Data Service (CZDS) is used to provide the zone file to the end user
03	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
04	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
05	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
06	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
07	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
08	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
09	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
10	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
11	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
12	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
13	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
14	srs-dom-renew	number of SRS (EPP and any other interface) domain name “renew” requests responded

Field #	Field Name	Description
		during the reporting period
15	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP "restore" requests delivering a restore report responded during the reporting period
16	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP "restore" requests responded during the reporting period
17	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name "transfer" requests to approve transfers responded during the reporting period
18	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name "transfer" requests to cancel transfers responded during the reporting period
19	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name "transfer" requests to query about a transfer responded during the reporting period
20	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name "transfer" requests to reject transfers responded during the reporting period
21	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name "transfer" requests to request transfers responded during the reporting period
22	srs-dom-update	number of SRS (EPP and any other interface) domain name "update" requests (not including RGP restore requests) responded during the reporting period
23	srs-host-check	number of SRS (EPP and any other interface) host "check" requests responded during the reporting period
24	srs-host-create	number of SRS (EPP and any other interface) host "create" requests responded during the reporting period
25	srs-host-delete	number of SRS (EPP and any other interface) host "delete" requests responded during the reporting period
26	srs-host-info	number of SRS (EPP and any other interface) host "info" requests responded during the reporting period
27	srs-host-update	number of SRS (EPP and any other interface) host "update" requests responded during the reporting period
28	srs-cont-check	number of SRS (EPP and any other interface) contact "check" requests responded during the reporting period

Field #	Field Name	Description
29	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period
30	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
31	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
32	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
33	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
34	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
35	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
36	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
37	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

For gTLDs that are part of a single-instance Shared Registry System, the Registry Functions Activity Report may include the total contact or host transactions for all the gTLDs in the system.



## SPECIFICATION 4

### REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

Registry Operator shall implement a new standard supporting access to domain name registration data (SAC 051) no later than one hundred thirty-five (135) days after it is requested by ICANN if: 1) the IETF produces a standard (i.e., it is published, at least, as a Proposed Standard RFC as specified in RFC 2026); and 2) its implementation is commercially reasonable in the context of the overall operation of the registry.

- 1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.
- 1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.
- 1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.
- 1.4. The fields specified below set forth the minimum output requirements. Registry Operator may output data fields in addition to those specified below, subject to approval by ICANN, which approval shall not be unreasonably withheld.

- 1.5. **Domain Name Data:**

- 1.5.1 **Query format:** whois EXAMPLE.TLD

- 1.5.2 **Response format:**

Domain Name: EXAMPLE.TLD  
 Domain ID: D1234567-TLD  
 WHOIS Server: whois.example.tld  
 Referral URL: http://www.example.tld  
 Updated Date: 2009-05-29T20:13:00Z  
 Creation Date: 2000-10-08T00:45:00Z  
 Registry Expiry Date: 2010-10-08T00:44:59Z  
 Sponsoring Registrar: EXAMPLE REGISTRAR LLC  
 Sponsoring Registrar IANA ID: 5555555  
 Domain Status: clientDeleteProhibited  
 Domain Status: clientRenewProhibited  
 Domain Status: clientTransferProhibited

Registrant ID: 5372808-ERL  
 Registrant Name: EXAMPLE REGISTRANT  
 Registrant Organization: EXAMPLE ORGANIZATION  
 Registrant Street: 123 EXAMPLE STREET  
 Registrant City: ANYTOWN  
 Registrant State/Province: AP  
 Registrant Postal Code: A1A1A1  
 Registrant Country: EX  
 Registrant Phone: +1.5555551212  
 Registrant Phone Ext: 1234  
 Registrant Fax: +1.5555551213  
 Registrant Fax Ext: 4321  
 Registrant Email: EMAIL@EXAMPLE.TLD  
 Admin ID: 5372809-ERL  
 Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE  
 Admin Organization: EXAMPLE REGISTRANT ORGANIZATION  
 Admin Street: 123 EXAMPLE STREET  
 Admin City: ANYTOWN  
 Admin State/Province: AP  
 Admin Postal Code: A1A1A1  
 Admin Country: EX  
 Admin Phone: +1.5555551212  
 Admin Phone Ext: 1234  
 Admin Fax: +1.5555551213  
 Admin Fax Ext:  
 Admin Email: EMAIL@EXAMPLE.TLD  
 Tech ID: 5372811-ERL  
 Tech Name: EXAMPLE REGISTRAR TECHNICAL  
 Tech Organization: EXAMPLE REGISTRAR LLC  
 Tech Street: 123 EXAMPLE STREET  
 Tech City: ANYTOWN  
 Tech State/Province: AP  
 Tech Postal Code: A1A1A1  
 Tech Country: EX  
 Tech Phone: +1.1235551234  
 Tech Phone Ext: 1234  
 Tech Fax: +1.5555551213  
 Tech Fax Ext: 93  
 Tech Email: EMAIL@EXAMPLE.TLD  
 Name Server: NS01.EXAMPLEREGISTRAR.TLD  
 Name Server: NS02.EXAMPLEREGISTRAR.TLD  
 DNSSEC: signedDelegation  
 DNSSEC: unsigned  
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

## 1.6. Registrar Data:

1.6.1 **Query format:** whois "registrar Example Registrar, Inc."

1.6.2 **Response format:**

Registrar Name: Example Registrar, Inc.  
 Street: 1234 Admiralty Way  
 City: Marina del Rey  
 State/Province: CA  
 Postal Code: 90292  
 Country: US  
 Phone Number: +1.3105551212  
 Fax Number: +1.3105551213  
 Email: registrar@example.tld  
 WHOIS Server: whois.example-registrar.tld  
 Referral URL: http://www.example-registrar.tld  
 Admin Contact: Joe Registrar  
 Phone Number: +1.3105551213  
 Fax Number: +1.3105551213  
 Email: joeregistrar@example-registrar.tld  
 Admin Contact: Jane Registrar  
 Phone Number: +1.3105551214  
 Fax Number: +1.3105551213  
 Email: janeregistrar@example-registrar.tld  
 Technical Contact: John Geek  
 Phone Number: +1.3105551215  
 Fax Number: +1.3105551216  
 Email: johngeek@example-registrar.tld  
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

## 1.7. Nameserver Data:

1.7.1 **Query format:** whois “nameserver (nameserver name)”, or whois “nameserver (IP Address).” For example: whois “nameserver NS1.EXAMPLE.TLD”.

### 1.7.2 Response format:

Server Name: NS1.EXAMPLE.TLD  
 IP Address: 192.0.2.123  
 IP Address: 2001:0DB8::1  
 Registrar: Example Registrar, Inc.  
 WHOIS Server: whois.example-registrar.tld  
 Referral URL: http://www.example-registrar.tld  
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.8. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers (the extension will be provided as a separate field as shown above), email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.9. In order to be compatible with ICANN’s common interface for WHOIS (InterNIC), WHOIS output shall be in the format outline above.

section.

- 1.10.1 Registry Operator will offer searchability on the web-based Directory Service.
- 1.10.2 Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).
- 1.10.3 Registry Operator will offer exact-match capabilities, at least, on the following fields: Registrar ID, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).
- 1.10.4 Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.
- 1.10.5 Search results will include domain names matching the search criteria.
- 1.10.6 Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.
- 1.11. Registry Operator shall provide a link on the primary website for the TLD (i.e., the website provided to ICANN for publishing on the ICANN website) to a web page designated by ICANN containing WHOIS policy and educational materials.

## 2. Zone File Access

### 2.1. Third-Party Access

- 2.1.1 **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user, which will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider, which may be ICANN or an ICANN designee (the "CZDA Provider"). Registry Operator (optionally through the CZDA Provider) will provide access to zone file data per Section 2.1.3 of this Specification and do so using the format described in Section 2.1.4 of this Specification. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 below or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5 below.
- 2.1.2 **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address and IP address.

**2.1.3 Grant of Access.** Each Registry Operator (optionally through the CZDA Provider) will provide the Zone File SFTP (or other Registry supported) service for an ICANN specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry's zone data archives. Registry Operator will grant the user a non-exclusive, nontransferable, limited right to access Registry Operator's (optionally CZDA Provider's) Zone File hosting server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using SFTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator (or the CZDA Provider) also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

**2.1.4 File Format Standard.** Registry Operator (optionally through the CZDA Provider) will provide zone files using a subformat of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.
3. TTL must be present as a decimal integer.
4. Use of \X and \DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.

15. No blank lines.

16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each zone goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5 **Use of Data by User.** Registry Operator will permit user to use the zone file for lawful purposes; provided that (a) user takes all reasonable steps to protect against unauthorized access to, use of, and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to (i) allow, enable or otherwise support any marketing activities to entities other than the user's existing customers, regardless of the medium used (such media include but are not limited to transmission by e-mail, telephone, facsimile, postal mail, SMS, and wireless alerts of mass unsolicited, commercial advertising or solicitations to entities), (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar, or (iii) interrupt, disrupt or interfere in the normal business operations of any registrant.

2.1.6 **Term of Use.** Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7 **No Fee for Access.** Registry Operator will provide, and CZDA Provider will facilitate access to the zone file to user at no cost.

## 2.2. Co-operation

2.2.1 **Assistance.** Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3. **ICANN Access.** Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time. Access will be provided at least daily. Zone files will include SRS data committed as close as possible to 00:00:00 UTC.

2.4. **Emergency Operator Access.** Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

## 3. Bulk Registration Data Access to ICANN

3.1. **Periodic Access to Thin Registration Data.** In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for

- 3.1.1 **Contents.** Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), Registrar ID (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar id (IANA ID), hostname of registrar Whois server, and UR of registrar.
- 3.1.2 **Format.** The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.
- 3.1.3 **Access.** Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.
- 3.2. **Exceptional Access to Thick Registration Data.** In case of a registrar failure, deaccreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data as soon as commercially practicable, but in no event later than five (5) calendar days following ICANN's request. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1 of this Specification.

## SPECIFICATION 5

### SCHEDULE OF RESERVED NAMES

Except to the extent that ICANN otherwise expressly authorizes in writing, and subject to the terms and conditions of this Specification, Registry Operator shall reserve the following labels from initial (i.e., other than renewal) registration within the TLD. If using self-allocation, the Registry Operator must show the registration in the RDDS. In the case of IDN names (as indicated below), IDN variants will be identified according to the registry operator IDN registration policy, where applicable.

1. **Example.** The ASCII label “EXAMPLE” shall be withheld from registration or allocated to Registry Operator at the second level and at all other levels within the TLD at which Registry Operator offers registrations (such second level and all other levels are collectively referred to herein as, “All Levels”). Such label may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator’s designation as operator of the registry for the TLD, such withheld or allocated label shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such name without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.
2. **Two-character labels.** All two-character ASCII labels shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Such labels may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator, provided that such two-character label strings may be released to the extent that Registry Operator reaches agreement with the related government and country-code manager of the string as specified in the ISO 3166-1 alpha-2 standard. The Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN. Upon conclusion of Registry Operator’s designation as operator of the registry for the TLD, all such labels that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.
3. **Reservations for Registry Operations.**
  - 3.1. The following ASCII labels must be withheld from registration or allocated to Registry Operator at All Levels for use in connection with the operation of the registry for the TLD: WWW, RDDS and WHOIS. The following ASCII label must be allocated to Registry Operator upon delegation into the root zone at All Levels for use in connection with the operation of the registry for the TLD: NIC. Registry Operator may activate WWW, RDDS and WHOIS in the DNS, but must activate NIC in the DNS, as necessary for the operation of the TLD (in accordance with the provisions of Exhibit A, the ASCII label NIC must be provisioned in the DNS as a zone cut using NS resource records). None of WWW, RDDS, WHOIS or NIC may be released or registered to any person (other than Registry Operator) or third party. Upon conclusion of Registry Operator’s designation as operator of the registry for the TLD, all such withheld or allocated names shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement. Such domains shall be identified by Registrar ID 9999.



4. **Country and Territory Names.** The country and territory names (including their IDN variants, where applicable) contained in the following internationally recognized lists shall be withheld from registration or allocated to Registry Operator at All Levels:
- 4.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union  
<[http://www.iso.org/iso/support/country\\_codes/iso\\_3166\\_code\\_lists/iso-3166-1\\_decoding\\_table.htm](http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm)>;
  - 4.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
  - 4.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names (including their IDN variants according to the registry operator IDN registration policy, where applicable) may be released to the extent that Registry Operator reaches agreement with the applicable government(s). Registry Operator must not activate such names in the DNS; provided, that Registry Operator may propose the release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

5. **International Olympic Committee; International Red Cross and Red Crescent Movement.** As instructed from time to time by ICANN, the names (including their IDN variants, where applicable) relating to the International Olympic Committee, International Red Cross and Red Crescent Movement listed at <http://www.icann.org/en/resources/registries/reserved> shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Additional International Olympic Committee, International Red Cross and Red Crescent Movement names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Such names may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such names withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.
6. **Intergovernmental Organizations.** As instructed from time to time by ICANN, Registry Operator will implement the protections mechanism determined by the ICANN Board of Directors relating to the protection of identifiers for Intergovernmental Organizations. A list of reserved names for this Section 6 is available at <http://www.icann.org/en/resources/registries/reserved>. Additional names (including their IDN variants) may be added to the list upon ten (10) calendar days notice from ICANN to Registry Operator. Any such protected identifiers for Intergovernmental

Organizations may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator. Upon conclusion of Registry Operator's designation as operator of the registry for the TLD, all such protected identifiers shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN accredited registrar, which will not be considered Transactions for purposes of Section 6.1 of the Agreement.

## SPECIFICATION 6

### REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

#### 1. Standards Compliance

- 1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF), including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1123, 1982, 2181, 2182, 3226, 3596, 3597, 4343, 5966 and 6891. DNS labels may only include hyphens in the third and fourth position if they represent valid IDNs (as specified above) in their ASCII encoding (e.g., “xn--ndk061n”).
- 1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732 (if using host objects), 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.
- 1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). For the absence of doubt, Registry Operator shall sign the zone file of <TLD> and zone files used for in-bailiwick glue for the TLD’s DNS servers. During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 6781 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in RFC 6841. DNSSEC validation must be active and use the IANA DNS Root Key Signing Key set (available at <https://www.iana.org/dnssec/files>) as a trust anchor for Registry Operator’s Registry Services making use of data obtained via DNS responses.
- 1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices.

corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g., Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six (6) months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

- 1.6. **IANA Rootzone Database.** In order to ensure that authoritative information about the TLD remains publicly available, Registry Operator shall submit a change request to the IANA functions operator updating any outdated or inaccurate DNS or WHOIS records of the TLD. Registry Operator shall use commercially reasonable efforts to submit any such change request no later than seven (7) calendar days after the date any such DNS or WHOIS records becomes outdated or inaccurate. Registry Operator must submit all change requests in accordance with the procedures set forth at <http://www.iana.org/domains/root>.
- 1.7. **Network Ingress Filtering.** Registry Operator shall implement network ingress filtering checks for its Registry Services as described in BCP 38 and BCP 84, which ICANN will also implement.

## 2. Registry Services

- 2.1. **Registry Services.** “Registry Services” are, for purposes of the Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.
- 2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

## 3. Registry Continuity

- 3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-nod

level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator. Registry Operator's emergency operations department shall be available at all times to respond to extraordinary occurrences.

3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within twenty-four (24) hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of forty-eight (48) hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

#### 4. **Abuse Mitigation**

4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operator shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

#### 5. **Supported Initial and Renewal Registration Periods**

5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) year

5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

#### 6. **Name Collision Occurrence Management**

6.1. **No-Activation Period.** Registry Operator shall not activate any names in the DNS zone for the Registry TLD (except for "NIC") until at least 120 calendar days after the effective date of this agreement. Registry Operator may allocate names (subject to subsection 6.2 below

during this period only if Registry Operator causes registrants to be clearly informed of the inability to activate names until the No-Activation Period ends.

## 6.2. Name Collision Occurrence Assessment

- 6.2.1 Registry Operator shall not activate any names in the DNS zone for the Registry TLD except in compliance with a Name Collision Occurrence Assessment provided by ICANN regarding the Registry TLD. Registry Operator will either (A) implement the mitigation measures described in its Name Collision Occurrence Assessment before activating any second-level domain name, or (B) block those second-level domain names for which the mitigation measures as described in the Name Collision Occurrence Assessment have not been implemented and proceed with activating names that are not listed in the Assessment.
- 6.2.2 Notwithstanding subsection 6.2.1, Registry Operator may proceed with activation of names in the DNS zone without implementation of the measures set forth in Section 6.2.1 only if (A) ICANN determines that the Registry TLD is eligible for this alternative path to activation of names; and (B) Registry Operator blocks all second level domain names identified by ICANN and set forth at <http://newgtlds.icann.org/en/announcements-and-media/announcement-2-17nov13-en> as such list may be modified by ICANN from time to time. Registry Operator may activate names pursuant to this subsection and later activate names pursuant to subsection 6.2.1.
- 6.2.3 The sets of names subject to mitigation or blocking pursuant to Sections 6.2.1 and 6.2.2 will be based on ICANN analysis of DNS information including "Day in the Life of the Internet" data maintained by the DNS Operations, Analysis, and Research Center (DNS-OARC) <https://www.dns-oarc.net/oarc/data/ditl>.
- 6.2.4 Registry Operator may participate in the development by the ICANN community of process for determining whether and how these blocked names may be released.
- 6.2.5 If ICANN determines that the TLD is ineligible for the alternative path to activation of names, ICANN may elect not to delegate the TLD pending completion of the final Name Collision Occurrence Assessment for the TLD, and Registry Operator's completion of all required mitigation measures. Registry Operator understands that the mitigation measures required by ICANN as a condition to activation of names in the DNS zone for the TLD may include, without limitation, mitigation measures such as those described in Section 3.2 of the New gTLD Name Collision Occurrence Management Plan approved by the ICANN Board New gTLD Program Committee (NGPC) on 7 October 2013 as found at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf>.

## 6.3. Name Collision Report Handling

- 6.3.1 During the first two years after delegation of the TLD, Registry Operator's emergency operations department shall be available to receive reports, relayed by ICANN, alleging demonstrably severe harm from collisions with overlapping use of the names outside of the authoritative DNS.

- 6.3.2 Registry Operator shall develop an internal process for handling in an expedited

Operator may, to the extent necessary and appropriate, remove a recently activated name from the TLD zone for a period of up to two years in order to allow the affected party to make changes to its systems.

## SPECIFICATION 7

### MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to the rights protection mechanisms (“RPMs”) specified in this Specification. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all RPMs required by this Specification 7 and any additional RPMs developed and implemented by Registry Operator in the Registry-Registrar Agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements set forth therein each of the mandatory RPMs set forth in the Trademark Clearinghouse as of the date hereof, as posted at <http://www.icann.org/en/resources/registries/tmch-requirements> (the “Trademark Clearinghouse Requirements”), which may be revised in immaterial respects by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse. If there is a conflict between the terms and conditions of this Agreement and the Trademark Clearinghouse Requirements, the terms and conditions of this Agreement shall control. Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar authorizing such registrar(s) to register domain names in the TLD as follows:
  - a. if Registry Operator conducts a Qualified Launch Program or is authorized by ICANN to conduct an Approved Launch Program (as those terms are defined in the Trademark Clearinghouse Requirements), Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar prior to allocating any domain names pursuant to such Qualified Launch Program or Approved Launch Program, as applicable;
  - b. if Registry Operator does not conduct a Qualified Launch Program or is not authorized by ICANN to conduct an Approved Launch Program, Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar at least thirty (30) calendar days prior to the expiration date of the Sunrise Period (as defined in the Trademark Clearinghouse Requirements) for the TLD; or
  - c. if this Agreement contains a Specification 13, Registry Operator must enter into a binding and enforceable Registry-Registrar Agreement with at least one ICANN accredited registrar prior to the Claims Commencement Date (as defined in Specification 13).

Nothing in this Specification 7 shall limit or waive any other obligations or requirements of this Agreement applicable to Registry Operator, including Section 2.9(a) and Specification 9.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:
  - a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at <http://www.icann.org/en/resources/registries/pddrp> and <http://www.icann.org/en/resources/registries/rrdrp>, respectively). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy including for the avoidance of doubt the termination of the Registry

Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and

- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at <http://www.icann.org/en/resources/registries/urs>), including the implementation of determinations issued by URS examiners.

## SPECIFICATION 8

### CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6<sup>th</sup>) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. If Registry Operator elects to obtain an irrevocable standby letter of credit but the term required above is unobtainable, Registry Operator may obtain a letter of credit with a one-year term and an “evergreen provision,” providing for annual extensions, without amendment, for an indefinite number of additional periods until the issuing bank informs ICANN of its final expiration or until ICANN releases the letter of credit as evidenced in writing, if the letter of credit otherwise meets the requirements set forth in item 50(b) of Attachment to Module 2 – Evaluation Questions and Criteria – of the gTLD Applicant Guidebook, as published and supplemented by ICANN prior to the date hereof; provided, however, that if the issuing bank informs ICANN of the expiration of such letter of credit prior to the sixth (6th) anniversary of the Effective Date, such letter of credit must provide that ICANN is entitled to draw the funds secured by the letter of credit prior to such expiration. The letter of credit must require the issuing bank to give ICANN at least thirty (30) calendar days’ notice of any such expiration or non-renewal. If the letter of credit expires or is terminated at any time prior to the sixth (6th) anniversary of the Effective Date, Registry Operator will be required to obtain a replacement Continued Operations Instrument. ICANN may draw the funds under the original letter of credit, if the replacement Continued Operations Instrument is not in place prior to the expiration of the original letter of credit. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld).
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an Alternative Instrument). Any such Alternative Instrument shall be on terms no less

favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.

3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an Alternative Instrument that (i) provides for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section 6 of Specification 10 to this Agreement for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operator replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such Alternative Instrument(s), and such instrument shall thereafter be considered the Continued Operations Instrument for purposes of this Agreement.

## SPECIFICATION 9

### REGISTRY OPERATOR CODE OF CONDUCT

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
  - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
  - b. register domain names in its own right, except for names registered through an ICANN accredited registrar; provided, however, that Registry Operator may (a) reserve names from registration pursuant to Section 2.6 of the Agreement and (b) may withhold from registration or allocate to Registry Operator up to one hundred (100) names pursuant to Section 3.2 of Specification 5;
  - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, “front-running”); or
  - d. allow any Affiliated registrar to disclose Personal Data about registrants to Registry Operator or any Registry Related Party, except as reasonably necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations
3. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will conduct internal reviews at least once per calendar year to ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator’s compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification; provided, however, ICANN shall not disclose Confidential Information contained in such results except in accordance with Section 7.15 of the Agreement.
4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator’s non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN in investigations of claims of Registry Operator’s non-compliance with this Code of Conduct.

5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its Affiliate; (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

## SPECIFICATION 10

### REGISTRY PERFORMANCE SPECIFICATIONS

#### 1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or RTT refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

#### 2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
<b>DNS</b>	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
<b>RDDS</b>	DNS update time	≤ 60 min, for at least 95% of the probes
	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
<b>EPP</b>	RDDS update time	≤ 60 min, for at least 95% of the probes
	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands



domain name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

- 3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.
- 3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

#### 4. **RDDS**

- 4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.
- 4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.
- 4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.
- 4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.
- 4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

- 4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

## 5. EPP

- 5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.
- 5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.
- 5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.
- 5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.
- 5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

- 5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**” of

inside each category. If an “EPP test” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

- 5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions and care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

## 6. Emergency Thresholds

The following matrix presents the emergency thresholds that, if reached by any of the services mentioned above for a TLD, would cause the emergency transition of the Registry for the TLD as specified in Section 2.13 of this Agreement.

Critical Function	Emergency Threshold
DNS Service	4-hour total downtime / week
DNSSEC proper resolution	4-hour total downtime / week
EPP	24-hour total downtime / week
RDDS	24-hour total downtime / week
Data Escrow	Reaching any of the criteria for the release of deposits described in Specification 2, Part B, Section 6.2 through Section 6.6.

## 7. Emergency Escalation

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

### 7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6 of this Specification, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the commitment to begin the process of rectifying issues with either the monitoring service or the service being monitored.

## 7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations department prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the registry for the TLD because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an emergency escalation to the emergency operations department of ICANN. ICANN then may initiate an emergency escalation with the Registry Operator as explained above.

## 7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, it will provide notice to the ICANN emergency operations department, at least, twenty-four (24) hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per its contractual obligations with ICANN, on services under a service level agreement and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend emergency escalation services for the monitored services involved.

## 8. Covenants of Performance Measurement

- 8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as if it would to any other request from an Internet user (for DNS and RDDS) or registrar (for EPP).
- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement. Registry Operator shall identify these transactions using Registrar ID 9997.



## SPECIFICATION 11

### PUBLIC INTEREST COMMITMENTS

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on 27 June 2013 in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN's website.
2. Registry Operator will operate the registry for the TLD in compliance with all commitments, statements of intent and business plans stated in the following sections of Registry Operator's application to ICANN for the TLD, which commitments, statements of intent and business plans hereby incorporated by reference into this Agreement. Registry Operator's obligations pursuant to this paragraph shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at <http://www.icann.org/en/resources/registries/picdrp>), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination

[Registry Operator to insert specific application sections here, if applicable]

3. Registry Operator agrees to perform the following specific public interest commitments, which commitments shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN (posted at <http://www.icann.org/en/resources/registries/picdrp>), which may be revised in immaterial respects by ICANN from time to time (the "PICDRP"). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Agreement) following a determination by any PICDRP panel and to be bound by any such determination.
  - a. Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.
  - b. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

- d. Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registered names in the TLD that limit registrations exclusively to a single person or entity and/or to a person’s or entity’s “Affiliates” (as defined in Section 2.9(c) of the Registry Agreement). “Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those of others.



–  
**SPECIFICATION 12**

**COMMUNITY REGISTRATION POLICIES**

Registry Operator shall implement and comply with all community registration policies described below and/or attached to this Specification 12.

[Insert registration policies]

**EXHIBIT JJN-70**



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### Relying on ICANN Community-Developed Processes for a Safe, Secure Internet

5 January 2022

By [John Jeffrey](#) and [Theresa Swinehart](#)

We have observed community discussions and received comments and questions about ICANN's top-level domain (TLD) Registry Agreement assignment approval process and a recent Urgent Reconsideration

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Request considered by the ICANN Board Accountability Mechanisms Committee (BAMC). We believe it is important to provide context to some of these discussions.

### Proposed Assignments of TLD Registry Agreements

In May 2021, ICANN began receiving formal assignment notifications and requests for approval relating to the proposed assignments of top-level domain (TLD) Registry Agreements by UNR Corp. (UNR). With the exception of one TLD, the assignments are the result of private, non-ICANN affiliated auctions held by UNR for several of its TLDs in April 2021.

The UNR auctions offered these TLDs in an unconventional manner. The marketing materials and other communications associated with the UNR auctions indicated that the potential assignees would receive ownership rights, possibly denoting some form of property right or interest. The marketing materials also asserted that the potential assignees would have the power to control the entire name spaces of the TLDs in both the Domain Name System (DNS) and the Ethereum Name Service (ENS). This has led us to ask specific questions during our diligence to understand whether UNR was asserting authority in this regard. Additionally, the UNR offering included "newly minted NFTs" (non-fungible tokens) in the ENS for suffixes identical to the TLDs UNR operates under registry agreements with ICANN.

These assertions raised questions and concerns during our review, particularly with regard to ownership, as TLDs are not considered property. The statements also raise potential issues and consequences related to the Consensus Policies created by the ICANN community, name collisions, contractual compliance, predictability for users, consumer interests, and rights protection as it relates to receiving rights to a TLD in both the DNS and the ENS. Additionally, we are aware that some of the TLDs put out for auction by UNR are meant to support certain public interests, and therefore those Registry Agreements contain specific Public Interest Commitments or Community Registration Policies with unique and specific binding obligations on the registry operator.

Since May 2021, we have been conducting diligence of the proposed assignment requests to inform the decision of whether to approve the assignments. This diligence includes asking questions to ensure the proposed assignees meet the community-established criteria for a registry operator, as well as to ensure a clear understanding of the transactions and any impact such an approval could have on ICANN's remit and responsibilities. This is work ICANN does regularly, as we receive and process numerous transactions each year, some of which are simple and some more complex. This proposed assignment falls into the category of more complex and in this instance, it has been difficult to get clear answers to our questions resulting from the diligence process.

Since May, ICANN has repeatedly requested information and asked clarifying questions of UNR and the potential assignees. UNR and the potential assignees have provided, and continue to provide, additional

[and-ceo-search-enters-the-next-phase-22-06-2023-en](#))

[A Look Back at ICANN77 \(/en/blogs/details/a-look-back-at-icann77-21-06-2023-en\)](#)

[U.N. Secretary General Policy Report: Considerations for the ICANN Community \(/en/blogs/details/un-secretary-general-policy-report-considerations-for-the-icann-community-13-06-2023-en\)](#)

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### Blogs by Author

[ICANN Board Approves RDAP Amendments \(/en/blogs/details/icann-board-approves-rdap-amendments-04-05-2023-en\)](#)

[Evolution of WHOIS Services to Provide Better Experience \(/en/blogs/details/evolution-of-whois-services-to-provide-better-experience-15-12-2022-en\)](#)

[Share Your Feedback on the Registration Data Policy Implementation Plan \(/en/blogs/details/share-your-feedback-on-the-registration-data-policy-implementation-plan-24-08-2022-en\)](#)

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information throughout this process, including new answers as recently as 30 December 2021. ICANN is evaluating this new information.

Despite assertions made publicly, ICANN has not indicated that the issuance of NFTs was the primary concern relating to the transactions. ICANN questioned what purpose they serve. ICANN org has since been informed that the NFTs have been destroyed. This only serves to make the issue more confusing since the NFTs were marketed as enhancing the value of the offering, but now are set out as unimportant and of no value. There is no indication that the rights intended to be conferred did or did not exist, or where the authority to issue them or destroy them came from, or how that related to auctioning TLD's conferred via contracts with ICANN.

### **Urgent Reconsideration Request Submission**

On 14 December 2021, ICANN received an Urgent Reconsideration Request submitted by one of the potential assignees challenging alleged staff inaction on the requested assignment of one specific TLD, .HIPHOP. The BAMC concluded that the request did not meet the requirements for urgent reconsideration as mandated in ICANN's Bylaws.

While the BAMC considered the request for urgent treatment of the Reconsideration Request, it did not evaluate the merits of the request and determined that the Reconsideration Request will proceed under the regular time frame of the Reconsideration process set forth in the Bylaws. This process requires several steps, all of which are to be completed no later than 135 days from ICANN's receipt of the request, or 28 April 2022. More specifically, the BAMC must first decide if the request is sufficiently stated (see ICANN Bylaws, Article 4, section 4.2(k)). If so, then the ICANN Ombudsman must determine within 15 days of receipt (see Id., section 4.2(l)(ii)) if it is appropriate to evaluate the matter and make a recommendation to the BAMC, or to pass the matter directly to the BAMC. Following the Ombudsman step, the BAMC must then make a recommendation to the Board 30 days after receiving the Ombudsman's response, unless impractical (see Id., section 4.2 (q)). The Board must then make a final decision within 45 days of receipt of the BAMC recommendation, or as soon after as feasible, but in no event later than 135 days following ICANN org's receipt of the request (see Id., section 4.2(r)).

Representatives of .HIPHOP have made assertions that ICANN is retaliating against them by pausing the review of the request by UNR to assign that specific TLD while the matter is being considered under the Reconsideration Request process. Pausing review while an accountability mechanism is processed is a long-standing practice for ICANN, but we are considering the potential impact on the requestor as we have been requested to do. ICANN has often treated similarly situated requests evoking the ICANN Accountability Mechanisms by placing consideration by ICANN on hold, during the review phases, so that the information regarding the request can be reviewed without the information relating to such request shifting or changing during the review period, and to avoid Accountability Mechanisms from being used to pressure ICANN to make a

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decision on any basis other than the public interest. We have received correspondence from UNR and are reviewing many pieces of correspondence, blogs, and community outreach from representatives of .HIPHOP since the original Reconsideration Request was filed and are concerned that the information and record is still evolving. That said, we are still seeking to continue to evaluate and review the totality of the UNR requests and thereby .HIPHOP, as the answers relate to them, as soon as possible.

## ICANN's Responsibility and Remit

ICANN enters into contractual agreements with registry operators by following Board-adopted, community-developed policies and processes, with the objective of establishing the rights, duties, and obligations required to operate TLDs. The intention of these agreements and the community-developed Consensus Policies are to protect domain name holders, rights holders, and end users by helping to maintain a stable, secure, and resilient DNS. Registry Operators adherence to these requirements are critical, and ICANN's means to enforce such obligations is through the Registry Agreements for TLDs in the DNS.

ICANN's responsibility is to consider and thoroughly evaluate all requests that impact the landscape of the Internet ecosystem or users' access to critical global resources. ICANN must conduct the necessary diligence to ensure that the potential gaining registry will abide by the commitments in the Registry Agreement. It would be irresponsible not to consider the implications before such a precedent is set.

We are providing this information to continue to enhance ICANN's performance of its responsibilities with accountability and transparency, following the processes decided by the global community and integrated into ICANN's Bylaws. As a nonprofit, public-benefit corporation with participants from all over the world, ICANN is conducting its work, within its mission, according to policies, processes, and accountability mechanisms as established by the community to ensure that the Internet continues to evolve in a safe, secure, and reliable manner.

Technology will always change and evolve, and the Internet will change and evolve, making way for new innovation, competition, and choice. The ICANN community is open to all participants, and open discussions about the Internet's unique identifiers. We all must consider how we together perform our areas of responsibility while also ensuring a stable, secure, predictable addressing system for users and economies globally.

## Authors



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Secretary, Co-Deputy to  
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[Read biography.](#)



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SVP, Global Domains and Strategy, Co-Deputy to the President and CEO

[Read biography.](#)

### You May Also Like

[ICANN and Contract Negotiations Update: Improved DNS Abuse Requirements \(/en/blogs/details/icann-and-contract-negotiations-update-improved-dns-abuse-requirements-30-05-2023-en\)](/en/blogs/details/icann-and-contract-negotiations-update-improved-dns-abuse-requirements-30-05-2023-en)

[ICANN Opens Public Comment for RA and RAA Amendments \(/en/blogs/details/icann-opens-public-comment-for-ra-and-raa-amendments-06-09-2022-en\)](/en/blogs/details/icann-opens-public-comment-for-ra-and-raa-amendments-06-09-2022-en)

[ICANN Updates UNR Registry Agreement Assignments Status \(/en/blogs/details/icann-updates-unr-registry-agreement-assignments-status-21-03-2022-en\)](/en/blogs/details/icann-updates-unr-registry-agreement-assignments-status-21-03-2022-en)

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[Explore Our Social Media Hub and Follow Us on ICANN's Official Accounts \(/resources/pages/social-media-2020-12-14-en\)](/resources/pages/social-media-2020-12-14-en)

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<a href="http://learn.icann.org">ICANN Learn (http://learn.icann.org)</a>	<a href="/en/help">I Need Help (/en/help)</a>	<a href="/resources/pages/report-disclosure">Report Disclosure (/resources/pages/report-disclosure)</a>	<a href="/en/about/agreements">Agreements (/en/about/agreements)</a>	<a href="/en/help/dndr">Domain Name Dispute Resolution (/en/help/dndr)</a>	
<a href="/en/about/participate">Participate (/en/about/participate)</a>	<a href="/resources/pages/report-security-issues">Report Security Issues (/resources/pages/report-security-issues)</a>	<a href="/en/about/transparency">Document Disclosure (/en/about/transparency)</a>	<a href="/resources/reviews/orc">Reviews (/resources/reviews/orc)</a>	<a href="/en/help/name-collision">Name Collision (/en/help/name-collision)</a>	
<a href="/diversity-en">Diversity at ICANN (/diversity-en)</a>	<a href="2018-05-24-en">Certificate Authority (/contact/certificate-authority)</a>	<a href="/resources/pages/irp">Independent Review Process (/resources/pages/irp)</a>	<a href="/resources/reviews/ad">Annual Report (/resources/reviews/ad)</a>	<a href="https://whois.icann.org/en">ICANN Lookup (https://whois.icann.org/en)</a>	
<a href="/resources/pages/groups">Groups (/resources/pages/groups)</a>		<a href="2012-02-25-en">2012-02-25-en</a>	<a href="/about/annual-report">Annual Report (/about/annual-report)</a>		
<a href="/resources/pages/board">Board (/resources/pages/board)</a>					

<a href="#">of-directors-2014-03-19-en</a>	<a href="#">Registry Liaison (/resources/pages/cor</a>	<a href="#">Request for Reconsideration (/resources/pages/accountability/reconsideration-en)</a>	<a href="#">Financials (/en/about/financials)</a>
<a href="#">CEO Corner (/presidentsandceo-corner)</a>	<a href="#">f2-2012-02-25-en) Ombudsman (/ombudsman)</a>	<a href="#">en) Empowered Community (/ec)</a>	<a href="#">Planning (/en/about/planning)</a>
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**EXHIBIT JJN-71**

# Assignment of Registry Agreement or Registry Operator Change of Control

This page is available in:

English |

العربية (<https://www.icann.org/resources/pages/assignment-registry-agreement-registry-operator-change-control-2022-12-06-ar>) |

Español (<https://www.icann.org/resources/pages/assignment-registry-agreement-registry-operator-change-control-2022-12-06-es>) |

Français

(<https://www.icann.org/resources/pages/assignment-registry-agreement-registry-operator-change-control-2022-12-06-fr>) |

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Русский

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|

中文 (<https://www.icann.org/resources/pages/assignment-registry-agreement-registry-operator-change-control-2022-12-06-zh>)

Please note that the English language version of all translated content and documents are the official versions and that translations in other languages are for informational purposes only.

For registry operators subject to the base new gTLD (generic Top Level Domain) Registry Agreement ("Registry Agreement"), any proposed assignment of the Registry Agreement or direct or indirect change of control of the

registry operator must follow the process set forth in Section 7.5 of the Registry Agreement.

- **Assignment** (</resources/assignments>) - occurs when the registry operator transfers any of its rights and/or obligations under the Registry Agreement to another entity. Assignments can be classified as:
  - Assignment to Affiliated Assignee
  - Assignment to Existing Registry Operator
  - Assignment to New Registry Operator
- **Change of Control** (</resources/change-of-control>) - occurs when there is a change in the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of the registry operator. Please refer to the definition of "control" in [Section 2.9](#) (<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html#article2.9>)(c) of the Registry Agreement.

The review and approval processes for assignments or changes of control will follow related but distinct paths, which may vary depending on the specific set of circumstances surrounding the transaction. For further information and instructions on submitting a request, please visit the [Assignment](/resources/assignments) (</resources/assignments>) or [Change of Control](/resources/change-of-control) (</resources/change-of-control>) webpages.

If your request is related to a subcontracting arrangement of any Critical Function (as identified in Section 6 of [Specification 10](#) (<https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-31jul17-en.html#specification10>) of the Registry Agreement), please visit the [Material Subcontracting Arrangement \(MSA \(Material Subcontracting Agreement\)\)](#).

change webpage (/resources/material-subcontracting-arrangement) for further details. **When both an assignment of a Registry Agreement and MSA (Material Subcontracting Agreement) change are being contemplated simultaneously, please keep in mind the timing of submission because an MSA (Material Subcontracting Agreement) change request must be started and completed under the same registry operator.**

ICANN (Internet Corporation for Assigned Names and Numbers) organization encourages early engagement with your account manager when planning for these types of transactions to help you better understand the service request case(s) that may be applicable, including any timing considerations. To schedule a consultation call, registry operators may contact their account managers directly or open a General Inquiry case in the Naming Services portal (<https://portal.icann.org/>). Note that any such inquiries shall not be considered notice of an assignment or change of control as required by the Registry Agreement.

*Registry operators are not to construe any consultations with ICANN (Internet Corporation for Assigned Names and Numbers) organization as legal, business or tax advice. Each registry operator should consult its own attorney, accountant or other professional advisors concerning legal, business, tax, or other matters concerning the proposed assignment or change of control. No statement contained herein shall be deemed to modify or supplement in any way the provisions of the Registry Agreement. This webpage and the various linked webpages herein are resources and guides only and by no means limits ICANN (Internet Corporation for Assigned Names and Numbers)'s rights provided under the Registry Agreements or limits ICANN (Internet Corporation for Assigned Names and Numbers) in performing its diligence of the assignment requests.*

**EXHIBIT JJN-72**

Search



## New Generic Top-Level Domains

ICANN APPLICANT GUIDEBOOK NAMING SERVICES PORTAL GLOBAL SUPPORT

### OBJECTION DETERMINATIONS

In April 2013, ICANN published the [list of Objections](#) filed that passed the Dispute Resolution Service Providers' (DRSPs') administrative reviews. Determinations made by the expert panels are published in the Determination column of the table below. ICANN will update this table as new Determinations become available. The date listed in the Determination Date column represents the actual date of the Determination, which can be found in each PDF file. The Determination Publication Date column reflects the date that ICANN published the Determination.

More information on Objections and Determinations can be found on DRSP websites:

- [String Confusion Objections](#) (The International Center for Dispute Resolution)
- [Existing Legal Rights Objections](#) (WIPO Arbitration and Mediation Center)
- [Limited Public Interest Objections](#) (The International Center of Expertise of the International Chamber of Commerce)
- [Community Objections](#) (The International Center of Expertise of the International Chamber of Commerce)

String	Application ID	Applicant	Objector	Objection Type	Determination
ACADEMY	1-1336-51768	Half Oaks, LLC	Academy, Ltd., d/b/a Academy Sports + Outdoors	Legal Rights	Applicant Prevailed
AMAZON	1-1315-58086	Amazon EU S.à r.l.	Prof. Alain Pellet, Independent Objector	Community	Applicant Prevailed
ARCHITECT	1-1342-7920	Spring Frostbite, LLC	The International Union of Architects	Community	Objector Prevailed
AUTOINSURANCE	1-1191-86372	Allstate Fire and Casualty Insurance Company	American Insurance Association	Community	Application Withdrawn
AXIS	1-1934-72316	Saudi Telecom Company	Axis Communications AB/ Axis AB	Legal Rights	Terminated
BAND	1-1350-42613	Auburn Hollow, LLC	American Association of	Community	Applicant Prevailed

			Independent Music (A2IM)		
BAND	1-856-54878	Red Triangle, LLC	American Association of Independent Music (A2IM)	Community	Applicant Prevailed
BANK	1-1053-59307	Dotsecure Inc.	International Banking Federation	Community	Objector Prevailed
BASKETBALL	1-1199-43437	dot Basketball Limited	Fédération Internationale de Basketball (FIBA)	Community	Applicant Prevailed
BASKETBALL	1-1355-53565	Little Hollow, LLC	Fédération Internationale de Basketball (FIBA)	Community	Applicant Prevailed
BIO	1-1000-94806	STARTING DOT	BIOTECHNOLOGY INDUSTRY ORGANIZATION	Community	Objection Withdrawn
BIO	1-1000-94806	STARTING DOT	Biotechnology Industry Organization	Legal Rights	Applicant Prevailed
BLUE	1-868-24255	Afilias Limited	Blue Cross and Blue Shield Association ("BCBSA")	Legal Rights	Applicant Prevailed
BOM	1-1119-71934	Núcleo de Informação e Coordenação do Ponto BR - NIC.br	Verisign, Inc.	String Confusion	Applicant Prevailed
BOOK	1-1315-44051	Amazon EU S.à r.l.	Rakuten, Inc.	Community	Applicant Prevailed
BROKER	1-1332-82635	IG Group Holdings PLC	TD Ameritrade	Limited Public Interest	Applicant Prevailed
BROKER	1-1332-82635	IG Group Holdings PLC	Charles Schwab & Co., Inc.	Limited Public Interest	Objection Withdrawn
BUY	1-1141-30048	Charleston Road Registry Inc.	Commercial Connect LLC	String Confusion	Applicant Prevailed
CAM	1-1234-83704	dot Agency Limited	Verisign, Inc.	String Confusion	Applicant Prevailed
CAM	1-1234-	dot Agency	AC Webconnecting	Legal	Applicant

	83704	Limited	Holding B.V.	Rights	Prevailed
CAM	1-1255-75865	United TLD Holdco Ltd.	Verisign, Inc.	String Confusion	Objector Prevailed Final Determination
CAM	1-1255-75865	United TLD Holdco Ltd.	AC Webconnecting Holding B.V.	Legal Rights	Applicant Prevailed
CAM	1-882-71415	AC Webconnecting Holding B.V.	Verisign, Inc.	String Confusion	Applicant Prevailed
CAREERS	1-1378-74207	Wild Corner, LLC	Employ Media LLC	Community	Objection Withdrawn
CARINSURANCE	1-1191-70059	Allstate Fire and Casualty Insurance Company	American Insurance Association	Community	Application Withdrawn
CARS	1-1377-8759	Koko Castle, LLC	Charleston Road Registry Inc.	String Confusion	Applicant Prevailed
CARS	1-845-37810	Uniregistry, Corp.	Charleston Road Registry Inc.	String Confusion	Applicant Prevailed
CARS	1-909-45636	DERCars, LLC	Charleston Road Registry Inc.	String Confusion	Objector Prevailed
CHARITY	1-1241-87032	Spring Registry Limited	Prof. Alain Pellet, Independent Objector	Community	Applicant Prevailed
CHARITY	1-1384-49318	Corn Lake, LLC	Prof. Alain Pellet, Independent Objector	Community	Objector Prevailed Final Determination'
CLOUD	1-1027-19707	Symantec Corporation	Cloud Industry Forum Limited	Community	Applicant Prevailed
CLOUD	1-1099-17190	Charleston Road Registry Inc.	Cloud Industry Forum Limited	Community	Applicant Prevailed
CLOUD	1-1315-79670	Amazon EU S.à r.l.	Cloud Industry Forum Limited	Community	Applicant Prevailed
COACH	1-1397-64766	Koko Island, LLC	Coach, Inc.	Legal Rights	Applicant Prevailed
COMPANY	1-1399-	Silver Avenue,	Verisign, Inc.	String	Applicant

	64977	LLC		Confusion	Prevailed
CRUISES	1-1415-46513	Spring Way, LLC	Cruise Lines International Association Inc.	Community	Objection Withdrawn
DELMONTE	1-929-51262	Del Monte International GmbH	Del Monte Corporation	Legal Rights	Objector Prevailed
DIRECT	1-2007-43424	Dish DBS Corporation	The DirecTV Group Inc.	Legal Rights	Objector Prevailed
DIY	1-1678-58300	Charleston Road Registry Inc.	Scripps Networks, LLC	Legal Rights	Applicant Prevailed
DTV	1-2084-81667	Dish DBS Corporation	Verisign Switzerland SA	String Confusion	Applicant Prevailed
ECO	1-1039-91823	Top Level Domain Holdings Limited	planet.ECO, LLC	Legal Rights	Applicant Prevailed
ECOM	1-2016-12429	Ecommerce Inc.	Verisign, Inc.	String Confusion	Objector Prevailed
ECOM	1-2016-12429	Ecommerce Inc.	Commercial Connect LLC	String Confusion	Applicant Prevailed
EMERCK	1-980-60636	Merck KGaA	Merck & Co. Inc	String Confusion	Applicant Prevailed
EMERCK	1-980-60636	Merck KGaA	Merck & Co., Inc.	Legal Rights	Applicant Prevailed
EPOST	1-1075-2496	Deutsche Post AG	Universal Postal Union (UPU)	String Confusion	Applicant Prevailed
EXPRESS	1-1447-46365	Sea Sunset, LLC	Express, LLC	Legal Rights	Applicant Prevailed
FAN	1-1449-26710	Goose Glen, LLC	Asiamix Digital Ltd.	String Confusion	Objection Withdrawn
FLY	1-1141-48206	Charleston Road Registry Inc.	FairSearch.org	Community	Applicant Prevailed
FOOD	1-1462-36448	Wild Orchard, LLC	Scripps Networks Interactive, Inc.	Legal Rights	Applicant Prevailed
FOOD	1-1975-66983	Dot Food, LLC	Scripps Networks Interactive, Inc.	Legal Rights	Applicant Prevailed
FORSALE	1-909-18178	DERForsale, LLC	Commercial Connect LLC	String Confusion	Applicant Prevailed

GAME	1-1316-7998	Amazon EU S.à r.l.	Entertainment Software Association	Community	Applicant Prevalled
GAME	1-1660-73645	Beijing Gamease Age Digital Technology Co., Ltd.	Entertainment Software Association	Community	Objection Withdrawn
GAMES	1-1470-40168	Foggy Beach, LLC	Charleston Road Registry Inc.	String Confusion	Objector Prevalled
GAY	1-1039-47682	Top Level Domain Holdings Limited	The International Lesbian Gay Bisexual Trans and Intersex Association	Community	Applicant Prevalled
GAY	1-1086-79087	Top Level Design, LLC	The International Lesbian Gay Bisexual Trans and Intersex Association	Community	Applicant Prevalled
GAY	1-1255-4825	United TLD Holdco Ltd.	The International Lesbian Gay Bisexual Trans and Intersex Association	Community	Applicant Prevalled
GAY	1-1713-23699	dotgay llc	Metroplex Republicans of Dallas	Community	Applicant Prevalled
GBIZ	1-1683-16092	Charleston Road Registry Inc.	Neustar, Inc.	String Confusion	Applicant Prevalled
GCC	1-1936-21010	GCCIX WLL	The Cooperation Council for the Arab States of the Gulf also known as the Gulf Cooperation Council or GCC	Legal Rights	DRSP Terminated Proceedings
GIFT	1-1218-92007	Dot Gift Limited	Lucy Ventures, LLC	String Confusion	Objection Withdrawn
GIFT	1-855-85881	Uniregistry, Corp.	Lucy Ventures, LLC	String Confusion	Objection Withdrawn
GMBH	1-1952-21459	InterNetWire Web-Development GmbH	TLDDOT GmbH	Legal Rights	Applicant Prevalled
GOLD	1-1478-71326	June Edge, LLC	World Gold Council, An Association	Community	Applicant Prevalled

GOO	1-1142-62939	Charleston Road Registry Inc.	NTT Resonant Inc.	Legal Rights	Application Withdrawn
HALAL	1-2131-60793	Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.	Telecommunications Regulatory Authority of the United Arab Emirates	Community	Applicant Prevailed
HEALTH	1-1178-3236	dot Health Limited	Prof. Alain Pellet, Independent Objector	Limited Public Interest	Application Withdrawn
HEALTH	1-1178-3236	dot Health Limited	ICANN At-Large Advisory Committee (ALAC)	Community	Application Withdrawn
HEALTH	1-1489-82287	Goose Fest, LLC	Prof. Alain Pellet, Independent Objector	Limited Public Interest	Applicant Prevailed
HEALTH	1-1489-82287	Goose Fest, LLC	ICANN At-Large Advisory Committee (ALAC)	Community	Applicant Prevailed
HEALTH	1-1684-6394	DotHealth, LLC	Prof. Alain Pellet, Independent Objector	Limited Public Interest	Applicant Prevailed
HEALTH	1-1684-6394	DotHealth, LLC	ICANN At-Large Advisory Committee (ALAC)	Community	Applicant Prevailed
HEALTH	1-868-3442	Afilias Limited	Prof. Alain Pellet, Independent Objector	Limited Public Interest	Applicant Prevailed
HEALTHCARE	1-1492-32589	Silver Glen, LLC	Prof. Alain Pellet, Independent Objector	Community	Applicant Prevailed
HEALTHCARE	1-1492-32589	Silver Glen, LLC	Prof. Alain Pellet, Independent Objector	Limited Public Interest	Applicant Prevailed
HOME	1-1013-95616	.HOME REGISTRY INC.	Defender Security Company	Legal Rights	Applicant Prevailed
HOME	1-1049-60075	DotHome Inc.	Defender Security Company	Legal Rights	Applicant Prevailed
HOME	1-1139-16944	Charleston Road Registry Inc.	Defender Security Company	Legal Rights	Applicant Prevailed

HOME	1-1326-24627	Lifestyle Domain Holdings, Inc.	Defender Security Company	Legal Rights	Applicant Prevalled
HOME	1-1494-83305	Baxter Pike, LLC	Defender Security Company	Legal Rights	Applicant Prevalled
HOME	1-845-48417	Uniregistry, Corp.	Defender Security Company	Legal Rights	Applicant Prevalled
HOME	1-875-27253	Merchant Law Group LLP	Defender Security Company	Legal Rights	Applicant Prevalled
HOME	1-907-28623	Dot Home LLC	Defender Security Company	Legal Rights	Applicant Prevalled
HOME	1-927-70273	Top Level Domain Holdings Limited	Defender Security Company	Legal Rights	Applicant Prevalled
HOMES	1-909-196	DERHomes, LLC	Charleston Road Registry Inc.	String Confusion	Objection Withdrawn
HOSPITAL	1-1505-15195	Ruby Pike, LLC	Prof. Alain Pellet, Independent Objector	Community	Objection Withdrawn
HOSPITAL	1-1505-15195	Ruby Pike, LLC	Prof. Alain Pellet, Independent Objector	Limited Public Interest	Objector Prevalled Dissenting Opinion Final Determination
HOSPITAL	1-1505-15195	Ruby Pike, LLC	American Hospital Association	Community	Objection Withdrawn
HOTEIS	1-1249-87712	Despegar Online SRL	Hotel Top-Level-Domain S.a.r.l	String Confusion	Applicant Prevalled
HOTEIS	1-1249-87712	Despegar Online SRL	Hotel Consumer Protection Coalition	Community	Objection Withdrawn
HOTEIS	1-1249-87712	Despegar Online SRL	HOTREC, Hotels, Restaurants & Cafés in Europe	Community	Objection Withdrawn
HOTEL	1-1249-36568	Despegar Online SRL	Hotel Consumer Protection Coalition	Community	Objection Withdrawn
HOTEL	1-1249-36568	Despegar Online SRL	HOTREC, Hotels, Restaurants & Cafés in Europe	Community	Objection Withdrawn

HOTELES	1-1249-1940	Despegar Online SRL	Hotel Top-Level-Domain S.a.r.l	String Confusion	Applicant Prevalled
HOTELES	1-1249-1940	Despegar Online SRL	Hotel Consumer Protection Coalition	Community	Objection Withdrawn
HOTELES	1-1249-1940	Despegar Online SRL	HOTREC, Hotels, Restaurants & Cafés in Europe	Community	Objection Withdrawn
HOTELS	1-1016-75482	Booking.com B.V.	Hotel Top-Level-Domain S.a.r.l	String Confusion	Applicant Prevalled
HOTELS	1-1016-75482	Booking.com B.V.	Hotel Consumer Protection Coalition	Community	Applicant Prevalled
HOTELS	1-1016-75482	Booking.com B.V.	HOTREC, Hotels, Restaurants & Cafés in Europe	Community	Applicant Prevalled
IMMOBILIEN	1-1255-76933	United TLD Holdco Ltd.	Starting Dot s.a.s	String Confusion	Applicant Prevalled
INDIANS	1-1308-78414	Reliance Industries Limited	Prof. Alain Pellet, Independent Objector	Community	Objection Withdrawn
INSURANCE	1-1035-75923	fTLD Registry Services LLC	American Insurance Association	Community	Objection Withdrawn
INSURANCE	1-1063-32835	Dotfresh Inc.	The Financial Services Roundtable	Community	Objector Prevalled
INSURANCE	1-1063-32835	Dotfresh Inc.	American Insurance Association	Community	Applicant Prevalled
INSURANCE	1-1512-20834	Auburn Park, LLC	The Financial Services Roundtable	Community	Objector Prevalled
INSURANCE	1-1512-20834	Auburn Park, LLC	American Insurance Association	Community	Applicant Prevalled
INSURE	1-1516-617	Pioneer Willow, LLC	The Financial Services Roundtable	Community	Objection Withdrawn
INSURE	1-1516-617	Pioneer Willow, LLC	American Insurance Association	Community	Applicant Prevalled
IRA	1-1845-3627	Fidelity Brokerage Services LLC	TD Ameritrade	Limited Public Interest	Application Withdrawn
IRA	1-1845-3627	Fidelity Brokerage Services LLC	Charles Schwab & Co., Inc.	Limited Public Interest	Objection Withdrawn

IRA	1-1845-3627	Fidelity Brokerage Services LLC	Teachers Insurance and Annuity Association of America	Limited Public Interest	Application Withdrawn
ISLAM	1-2130-23450	Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.	Telecommunications Regulatory Authority of the United Arab Emirates	Community	Applicant Prevailed
ITV	1-978-21016	ITV Services Limited	Verisign Switzerland SA	String Confusion	Applicant Prevailed
KID	1-1141-94472	Charleston Road Registry Inc.	The Hong Kong Committee on Children's Rights	Community	Objection Withdrawn
KIDS	1-1309-46695	DotKids Foundation Limited	Charleston Road Registry Inc.	String Confusion	Terminated
KIDS	1-1316-67680	Amazon EU S.à r.l.	Charleston Road Registry Inc.	String Confusion	Terminated
KOSHER	1-1013-67544	Kosher Marketing Assets LLC	Union of Orthodox Jewish Congregations of Americas (OU Kosher)	Community	Applicant Prevailed
LGBT	1-868-8822	Afilias Limited	The International Lesbian Gay Bisexual Trans and Intersex Association	Community	Applicant Prevailed
LIMITED	1-1542-96415	Big Fest, LLC	Limited Stores, LLC	Legal Rights	Applicant Prevailed
LOTTO	1-868-7904	Afilias Limited	European State Lotteries and Toto Association	Community	Applicant Prevailed
MAIL	1-1013-47551	Afilias Domains No. 2 Limited,	Universal Postal Union	Community	Application Withdrawn
MAIL	1-1013-47551	Afilias Domains No. 2 Limited,	United States Postal Service	Legal Rights	Application Withdrawn
MAIL	1-1141-82929	Charleston Road Registry Inc.	Universal Postal Union	Community	Applicant Prevailed
MAIL	1-1141-82929	Charleston Road Registry Inc.	United States Postal Service	Legal Rights	Applicant Prevailed

MAIL	1-1256-50020	1&1 Mail & Media GmbH	Universal Postal Union	Community	Application Withdrawn
MAIL	1-1256-50020	1&1 Mail & Media GmbH	United States Postal Service	Legal Rights	Application Withdrawn
MAIL	1-1316-17384	Amazon EU S.à r.l.	Universal Postal Union	Community	Applicant Prevalled
MAIL	1-1316-17384	Amazon EU S.à r.l.	United States Postal Service	Legal Rights	Applicant Prevalled
MAIL	1-1548-63140	Victor Dale, LLC	Universal Postal Union	Community	Applicant Prevalled
MAIL	1-1548-63140	Victor Dale, LLC	United States Postal Service	Legal Rights	Applicant Prevalled
MAIL	1-1906-88399	WhitePages TLD LLC	Universal Postal Union	Community	Applicant Prevalled
MAIL	1-1906-88399	WhitePages TLD LLC	United States Postal Service	Legal Rights	Applicant Prevalled
MAIL	1-890-53570	GMO Registry, Inc.	Universal Postal Union	Community	Applicant Prevalled
MAIL	1-890-53570	GMO Registry, Inc.	United States Postal Service	Legal Rights	Applicant Prevalled
MAP	1-1417-46480	Charleston Road Registry Inc.	FairSearch.org	Community	Applicant Prevalled
MED	1-1139-2965	Charleston Road Registry Inc.	Prof. Alain Pellet, Independent Objector	Community	Objector Prevalled
MED	1-1139-2965	Charleston Road Registry Inc.	Prof. Alain Pellet, Independent Objector	Limited Public Interest	Applicant Prevalled
MED	1-1192-28569	HEXAP SAS	Prof. Alain Pellet, Independent Objector	Limited Public Interest	Applicant Prevalled
MED	1-907-38758	Medistry LLC	Prof. Alain Pellet, Independent Objector	Community	Objector Prevalled BGC Determination on Reconsideration Request 14-1
MED	1-907-38758	Medistry LLC	Prof. Alain Pellet, Independent	Limited Public	Applicant Prevalled

			Objector	Interest	
MEDICAL	1-1561-23663	Steel Hill, LLC	Prof. Alain Pellet, Independent Objector	Community	Objector Prevailed
MEDICAL	1-1561-23663	Steel Hill, LLC	Prof. Alain Pellet, Independent Objector	Limited Public Interest	Applicant Prevailed
MEME	1-1680-9209	Charleston Road Registry Inc.	The Government of Montenegro	String Confusion	Applicant Prevailed
MERCK	1-1702-28003	Merck Registry Holdings, Inc.	Merck KGaA	Community	Applicant Prevailed
MERCK	1-1702-28003	Merck Registry Holdings, Inc.	Merck KGaA	Legal Rights	Applicant Prevailed
					Applicant Prevailed (updated)
MERCK	1-1702-73085	Merck Registry Holdings, Inc.	Merck KGaA	Community	Applicant Prevailed
MERCK	1-1702-73085	Merck Registry Holdings, Inc.	Merck KGaA	Legal Rights	Applicant Prevailed
					Applicant Prevailed (updated)
MERCK	1-980-7217	Merck KGaA	Merck & Co., Inc.	Legal Rights	Applicant Prevailed
MERCKMSD	1-1704-28482	MSD Registry Holdings, Inc.	Merck KGaA	Community	Applicant Prevailed
MERCKMSD	1-1704-28482	MSD Registry Holdings, Inc.	Merck KGaA	Legal Rights	Applicant Prevailed
					Applicant Prevailed (updated)
MLS	1-868-71271	Afilias Limited	The Canadian Real Estate Association (CREA)	Legal Rights	Applicant Prevailed
MNET	1-1779-67877	Electronic Media Network Limited (M-Net)	Verisign, Inc.	String Confusion	Applicant Prevailed
MOBILE	1-1316-6133	Amazon EU S.à r.l.	Afilias Technologies Limited	String Confusion	Applicant Prevailed

MOBILE	1-1316-6133	Amazon EU S.à r.l.	CTIA - The Wireless Association®	Community	Objector Prevalled
MOBILE	1-1566-85057	Pixie North, LLC	Afilias Technologies Limited	String Confusion	Applicant Prevalled
MOBILE	1-2012-89566	Dish DBS Corporation	Afilias Technologies Limited	String Confusion	Applicant Prevalled
MOBILE	1-2012-89566	Dish DBS Corporation	CTIA - The Wireless Association®	Community	Applicant Prevalled
MOTO	1-1255-15838	United TLD Holdco Ltd.	Motorola Trademark Holdings LLC	Legal Rights	Applicant Prevalled
MUSIC	1-1058-25065	DotMusic Inc.	American Association of Independent Music (A2IM)	Community	Applicant Prevalled
MUSIC	1-1058-25065	DotMusic Inc.	DotMusic Limited	Legal Rights	Applicant Prevalled
MUSIC	1-1175-68062	dot Music Limited	American Association of Independent Music (A2IM)	Community	Applicant Prevalled
MUSIC	1-1175-68062	dot Music Limited	DotMusic Limited	Legal Rights	Applicant Prevalled
MUSIC	1-1316-18029	Amazon EU S.à r.l.	American Association of Independent Music (A2IM)	Community	Applicant Prevalled
MUSIC	1-1316-18029	Amazon EU S.à r.l.	DotMusic Limited	Legal Rights	Applicant Prevalled
MUSIC	1-1571-12951	Victor Cross	American Association of Independent Music (A2IM)	Community	Applicant Prevalled
MUSIC	1-1571-12951	Victor Cross	DotMusic Limited	Legal Rights	Applicant Prevalled
MUSIC	1-1680-18593	Charleston Road Registry Inc.	American Association of Independent Music (A2IM)	Community	Applicant Prevalled
MUSIC	1-1680-18593	Charleston Road Registry Inc.	DotMusic Limited	Legal Rights	Applicant Prevalled
MUSIC	1-959-51046	.music LLC	International Federation of Arts	Community	Applicant Prevalled

			Councils and Culture Agencies (IFACCA)		
MUSIC	1-959-51046	.music LLC	DotMusic Limited	Legal Rights	Applicant Prevalled
MUSIC	1-994-99764	Entertainment Names Inc.	American Association of Independent Music (A2IM)	Community	Applicant Prevalled
MUSIC	1-994-99764	Entertainment Names Inc.	DotMusic Limited	Legal Rights	Applicant Prevalled
MUTUALFUNDS	1-1845-68316	Fidelity Brokerage Services LLC	Prudential Financial Inc.	Limited Public Interest	Application Withdrawn
MUTUALFUNDS	1-1845-68316	Fidelity Brokerage Services LLC	TD Ameritrade	Limited Public Interest	Application Withdrawn
MUTUALFUNDS	1-1845-68316	Fidelity Brokerage Services LLC	Charles Schwab & Co., Inc.	Limited Public Interest	Objection Withdrawn
MUTUALFUNDS	1-1845-68316	Fidelity Brokerage Services LLC	Teachers Insurance and Annuity Association of America	Limited Public Interest	Application Withdrawn
NEC	1-1665-55096	NEC Corporation	Verisign, Inc.	String Confusion	Applicant Prevalled
NETWORK	1-1572-10553	Trixy Manor, LLC	Verisign, Inc.	String Confusion	Applicant Prevalled
NEW	1-1682-52941	Charleston Road Registry Inc.	Verisign, Inc.	String Confusion	Applicant Prevalled
NOW	1-1316-48771	Amazon EU S.à r.l.	Starbucks (HK) Limited	Legal Rights	Applicant Prevalled
NOW	1-1575-53902	Grand Turn, LLC	Starbucks (HK) Limited	Legal Rights	Applicant Prevalled
NOW	1-2138-10969	XYZ.COM LLC	Starbucks (HK) Limited	Legal Rights	Applicant Prevalled
NOW	1-861-67658	Global Top Level ApS	Starbucks (HK) Limited	Legal Rights	Applicant Prevalled
NOW	1-979-89214	One.com A/S	Starbucks (HK) Limited	Legal Rights	Applicant Prevalled

PATAGONIA	1-1084-78254	Patagonia, Inc.	Ministry of Foreign Affairs of Argentina	Community	Application Withdrawn
PATAGONIA	1-1084-78254	Patagonia, Inc.	Prof. Alain Pellet, Independent Objector	Community	Application Withdrawn
PERSIANGULF	1-2128-55439	Asia Green IT System Bilgisayar San. ve Tic. Ltd. Sti.	Gulf Cooperation Council or GCC	Community	Applicant Prevailed
PET	1-1678-92681	Charleston Road Registry Inc.	Verisign, Inc.	String Confusion	Applicant Prevailed
PET	1-868-95281	Afilias Limited	Verisign, Inc.	String Confusion	Applicant Prevailed
PETS	1-1578-44109	John Island, LLC	Afilias Limited	String Confusion	Objector Prevailed
PETS	1-1578-44109	John Island, LLC	Charleston Road Registry Inc.	String Confusion	Objector Prevailed
PHONE	1-2011-80942	Dish DBS Corporation	United States Telecom Association	Community	Objection Withdrawn
PIN	1-1317-59644	Amazon EU S.à r.l.	Pinterest, Inc.	Legal Rights	Applicant Prevailed
POLO	1-1125-1032	Ralph Lauren Corporation	United States Polo Association, Inc	Community	Objector Prevailed
REALESTATE	1-1597-13898	New North, LLC	Nationa Association of Realtors®	Community	Objection Withdrawn
REALESTATE	1-845-86924	Uniregistry, Corp.	Nationa Association of Realtors®	Community	Objection Withdrawn
REALESTATE	1-927-76919	Top Level Domain Holdings Limited	Nationa Association of Realtors®	Community	Objection Withdrawn
REALTY	1-1598-77594	Dash Bloom, LLC	Nationa Association of Realtors®	Community	Objection Withdrawn
REALTY	1-1913-14988	Fegistry, LLC	Nationa Association of Realtors®	Community	Objection Withdrawn
REISEN	1-1606-68851	New Cypress, LLC	Bundesverband der Deutschen Tourismuswirtschaft (BTW) e.V.	Community	Applicant Prevailed
REPUBLICAN	1-1255-42012	United TLD Holdco Ltd.	Republican National Committee	Community	Applicant Prevailed

RETIREMENT	1-1845-17694	Fidelity Brokerage Services LLC	Prudential Financial Inc.	Limited Public Interest	Application Withdrawn
RETIREMENT	1-1845-17694	Fidelity Brokerage Services LLC	TD Ameritrade	Limited Public Interest	Application Withdrawn
RETIREMENT	1-1845-17694	Fidelity Brokerage Services LLC	Charles Schwab & Co., Inc.	Limited Public Interest	Objection Withdrawn
RETIREMENT	1-1845-17694	Fidelity Brokerage Services LLC	Teachers Insurance and Annuity Association of America	Limited Public Interest	Application Withdrawn
RIGHTATHOME	1-1248-60975	Johnson Shareholdings, Inc.	Right At Home, Inc.	Legal Rights	Applicant Prevalued
RUGBY	1-1206-66762	dot Rugby Limited	International Rugby Board	Community	Objector Prevalued
RUGBY	1-1612-2805	Atomic Cross, LLC	International Rugby Board	Community	Objector Prevalued
SALE	1-1984-65341	Dot-Sale LLC	Commercial Connect LLC	String Confusion	Applicant Prevalued
SEARCH	1-1141-50966	Charleston Road Registry Inc.	Initiative For A Competitive Online Marketplace ("ICOMP")	Community	Applicant Prevalued
SEARCH	1-1141-50966	Charleston Road Registry Inc.	FairSearch.org	Community	Applicant Prevalued
SERVICES	1-1628-41321	Fox Castle, LLC	Commercial Connect LLC	String Confusion	Objection Withdrawn
SEX	1-2113-59868	Internet Marketing Solutions Limited	SX Registry SA B.V.	String Confusion	Applicant Prevalued
SEXY	1-855-58140	Uniregistry, Corp.	SX Registry SA B.V.	String Confusion	Objection Withdrawn
SHOP	1-1317-37897	Amazon EU S.à r.l.	Japan Association of New Economy (JANE)	Community	Applicant Prevalued
SHOPPING	1-1631-16988	Sea Tigers, LLC	Commercial Connect LLC	String Confusion	Objector Prevalued

SHOPYOURWAY	1-1767-1759	Shop Your Way, Inc.	Commercial Connect LLC	String Confusion	Applicant Prevalled
SKI	1-1636-27531	Wild Lake, LLC	Fédération Internationale de Ski (FIS)	Community	Objector Prevalled
SONG	1-1317-53837	Amazon EU S.à r.l.	American Association of Independent Music (A2IM)	Community	Applicant Prevalled
SONG	1-1317-53837	Amazon EU S.à r.l.	DotSong Limited	Legal Rights	Applicant Prevalled <sup>1</sup>
SPORT	1-1174-59954	dot Sport Limited	SPORTACCORD	Community	Objector Prevalled
SPORTS	1-1614-27785	Steel Edge, LLC	SportAccord	String Confusion	Objector Prevalled
SPORTS	1-1614-27785	Steel Edge, LLC	SPORTACCORD	Community	Objector Prevalled
STORE	1-1317-24947	Amazon EU S.à r.l.	Commercial Connect LLC	String Confusion	Applicant Prevalled
STORE	1-1789-97294	Dot Store Group LLC	Commercial Connect LLC	String Confusion	Applicant Prevalled
SUPPLIES	1-1601-42282	Atomic Fields, LLC	Commercial Connect LLC	String Confusion	Applicant Prevalled
SUPPLY	1-1591-23028	Half Falls, LLC	Commercial Connect LLC	String Confusion	Applicant Prevalled
TOURS	1-1648-61876	Sugar Station, LLC	Charleston Road Registry Inc.	String Confusion	Objector Prevalled
TUBE	1-1142-5476	Charleston Road Registry Inc.	Latin American Telecom, LLC	Legal Rights	Applicant Prevalled
TUNES	1-1317-30761	Amazon EU S.à r.l.	American Association of Independent Music (A2IM)	Community	Applicant Prevalled
TUNES	1-1317-30761	Amazon EU S.à r.l.	DotTunes Limited	Legal Rights	Applicant Prevalled
TVS	1-1862-71358	T V SUNDRAM IYENGAR & SONS LIMITED	Verisign Switzerland SA	String Confusion	Applicant Prevalled
VET	1-1642-14231	Wild Dale, LLC	Verisign, Inc.	String Confusion	Applicant Prevalled

VIP	1-1037-88001	Top Level Domain Holdings Limited	I-Registry Ltd.	Legal Rights	Applicant Prevailed
VIP	1-1140-53549	Charleston Road Registry Inc.	I-Registry Ltd.	Legal Rights	Applicant Prevailed
VIP	1-1532-71538	John Corner, LLC	I-Registry Ltd.	Legal Rights	Applicant Prevailed
VIP	1-851-9629	Vipospace Enterprises LLC	I-Registry Ltd.	Legal Rights	Applicant Prevailed
VIP	1-878-22942	VIP Registry Pte. Ltd.	I-Registry Ltd.	Legal Rights	Applicant Prevailed
WEATHER	1-1977-49078	The Weather Channel LLC	AccuWeather, Inc.	Community	Objection Withdrawn
WEBS	1-1033-22687	Vistaprint Limited	Web.com Group, Inc.	String Confusion	Objector Prevailed
WEBS	1-1033-73917	Vistaprint Limited	Web.com Group, Inc.	String Confusion	Objector Prevailed
WEIBO	1-1313-41040	Tencent Holdings Limited	Sina Corporation	Legal Rights	Objector Prevailed
YELLOWPAGES	1-1676-43685	Telstra Corporation Limited	Hibu (UK) Limited	Legal Rights	Applicant Prevailed
ZONE	1-1503-89379	Outer Falls, LLC	AutoZone Parts, Inc.	Legal Rights	Objection Withdrawn
بزار	1-862-50853	CORE Association	Commercial Connect LLC	String Confusion	Applicant Prevailed
KOM	1-1254-23113	VeriSign Sarl	Regtime Ltd.; Legato Ltd.	Legal Rights	Applicant Prevailed
opr	1-910-36696	Public Interest Registry	Regtime Ltd.; Legato Ltd.	Legal Rights	Applicant Prevailed
アマゾン	1-1318-83995	Amazon EU S.à r.l.	Prof. Alain Pellet, Independent Objector	Community	Applicant Prevailed
セール	1-1318-75179	Amazon EU S.à r.l.	Commercial Connect LLC	String Confusion	Applicant Prevailed
一号店	1-1244-37294	Wal-Mart Stores, Inc.	Commercial Connect LLC	String Confusion	Applicant Prevailed

亚马逊	1-1318-5591	Amazon EU S.à r.l.	Prof. Alain Pellet, Independent Objector	Community	Applicant Prevailed
商城	1-867-66064	Zodiac Capricorn Limited	Commercial Connect LLC	String Confusion	Applicant Prevailed
商店	1-1490-59840	Wild Island, LLC	Commercial Connect LLC	String Confusion	Applicant Prevailed
家電	1-1318-54339	Amazon EU S.à r.l.	Commercial Connect LLC	String Confusion	Applicant Prevailed
广州	1-1121-22691	Guangzhou YU Wei Information Technology Co., Ltd.	Guangzhou Internet Society	Community	Objection Withdrawn
微博	1-1313-58483	Tencent Holdings Limited	Sina Corporation	Legal Rights	Objector Prevailed
慈善	1-961-6109	Excellent First Limited	Prof. Alain Pellet, Independent Objector	Community	Applicant Prevailed
招聘	1-1158-95080	HU YI GLOBAL INFORMATION RESOURCES (HOLDING) COMPANY. HONGKONG LIMITED	Employ Media LLC	String Confusion	Terminated
网店	1-858-36255	Zodiac Libra Limited	Commercial Connect LLC	String Confusion	Applicant Prevailed
网店	1-2102-26509	Global eCommerce TLD	Commercial Connect LLC	String Confusion	Applicant Prevailed
购物	1-994-1450	Top Level Domain Holdings Limited	Commercial Connect LLC	String Confusion	Applicant Prevailed
通販	1-1318-15593	Amazon EU S.à r.l.	Commercial Connect LLC	String Confusion	Objector Prevailed Final Determination

- <sup>1</sup> This determination file was updated to reflect an updated file published by the DRSP.
- <sup>2</sup> This determination utilized the [IDCR Procedures for Final Review of Perceived Inconsistent or Unreasonable String Confusion Expert Determinations](#).
- <sup>3</sup> This determination utilized the procedures set forth in the [Request for the administration of Expert proceedings regarding the Final Review of the Limited Public Interest Objection against Ruby Pike, LLC's application for .HOSPITAL \[PDF, 341 KB\]](#).
- <sup>4</sup> This determination utilized the procedures set forth in the [Request for the administration of Expert proceedings regarding the Final Review of the Community Objection against Corn Lake, LLC's application for .CHARITY \[PDF, 2.22 MB\]](#).